



Neutral Citation: [2023] UKFTT 215 (TC)

Case Number: TC08741

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

Taylor House, London

Appeal references: TC/2021/00444  
TC/2021/00445

*VAT – Same individual sole director and shareholder of both appellants – Whether transactions of either or both appellants connected to fraudulent tax losses – Yes – Whether either or both appellants knew or should have known of such connection – Yes – Appeals dismissed*

**Heard on:** 17 – 20 and 24 January 2023

**Judgment date:** 21 February 2023

**Before**

**TRIBUNAL JUDGE JOHN BROOKS  
GILL HUNTER**

**Between**

**(1) HILLHEAD LIMITED  
(2) HILLHEAD PLANT LIMITED**

**Appellants**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellants: John Doyle, the sole director and shareholder of both Appellants

For the Respondents: Christopher Foulkes of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

## DECISION

### INTRODUCTION

1. Mr John Doyle is the sole director and shareholder of both appellants, Hillhead Limited (“Hillhead”) and Hillhead Plant Limited (“Plant”).
2. Hillhead appeals against a decision of His Majesty’s Revenue and Customs (“HMRC”) dated 7 July 2020, which was upheld on 5 January 2021 following a review, denying it the right to deduct input tax in the sum of £83,343 incurred on purchases of soft drinks in its VAT periods 07/18 (£22,848.00) and 01/19 (£60,495.00). HMRC’s case is that it denied the deduction of input tax because the transactions concerned were connected with the fraudulent evasion of VAT and that Hillhead knew or should have known of that connection.
3. Plant also appeals against a decision of HMRC dated 7 July 2020 which was upheld on 5 January 2021 following a review. That decision denied Plant the right to deduct input tax incurred on the purchase of various material including scrap metal, paving blocks, wire and plant and machinery parts. As with Hillhead, the input tax was denied by HMRC on the basis that Plant knew or should have known that the transactions concerned were connected to the fraudulent evasion of VAT. The total amount of input tax denied in Plant’s case is £254,311.63 which was incurred in its VAT periods 05/18 (£50,228), 08/18 (£164,218), 11/18 (£38,088) and 02/19 (£1,776).
4. Hillhead and Plant were represented by Mr Doyle. Mr Christopher Foulkes of counsel appeared for HMRC. Although carefully considered, we have not found it necessary to refer to each and every argument advanced on behalf of the parties or indeed to refer to all of the evidence in reaching our conclusions in relation to these appeals.
5. Also, to allay any concern that we might have not taken all of the evidence into account, we consider it appropriate at this stage to remind the parties of what Lewison LJ (with whom Males and Snowden LJJ agreed), said in *Volpi & another v Volpi* [2022] EWCA Civ 464 at [2(iii)]:

“... [the] mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.”

### EVIDENCE

6. In addition to being provided with an electronic hearing bundle, comprising 1,899 pages, we heard from the following HMRC officers.

(1) Pauline Wilcox, a Higher Officer of HMRC who has been employed in HMRC’s Fraud Investigation Service since 2005. Her duties include visiting VAT registered traders, establishing their business activities and auditing and verifying their accounting records in connection with VAT enquiries.

From April 2020 Officer Wilcox has been the allocated officer investigating Hillhead and Plant. The previous investigating officer for the companies, John Harris, left HMRC’s Fraud Investigation Service on 31 January 2020. Ms Wilcox’s evidence concerned the trading activities of Hillhead and Plant.

(2) Phyllis Mee, a Higher Officer of HMRC employed, since 2017, as a case worker in HMRC’s Fraud Investigation Service. Officer Mee, who undertook the initial investigations into Plant, gave evidence in relation to the trading of Hy-Mac Sales & Services Limited (Hy-Mac) and Citiflyte Limited (“Citiflyte”).

John Presho, a Senior Officer of HMRC. From October 2021, Officer Presho has been employed by HMRC as a Senior Avoidance Investigator having previously been, from

December 2013, a VAT Assurance Officer. His duties involve the identification and investigation of tax avoidance and complex tax planning concerning VAT. Officer Presho gave evidence in relation to the trading activities of Countrywide Business Limited (“Countrywide”).

7. We also heard from Mr Doyle who gave evidence on behalf of Hillhead and Plant.

## **FACTS**

### **Background**

#### ***John Doyle***

8. Mr Doyle’s background is in the construction industry. He operates as a consultant to contractors within that industry arranging rental of storage yards and equipment in addition to sales of heavy plant equipment and accessories. He also provides facilities management services including storage, transport provision and consultancy within the construction industry.

9. Having studied for the Building and Civil Engineering Ordinary National Diploma at Lisburn Technical College and the Higher National Diploma at what was then Sheffield Polytechnic, Mr Doyle was employed by Peter Birse Construction Limited (“Birse”), a main contractor that used subcontractors in carrying out construction projects. Although qualified as a civil engineer Mr Doyle became involved in the operational management on the sites covering most types of building and civil engineering work in which he dealt with numerous subcontractors.

10. He was made redundant during the recession of the early 1990s and returned home to Northern Ireland to work freelance utilising his experience. Due to the general downturn in the construction industry he worked for small (two to three man) companies. It was during this time that Mr Doyle met a Jonathan McGall who, in the late 1990s, approached Mr Doyle to work fulltime for his, Mr McGall’s, father’s company, Dawson Wam Limited (“Dawson Wam”). Mr Doyle took up the offer and was employed as Contracts Manager with Dawson Wam based in Bedfordshire. He undertook operational and marketing roles with the company utilising his previous links in the industry that he acquired during his time with Birse.

11. Mr Doyle’s work for Dawson Wam involved sourcing new work for the company, managing the jobs and dealing with payments in addition to dealing with suppliers and subcontractors. One such subcontractor was a Finbarr McMahon of MPS Heavy Haulage Limited (“MPS Haulage”).

12. After several years working for Dawson Wam, Mr Doyle decided to set up on his own as a freelance as he had done in the early 1990s. He agreed with Mr McMahon to undertake some marketing on a part time basis for MPS Haulage and also, through Mr McGall to provide services for Dawson Wam. He also used his experience and contacts to agree the provision of consultancy services to other businesses in the construction industry. Following the 2008 banking crisis and subsequent recession Mr Doyle accepted an invitation from Mr McMahon to take on an operational role, in addition to his marketing role, within the MPS companies.

13. Between 2011 and 2013 Mr Doyle had established his own companies, including Hillhead and Plant (see below), but because of his extra workload with the MPS companies most of these never traded.

14. Mr Doyle explained that his plan was to have a construction company to carry out contracts in South East England and Northern Ireland. He also intended there to be a plant hire company to supply the construction company and other contractors and also a transport

company to facilitate the construction and plant company and to carry out work in other haulage sectors when not busy with his companies.

15. Mr Doyle initially set up Cliffside Logistics Limited (“Cliffside”) for this purpose. He said he chose that name because it was the name of the area in which MPS Enterprises Limited (“MPS Enterprises”) was based. However, having decided to expand the remit of the work he was to be involved in, he chose “Hillhead” as a group name for the companies as it is the name of the townland and road junction where his family live in Northern Ireland. He intended that, for simplicity, the companies would operate under a group banner.

16. Although not intending to be a major contractor Mr Doyle based his blueprint on how other construction companies operated. He instructed the same accountants, Kumaran, that had been used by MPS Enterprises and relied on the accountants to establish the companies and ensure compliance with Companies House requirements.

17. Around 2013 MPS Haulage “collapsed”. However, its business was continued under MPS Enterprises. Mr Doyle described how, in 2015, Hillhead Haulage Limited (“Hillhead Haulage”), which had an operator’s licence, operated the business “very successfully” with the equipment being owned by MPS Plant and that he had continued to be engaged in the marketing and operational management of the companies or as he put it, “I was running the show”. A customer of MPS Plant, for whom transportation of plant was provided, was a Tony O’Gorman of Hy-Mac. It was also in or around 2015 that Mr Doyle employed Brian Donaghy, who had previously worked for MPS Enterprises, as a driver.

18. However, Mr Doyle was, in his words, “ousted” from both MPS Enterprises and Hillhead Haulage in 2017. He explained that this was because Mr McMahon had been advised that others could do better for the companies than Mr Doyle had. However, this was not the case. Hillhead Haulage was struck off the Companies House register in 2018 and MPS Plant went into liquidation in 2019.

19. In addition to Mr Doyle’s business difficulties, in 2016 his partner Karen Judge who he had met when both were working at MPS Enterprises lost her father. This resulted in a move from to Watford to Cornwall where Ms Judge’s mother lived and, as set out below, a change to Hillhead’s registered office. Ms Judge’s mother suffered ill health from summer 2017 until her death in 2020. Mr Doyle’s father also suffered ill health from June 2016 and he sadly died in Spring 2018. Mr Doyle suffered his own serious health issues in 2019.

20. Although Mr Doyle did not agree with the suggestion by Mr Foulkes that he was in a “desperate” situation at this time, which was also when the transactions with which these appeals are concerned took place, he did accept that these were difficult times for him and that he suffered stress as his businesses had lost money as indeed he had himself personally.

21. Mr Doyle explained that the reason why Hillhead and Plant had engaged in the disputed transactions, despite his lack of experience in dealing in such goods, was to add to the scope of works for the future and broaden the strands of business.

22. In addition to Hillhead and Plant Mr Doyle has been the director and shareholder of the six companies as set out in the table below:

<b>Company Name</b>	<b>Incorporation Date</b>	<b>Status</b>	<b>Dates Mr Doyle was a Director</b>
MPS Enterprises Ltd	25/11/2009	Active	01/08/14 – 04/07/17
Cliffside Logistics Ltd	02/09/2011	Active	02/09/11 – present
Hillhead Hire Ltd	11/09/2013	Dissolved	11/09/13 – 15/11/16

Hillhead Haulage Ltd	11/09/2013	Dissolved	11/09/13 – 20/03/17
Hillhead Group Ltd	13/09/2013	Dormant	13/09/13 – present
Cawdor Trading Ltd	16/01/2017	Active	23/01/19 – 01/12/19

### ***Hillhead***

23. Mr Doyle been the sole shareholder and director of Hillhead since its incorporation on 11 September 2013. Its initial registered office was that of its then accountants Kumaran in Southall, London. From its incorporation until 26 June 2018 its only assets were noted as £100 total shares and the company was described as “dormant” by Companies House. On 26 June 2018 Hillhead filed a Confirmation Statement at Companies House stating that its principal activity was “non-specialised wholesale trade.”

24. Hillhead was registered for VAT as an intending trader with effect from 1st June 2017. Its application, on form VAT1, stated that its intended business was to be “construction”, “construction supervision”, “construction of residential buildings” and “construction of commercial buildings”.

25. The anticipated annual turnover shown on the VAT1 was £100,000. Hillhead Haulage and MPS Enterprises were included on the form as “other business involvement” of Mr Doyle. However, having been registered for VAT, Hillhead filed NIL VAT returns for the VAT accounting periods 10/17, 01/18 and 04/18. Its turnover increased from £0 to £124,312 in its 07/18 VAT period to £374,301 in VAT period 01/19, decreasing to £6,239 in VAT Period 04/19.

26. Mr Doyle’s home address, a residential flat in Watford above Watford Social Club, was given as the principal place of business (“PPOB”) on the VAT1 form. From 14 September 2017 this address became Hillhead’s registered office and remained as such during the period in which the transactions with which this case is concerned took place. The registered office was subsequently changed to an address in Penzance on 3 July 2019 following Mr Doyle’s relocation to Cornwall for the reasons described above.

27. Other than Mr Doyle and his partner, Karen Judge, who acts as a part-time bookkeeper, Hillhead did not have any employees.

28. Following the disputed transactions with which this case is concerned the amounts shown on Hillhead’s VAT returns was minimal and the company was deregistered for VAT by agreement on 4 December 2019.

### ***Plant***

29. Plant was incorporated on 11th September 2013. Mr Doyle has been its sole shareholder and director throughout its existence. Like Hillhead, with which it shared a registered office, its registered office was initially that of its accountants, Kumarans, and changed first, on 14 September 2017, to Mr Doyle’s residential address in Watford and subsequently, on 3 July 2019, to an address in Penzance.

30. From incorporation until 31 August 2017 Plant’s only assets were noted as £1 total shares and it was noted as “dormant” by Companies House. Compulsory strike-off action was discontinued on 16 September 2017 and annual dormant accounts were filed on 19 September of that year.

31. Having applied for voluntary registration as an intending trader, Plant was registered for VAT with effect from 1 July 2017. Its VAT1 application form indicated that its intended trade was “plant hire for construction rental (without operator)” and its PPOB was to be the Watford address where Mr Doyle resided and from which Hillhead also operated. Plant filed

a NIL VAT return for its 08/17 accounting period. The VAT returns for its VAT periods 11/17 and 02/18 declared inputs of £297.99 and £199.02 respectively with outputs of £0.00. However, its turnover increased rising from £0 in its 02/18 VAT period to £254,739 in VAT period 05/18 and increasing to £840,132 in its 08/18 VAT period.

32. As with Hillhead, other than Mr Doyle and Ms Judge, Plant has no employees.

### **Contact with HMRC**

33. The first contact with HMRC was a pre-registration visit to Hillhead on 15 August 2017 by HMRC officers Lydia Dunne and Maggie Templeman who met with Mr Doyle at his Watford address which was also the proposed PPOB of Hillhead.

34. Mr Doyle told the officers his background was in construction and that he needed a VAT registration number to get onto an approved suppliers list. He said that Hillhead intended to trade and although he could not provide any emails or paperwork in support he explained that he was in talks at present with companies. Mr Doyle said that he was looking to rent a yard/storage area in order to store building and plant equipment for onward delivery to sites. His main customers were he said Barhale's Watford and Bamnuttal. He explained that the contractors would raise orders for storage. Delivery would then take place to subcontractors.

35. The visit report records that the officers were told that Mr Doyle's partner, Ms Judge, would raise invoices and carry out the general bookkeeping and VAT and that both Mr Doyle and Ms Judge were on PAYE. Banking details were also provided although no transactions were shown and no insurance had been arranged at this stage, or at all. The officers also discussed due diligence with Mr Doyle and the importance of undertaking checks was explained to him.

36. Although a note of the meeting records that Mr Doyle was given a leaflet by one of the officers. However, there is no record of which leaflet was given to Mr Doyle who has no recollection of ever receiving a leaflet at that meeting. Mr Doyle explained that he used Companies House to check a company's existence and only dealt with people he had known for a "good number of years" in the industry.

37. Mr Doyle was advised that in order for Hillhead's VAT registration to proceed HMRC would need to see correspondence confirming an intention to trade. Further information was to be provided to HMRC by Mr Doyle by 29 August 2015 failing which it would be necessary to reapply for registration. The visit report concluded with a recommendation that Hillhead's application for registration for VAT be rejected due to:

"Mr Doyle advising he was unable to provide us with the requested document at this present time. Trader advised to reapply."

However, this recommendation was never communicated to Mr Doyle, indeed the first he knew of it was in preparation for the hearing of this appeal.

38. As noted above (in paragraph 24), notwithstanding the recommendation in the visit report, Hillhead was registered for VAT with effect from 1st June 2017.

39. Plant first came to the attention of HMRC when it was noted that it was making supplies to companies with an MTIC (ie missing trader intra-community VAT fraud) interest that were being monitored.

40. On 25 October 2018 HMRC officers Phyllis Mee and Judith Parton made an unannounced visit to Plant's PPOB, Mr Doyle's residence. However, as nobody was there they left a "7 day letter" asking Hillhead to contact HMRC. Mr Doyle responded to that letter by making a telephone call to HMRC on 26 October 2018.

41. In a subsequent telephone conversation with Mr Doyle, on 30 October 2018, Officer Mee explained that she needed to arrange a visit to discuss Plant's business activity and to provide Mr Doyle with information regarding missing trader fraud in metals trading.

42. Mr Doyle explained that the majority of the metals that he bought were from a company called Citiflyte. When asked by Officer Mee how he contacted the company, Mr Doyle said that everything was done by word of mouth. He explained that he dealt with someone called "Jay" (Jay Makwana) from Citiflyte and that he had been introduced to him by someone although he could not remember who it had been. However, from his evidence it would appear that Mr Doyle first met Mr Makwana, who he said was involved in supplying materials, before Citiflyte had been incorporated.

43. Mr Doyle also told Officer Mee that Plant had several customers and that the last sale had been to PPX Metal Management Limited ("PPX"). Mr Doyle confirmed that Plant did not have a scrap metal licence as he did not think that such a licence was necessary.

44. HMRC's note of that telephone call, prepared by Officer Mee, records that Mr Doyle told her that a meeting would not be possible as he had moved out of the PPOB and that he was "here and there" and "all over the place" and was reluctant to say where he was. However, as Mr Doyle explained, and we accept, that conversation took place at a time when, following the death of his father, he was in the process of arranging to move his personal and business base from Watford to Cornwall and, as such was not able to answer Officer Mee with any certainty.

45. However, when it was explained to him that unless a meeting could be arranged deregistration action would be taken against Plant, Mr Doyle explained that he had a new office in Cornwall. It took several telephone calls to arrange a meeting which took place on 8 November 2018 at a private accommodation address in Watford a venue selected by Mr Doyle as he thought that it would assist Officer Mee for the meeting to take place in Watford rather than in Cornwall.

46. At the meeting Mr Doyle said that he had set up on his own as a civil engineer and that he had worked on various construction projects. He explained that he bumped into people to whom he bought and sold with transactions often being agreed on golf courses. Mr Doyle said that this was how he had met Jay Makwana, the director of Citiflyte, who Mr Doyle described as an "American, Asian Brummie" who he thought was "working for himself". In evidence Mr Doyle he told us that although he did not play golf himself he did attend company "golf days"

47. The note of the meeting records that, when asked about transport of these goods, Mr Doyle said that this was dealt with by somebody else. He said he received payment on delivery, and then paid his supplier and left goods at a friend's unit for storage, and also used Promac Commercial Limited ("Promac") in Essex, adding the cost to the haulage price. He also used Hillhead Haulage, but the relationship with his co-director, Mr McMahon, had ended badly in and he had lost £100,000 as a result. The meeting continued with a discussion on the business activities of Plant. The note records:

"Mr Doyle said that the main business activity was buying and selling materials, metals, construction materials, lorries, trailers and copper.

I [Officer Mee who wrote the note] asked about the construction materials.

Mr Doyle said that it had [to] be concrete.

I asked who the main supplier for the goods was.

Mr Doyle said it was Citiflyte who supplied goods relating to drainage, groundworks, trailers, lorries and confectionery.

I asked where he thought these supplies may originate from and to explain how a transaction takes place.

Mr Doyle said he did not know where Citiflyte sourced goods from. He said that transactions could be arranged in a bit of both fashion. They might have goods in stock and he might know someone who wants to buy them.

I asked about the sale of metals to a company called PPX Metal Management Ltd.

He said he knew them as he had dealt with them a few years ago. He couldn't remember where he had met them but around 18 months ago they had told him that if they came across iron or steel to let them know.

I asked if Citiflyte had sourced the metal for him.

Mr Doyle said that PPX had asked him and Citiflyte had some and did he know anyone who wanted it.

I asked what the goods were for these transactions.

Mr Doyle said it was scrap copper. I asked if he had seen it.

Mr Doyle said he had not seen the actual copper but he had been sent pictures.

I asked if he still had them.

Mr Doyle said probably somewhere.

He said that Citiflyte delivered the copper to PPX using a haulage company and Citiflyte paid for this. The paving stones were also sourced from Citiflyte as someone had asked for some.

I asked Mr Doyle if he had a metals trading licence. There followed a discussion where Mr Doyle said he didn't need one and he had confirmed this with the council and his accountant."

48. Mr Doyle also told Officer Mee that Citiflyte gave him good credit and that he had a good relationship with the company. He also said that PPX would not cut him out as the middleman as it was a matter of trust going back many years with Citiflyte and that he knew Jay Makwana "well". However, in evidence Mr Doyle said that he had only met Jay Makwana "two or three times" at the races or at trade fairs before "doing business" with him. Mr Doyle could not remember what work Mr Makwana was engaged in or who employed him at that time and thought that Mr Makwana was working for himself. Mr Doyle said that he had not heard of Citiflyte until he started to trade with the company.

49. Returning to the 8 November 2018 meeting with HMRC in which due diligence was also discussed. The meeting report records that Mr Doyle explained that he obtained VAT registration numbers, VIES checks, incorporation details and compiled "KYC packs".

50. When asked, Mr Doyle was unable to what was meant by "KYC packs" but he did confirm he was aware of the need for checks and he told the officers that Ms Judge, the bookkeeper, would be able to provide these. In evidence Mr Doyle explained that it was only after he started trading and had received requests from other companies that he became aware of KYC packs or undertaking checks on other companies. He said that in his experience when dealing with plant or equipment being supplied in the construction industry all that mattered was whether it was delivered on time and was fit for purpose.



51. MTIC Fraud was also discussed and Mr Doyle was issued with VAT information sheet *How to spot a missing trader* in addition to VAT Notice 726, *Joint and several liability for unpaid VAT*. Officer Mee's note concluded:

“The main suppliers have not submitted returns. It appears this company is a buffer as it has all the MTIC indicators including onward sales to known MTIC traders. Company to be put forward for monitoring”.

On 31 January 2019 Plant was placed in HMRC's trader monitoring project.

52. On 15 February 2019 a meeting, in relation to Plant, between HMRC Officers John Harris and Alexandra Morgan and Mr Doyle and Ms Judge took place at Plant's (and Hillhead's) new PPOB in Cornwall.

53. The meeting note records that the officers explained HMRC's trader monitoring process to Mr Doyle and Ms Judge. When he was asked about recent deals Mr Doyle told the officers that he had worked for Promac which had been his main source of income. He said that he had also purchased copper granules from a company in Dover which he sold to PPX Metal. Mr Doyle said he had stopped trading with Citiflyte following his meeting with Officer Mee. Officer Harris confirmed that the company had been deregistered for VAT. In fact, two companies that Hillhead Plant had bought from had been deregistered and another (Hy-Mac) was being examined by HMRC. In terms of mark-up, he said that he tried to achieve 1% to 3%.

54. Due diligence was discussed again, and VAT information sheet *How to spot a missing trader* and VAT Notice 726 *Joint and several liability for unpaid VAT* were issued to Mr Doyle. Mr Doyle said that he assumed the accountants would do the due diligence but Officer Harris pointed out the business was ultimately responsible for all issues.

55. When he was asked about inspections, Mr Doyle said he did inspect the goods particularly if they were of high value. However, he explained this was often done on the basis of photographs rather than seeing the goods themselves. Mr Doyle also said that he had three brothers in Northern Ireland and would ask them to check if the goods were there but that he would check them himself if he was in the London area.

56. In the visit report, Officer Harris recorded that Mr Doyle was difficult to pin down to an answer, and moved from one subject to another without giving a full and frank explanation to the questions.

57. On 26 March 2019 Officer Harris telephoned Mr Doyle in relation to Plant. Mr Doyle told him that said that he had not done very much trading in March, but was unable say what he had done. He said he would have to speak with Karen (Judge) the bookkeeper who would have raised the invoices. Similarly, when asked about any changes in the due diligence procedures. He did not give an answer but again said he would have a chat with Karen (Judge).

58. On 16 April 2019 HMRC officers Harris and Natasha Bird visited Plant at its (and Hillhead's) PPOB as part of HMRC's trader monitoring project. Officer Harris explained there might have been tax losses due to Plant's trade with missing traders and that a potential denial of input tax could follow if this was confirmed.

59. The meeting note records that Officer Harris was concerned about Mr Doyle seemingly not knowing who Plant had traded with in March when he telephoned and spoke Mr Doyle to ask about these transactions. However, in evidence Mr Doyle said that he had been caught “on the hop” by that telephone call from Officer Harris and that this explained his somewhat vague response to the officer's questions.

60. The note also records that Mr Doyle confirmed that he had stopped dealing in scrap metals in large scale as there was “too much going on which made him uneasy”. He said that he was currently doing consultancy work for Promac and that there had not been many transactions for Plant. Officer Harris also told Mr Doyle that the due diligence undertaken by Plant was not strong enough to prove the legitimacy of its suppliers and customers to HMRC.

61. A further assurance visit by HMRC officers Harris and Troy Jeffries was carried out on 2 July 2019, this time in relation to both Hillhead and Plant. At that time Mr Doyle was working as a consultant for Promac arranging site clearance, yard storage and transport. He said that he invoiced his own companies for this work as he was trying to establish himself as a main player to enable him to get bigger contracts and that it showed that he had increased his turnover for cash flow purposes. The Visit Report records that there had been little activity for Plant and that Mr Doyle had told the officers he was concentrating solely on plant machinery rental and transport.

62. With regards to Hillhead, Officer Harris issued VAT Notice 726 and leaflet *How to spot a missing trader* to Mr Doyle.

63. Mr Doyle explained that although Hillhead had been established to undertake house construction it had also done some buying and selling. It was confirmed the business transactions in dispute were mainly with Citiflyte. Mr Doyle stated these transactions were sourced via word of mouth after meeting a few individuals from the company. He had said that he had seen the goods which were soft drinks but that had stopped trading in them since the earlier MTIC visit to his associated business. He confirmed that the goods had been transported using O'Donnell Haulage.

64. On 4 November 2019 HMRC (Officer Harris) a tax loss letter was issued to Plant regarding supplies made to it by Countrywide, Hy-mac and Citiflyte Ltd. It stated (with emphasis as stated in the letter):

“I am writing to update you on the verification of your VAT returns for the period 05/18, 08/18, 11/18 and 02/19.

As a result of our enquiries in respect of your 05/18, 08/18, 11/18 and 02/19 VAT returns, we now know that 23 of the transactions (where the whole chain has been established) commenced with a defaulting trader, **resulting in a loss to the public revenue that exceeds £254312.40.**”

65. On 12 November 2019 Hillhead was issued with a trader monitoring notification.

66. A meeting was arranged for 3 December 2019, at which Mr Doyle told Officers Harris and Bird that following a period of ill health, he would be concentrating on consultancy work. The meeting note records that Mr Doyle said that his consultancy with Promac had fallen through and they had let him down. He said that he would not trade in these products again. Mr Doyle confirmed that there was very little activity carried out by Plant, but he said he wanted to keep its VAT number. It was agreed with HMRC officers that Hillhead Limited and Cliffside would be deregistered for VAT with effect from 4 December 2019.

67. On 13 January 2020, HMRC issued Hillhead with a tax loss letter which notified it of a total tax loss of £84,776.84. Hillhead's supplier in all of the transactions leading to tax losses was Citiflyte Ltd. There were 22 invoices listed for the period between 25 July 2018 to 18 October 2018 with a total tax loss was £84,776.84.

68. By letters dated 7 July 2020 HMRC, following a review of the transaction chains, notified both Hillhead and Plant of its decision leading to these appeals, ie that several of their transactions were connected with the fraudulent evasion of VAT and that both companies knew or should have known that this was the case and that the entitlement to the

right to deduct input tax in the sum of £83,343 was refused to Hillhead and £254,311.63 was refused to Plant.

69. On 17 July 2020, an assessment was issued to Hillhead in the total sum of £83,343 together with interest. On the same date, an assessment was notified against Hillhead Plant in the total sum of £254,310 together with interest. Both Hillhead and Plant requested a review of HMRC's decisions on 5 November 2020. Although late, the requests were accepted and both decisions reviewed. Hillhead and Plant were notified on 5 January 2021 that the decisions and assessments had been upheld following those reviews.

### **Transactions**

70. There are 22 transactions or deals in respect of which Hillhead was denied recovery of input tax by HMRC.

71. In each of these deals, which are described in more detail below (see Deals 1 – 22), Hillhead, following an offer from Jay Makwana (of Citiflyte), purchased a quantity of 0.33 litre cans of Danish Coca-Cola from Citiflyte which it then sold on to its customer. In most instances the customer was Pallet Price Limited ("Pallet Price"). Mr Doyle said that he did not consider it odd to be offered such a product from Citiflyte, whose invoices to Hillhead contained various payment terms such as payment due "7 days from invoice" or "due on receipt". Mr Doyle said that he saw these transactions as a possible method of promoting his haulage business.

72. Plant entered into 23 deals on which input tax was denied. Its transactions, which are more fully described below (see Deals 23 – 45), involved the purchase of scrap metal, paving blocks, wire and plant and machinery from Citiflyte, Countrywide and Hy-Mac. Although invoices issued by Countrywide did not include payment terms those issued by Citiflyte to Plant were on the same terms as those it has issued to Hillhead. Hy-Mac's invoices stated, "Terms & Conditions available on request. Title of goods will be given on Receiving Payment in Full".

73. In relation to all of the deals described below, Mr Doyle confirmed that neither Hillhead or Plant transported any of the goods which were delivered directly to their customers by the suppliers concerned. For that reason Mr Doyle did not consider it necessary to arrange any insurance for the goods which he considered was the responsibility of the supplier. When asked about charges for transport included on Plant's invoices to BPM Contracts Limited ("BPM") Mr Doyle's answer was to the effect that you charge what you can get, if a customer is willing to pay for transport then why not charge it even if it is not actually being provided.

### ***Hillhead Deals***

#### ***Deal 1***

74. Hillhead purchased 3,168 units described as "Coca-Cola 24 x 0.33L Cans DK" on the invoice, dated 25 July 2018, which was issued by Citiflyte. The total net price stated on the invoice was £19,324.80 with VAT of £3,864.96 (£23,189.76 gross).

75. Hillhead sold the same quantity of Danish Coca-Cola to Pallet Price under its invoice dated 24 July 2018 at £6.40 a unit with the total price being £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross), a profit of £950.40.

#### ***Deal 2***

76. An invoice issued by Citiflyte, dated 25 July 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.20 with a total cost of £23,569.92 (being £19,641.60 net with VAT of £3,928.32).

77. A Hillhead invoice, dated 25 July 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.40 a unit with a total price being £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross), a profit of £633.60.

*Deal 3*

78. An invoice issued by Citiflyte, dated 27 July 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.20 at a total cost of £23,569.92 (being £19,641.60 net with VAT of £3,928.32) (£19,641.60 (net) with VAT of £3,928.32).

79. A Hillhead invoice, dated 27 July 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.40 a unit with a total price being £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross), a profit of £633.60.

*Deal 4*

80. An invoice issued by Citiflyte, dated 28 July 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.10. The total net price was £19,324.80 and VAT £3,864.96 (£23,189.76 gross).

81. A Hillhead invoice, dated 30 July 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.40 a unit with a total price being £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross), a profit of £950.40.

*Deal 5*

82. An invoice issued by Citiflyte, dated 31 July 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.10. The total net price was £19,324.80 and VAT £3,864.96 (£23,189.76 gross).

83. A Hillhead invoice, dated 30 July 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.40 a unit with a total price being £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross), a profit of £950.40.

84. On 31 July 2018 Citiflyte issued a credit note to Hillhead in the sum of £61.00 (VAT £12.20) in relation to 10 damaged units in this transaction.

*Deal 6*

85. An invoice issued by Citiflyte, dated 31 July 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.20 with a total cost of £23,569.92 (being £19,641.60 net with VAT of £3,928.32).

86. A Hillhead invoice, dated 31 July 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.40 a unit with a total price being £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross), a profit of £633.60.

*Deal 7*

87. An invoice issued by Citiflyte, dated 1 August 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.10. The total net price was £19,324.80 and VAT £3,864.96 (£23,189.76 gross).

88. A Hillhead invoice, dated 1 August 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.40 a unit with a total price being £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross), a profit of £950.40.

#### *Deal 8*

89. An invoice issued by Citiflyte, dated 1 August 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.20 with a total cost of £23,569.92 (being £19,641.60 net with VAT of £3,928.32).

90. A Hillhead invoice, dated 1 August 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.40 a unit with a total price being £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross), a profit of £633.60.

#### *Deal 9*

91. An invoice issued by Citiflyte, dated 1 August 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.20 at a total cost of £23,569.92 (being £19,641.60 net with VAT of £3,928.32).

92. A Hillhead invoice, dated 7 August 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.40 a unit with a total price being £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross), a profit of £633.60.

#### *Deal 10*

93. An invoice issued by Citiflyte, dated 3 August 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.20 with a total cost of £23,569.92 (being £19,641.60 net with VAT of £3,928.32).

94. A Hillhead invoice, dated 7 August 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.40 a unit with a total price being £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross), a profit of £633.60.

#### *Deal 11*

95. An invoice issued by Citiflyte, dated 3 August 2018, records that Hillhead purchased 3,067 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.20 with a total cost of £23,569.92 (being £19,641.60 net with VAT of £3,928.32).

96. A Hillhead a invoice, dated 9 August 2018, records that Hillhead sold 3,168 units to Pallet Price at £6.40 a unit with a total price of £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross). However, on 15 August 2018 Hillhead issued a credit note to Pallet Price in the sum of £646.40, VAT 129.28 with the gross amount being £775.68 in respect of 101 units, the difference between 3,168 and 3,067 units.

#### *Deal 12*

97. An invoice issued by Citiflyte, dated 6 August 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.20 with a total cost of £23,569.92 (being £19,641.60 net with VAT of £3,928.32).

98. A Hillhead invoice, dated 7 August 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.40 a unit with a total price being £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross), a profit of £633.60.

#### *Deal 13*

99. An invoice issued by Citiflyte, dated 6 August 2018, records that Hillhead purchased 2,871 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.20. The total net price was £17,800 with VAT of £3,560.04 (£21,360.24 gross).

100. Hillhead's invoice records that 3,168 units were sold to Pallet Price on 14 August 2018 at £6.40 a unit but that a credit note was issued by Hillhead to Pallet Price on 22 August 2018 in respect of 297 units, the difference between 3,168 and 2,871 units. The effect of this was

that the total amount paid by Pallet Price was £22,049.29 (£18,374.40 net with £3,674.88 VAT, VAT) resulting in a profit for Hillhead of £574.20.

#### *Deal 14*

101. An invoice issued by Citiflyte, dated 10 August 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.10. The total net price was £19,324.80 and VAT £3,864.96 (£23,189.76 gross).

102. A Hillhead invoice, dated 23 August 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.40 a unit with a total price being £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross), a profit of £950.40.

#### *Deal 15*

103. An invoice issued by Citiflyte, dated 10 August 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.10. The total net price was £19,324.80 and VAT £3,864.96 (£23,189.76 gross).

104. A Hillhead invoice, dated 23 August 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.40 a unit with a total price being £20,275.20 (net) with £4,055.04 VAT (£24,330.24 gross), a profit of £950.40.

#### *Deal 16*

105. An invoice issued by Citiflyte, dated 21 August 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.10. The total net price was £19,324.80 and VAT £3,864.96 (£23,189.76 gross).

106. In contrast to the previous deals Hillhead did not sell to Pallet Price. Invoices issued by Hillhead, dated 27 August 2018, record that it sold 1,584 units to China Cash and Carry, 1,089 units to KBC Foods Limited and 495 units to Schimmel Distribution all at £7 per unit (a total net amount of £22,176 (£26,611.20 gross)) increased its profit margin with a profit of £2,851.20.

#### *Deal 17*

107. An invoice issued by Citiflyte, dated 21 August 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.10. The total net price was £19,324.80 and VAT £3,864.96 (£23,189.76 gross).

108. A Hillhead invoice, dated 30 August 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.30 a unit with a total price being £19,958.40 (net) with £3,991.68 VAT (£23,950.08 gross), a profit of £633.60.

#### *Deal 18*

109. An invoice issued by Citiflyte, dated 21 August 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.10. The total net price was £19,324.80 and VAT £3,864.96 (£23,189.76 gross).

110. A Hillhead invoice, dated 30 August 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.30 a unit with a total price being £19,958.40 (net) with £3,991.68 VAT (£23,950.08 gross), a profit of £633.60.

#### *Deal 19*

111. An invoice issued by Citiflyte, dated 22 August 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.10. The total net price was £19,324.80 and VAT £3,864.96 (£23,189.76 gross).

112. A Hillhead invoice, dated 1 September 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.30 a unit with a total price being £19,958.40 (net) with £3,991.68 VAT (£23,950.08 gross), a profit of £633.60.

*Deal 20*

113. An invoice issued by Citiflyte, dated 22 August 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.10. The total net price was £19,324.80 and VAT £3,864.96 (£23,189.76 gross).

114. A Hillhead invoice, dated 3 September 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.30 a unit with a total price being £19,958.40 (net) with £3,991.68 VAT (£23,950.08 gross), a profit of £633.60.

*Deal 21*

115. An invoice issued by Citiflyte, dated 27 August 2018, records that Hillhead purchased 3,168 units comprising 24 x 0.33L cans of Danish Coca-Cola at a unit price of £6.10. The total net price was £19,324.80 and VAT £3,864.96 (£23,189.76 gross).

116. A Hillhead invoice, dated 4 September 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £6.30 a unit with a total price being £19,958.40 (net) with £3,991.68 VAT (£23,950.08 gross), a profit of £633.60.

*Deal 22*

117. An invoice issued by Citiflyte, dated 18 October 2018, records that Hillhead purchased 3,168 units (which are not further described) at a unit price of £5.60. The total net price was £17,740.80 with VAT £3,548.16 (£21,288.96 gross).

118. A Hillhead invoice, dated 12 December 2018, records that Hillhead sold 3,168 units of Danish Coca-Cola to Pallet Price at £5.90 a unit with a total price being £18,691.20 (net) with £3,738.24 VAT (£22,429.44 gross), a profit of £950.40.

***Plant Deals***

*Deal 23*

119. A Countrywide invoice, dated 8 March 2018, records that it supplied mixed scrap to Plant at a net cost of £11,100 with VAT of £2,220 (£13,320 gross) to which transport costs of £84.60 (plus £16.92 VAT) were added. The total invoice amount was £11,184.60 (net), £2,236.92 (VAT) and £13,421.52 (gross).

120. This was sold by Plant to Creek Metals Limited (“Creek”). The invoice issued by Plant, dated 6 March 2018, records the goods as being 15.52 units of iron at £130 per unit, 2.34 units of mixed cable at £1,600 per unit and 1.46 units of Mixed Copper at £3,800 per unit. The total invoice amount was £11,309.60 (net), £2,261.92 (VAT), £13,571 (gross) resulting in a profit of £125 for Plant.

*Deal 24*

121. A Countrywide invoice, dated 8 March 2018, records that it supplied mixed scrap to Plant at a net cost of £8,008 with VAT of £1,601.60 (£9,609.60 gross) to which transport costs of £55.80 (plus £11.16 VAT) were added. The total invoice amount was £8,063.80 (net), £1,612.76 (VAT), £9,676.56 (gross).

122. This was sold by Plant to Creek. The invoice issued by Plant, dated 13 March 2018, records the goods as being 15.66 units of iron at £130 per unit, 1.35 units of mixed cable at £1,600 per unit and 0.94 units of Mixed Copper at £3,800 per unit. The total invoice amount was £8,143.80 (net), £1,628.76 (VAT), £9,772.56 (gross) resulting in a profit of £80 for Plant.

#### *Deal 25*

123. A Countrywide invoice, dated 20 March 2018, records that it supplied mixed scrap to Plant at a net cost of £9,840 with VAT of £1,968 (£11,808 gross) to which transport costs of £82.80 (plus £16.56 VAT) were added. The total invoice amount was £9,922.80 (net), £1,984.56 (VAT), £11,907.36 (gross).

124. This was sold by Plant to Creek. The invoice issued by Plant, dated 19 March 2018, records the goods as being 15.82 units of iron at £130 per unit, 2.16 units of mixed cable at £1,600 per unit and 1.125 units of Mixed Copper at £4,000 per unit. The total invoice amount was £10,012.60 (net), £2,002.52 (VAT), £12,015.12 (gross) resulting in a profit of £89.80 for Plant.

#### *Deal 26*

125. A Countrywide invoice, dated 22 March 2018, records that it supplied 540 paving blocks to Plant at a net cost of £13,750 plus £2,750 VAT (£16,500 gross).

126. An invoice issued by Plant on 21 March states that it supplied 288 units of “block paving” at £25 per unit to BPM. The invoice also records that Plant charged BPM £263.45 plus VAT for transport although Mr Doyle confirmed that it did not transport the goods which were delivered by Countrywide. A charge of 198.53 plus VAT for transporting 210 “block paving” units at £30 a unit was also included in an invoice issued by Plant to BPM on 22 March 2018. The total amount of these two invoices was £13,961.98 (net), £2,792.40 (VAT), £16,754.38 (gross) resulting in a profit for Plant of £211.98.

#### *Deal 27*

127. A Citiflyte invoice, dated 14 May 2018, records that it supplied 18.62 units of “Dry Bright Wire” at £4,653 per unit and 1.36 units of “Hair Wire” at £4,504.50 to Plant. The total price was £92,764.98 (net), £18,553 (VAT), £111,317.98 (gross).

128. Although the invoice issued by Plant to NRM Metal Recycling (“NRM”), dated 8 May 2018, does not describe the goods it sold, it would appear that these were the dry bright wire and hair wire that it acquired from Citiflyte. Plant’s invoice to NRM records the invoice totals as being £93,702 (net), £18,740.40 (VAT), £112,442.40 (gross) resulting in a profit for Plant of £937.02.

#### *Deal 28*

129. An invoice issued by Citiflyte, dated 24 May 2018, records that it sold Plant 21.48 units of dry bright wire at £4,653 per unit, 2.82 units of hair wire at £4,504.50 per unit, 0.454 units of No2 burnt wire at £4,158 per unit and 0.26 units of “Clean Flat Electro-Bus” at £4,455 per unit. The total invoice price was £115,454.59 (net), £23,090.93 (VAT), £138,545.52 (gross).

130. The corresponding invoice issued by Plant to NRM on 23 May 2018 does not describe the materials sold although these would appear to be the same as the goods acquired from Citiflyte. The amounts shown in Plant’s invoice are £116,620.80 (net), £23,324.16 (VAT), £139,944.96 (gross) which resulted in a profit of £1,166.21 for Plant.

#### *Deal 29*

131. A Citiflyte invoice, dated 29 May 2018, records that it supplied Plant with 27.5 units of dry bright wire at £4,633.20 per unit. The invoice total was £127,413 (net) £25,482.60 (VAT), £152,895.60 (gross). As stated in its invoice, dated 2 July 2018, Plant sold the same quantity of dry bright wire to PPX at £4,680 per unit. The totals recorded on Plant’s invoice were £128,700 (net), £25,740 (VAT), £154,400 (gross). Plant made a profit of £1,287 on this transaction.



### *Deal 30*

132. A Citiflyte invoice, dated 8 June 2018, states that 4.055 units of No2 Burnt Wire at £4,274.75 per unit and 19.425 units of Dry Bright Wire at £4,732.20 were sold to Plant. The invoice total was £109,327.08 (net), £21,865.42 (VAT), £131,192.50 (gross). Although its invoice, dated 5 June 2018, does not describe the metals it appears that Plant sold the metals it acquired from Citiflyte to NRM. The totals recorded on Plant's invoice were £110,835.45 (net), £22,167.09 (VAT), £133,002.54 (gross). Plant made a profit of £1,508.37 on this deal.

### *Deal 31*

133. A Citiflyte invoice, dated 13 June 2018, records that it sold 3.01 units of No2 Burnt Wire at £4,445 per unit and 17.93 units of Dry Bright Wire at £4,702.50 to Plant. The invoice totals were £97,725.38 (net), £19,545.08 (VAT), £117,270.45 (gross). Plant's invoice, dated 6 June 2018, does not record the materials sold or price per unit but it was not disputed that the transaction concerned the same metals. The totals on Plant's invoice to NRM were £98,712.50 (net), £19,742.50 (VAT), £118,455 (gross) resulting in a profit for Plant of £987.13.

### *Deal 32*

134. An invoice, dated 20 June 2018, issued by Citiflyte records the sale to Plant of 4.046 units of No2 Burnt Wire at £4,455 per unit and 23.434 units of Dry Bright Wire at £4,801.50 a unit. The total sums due under that invoice were £130,543.28 (net), £26,108.66 (VAT), £156,651.94 (gross). This material was sold to NRM by Plant. Although Plant's invoice, dated 20 June 2018, does not record the metals sold, the amounts stated on it were £131,861.90 (net), £26,372.38 (VAT), £158,234.28 (gross), a profit of £1,318.62 for Plant.

### *Deal 33*

135. A Citiflyte invoice, dated 5 July 2018, records that it supplied Plant with 25 units of Bright Copper Wire at a cost of £4,342.14 per unit. The total sums due under the invoice were £108,553.50 (net), £21,710.70 (VAT), £130,264.20 (gross). Plant's invoice, dated 9 July 2018, states that it supplied PPX with 25 units of Bright Copper at £4,386 per unit, a total price of £109,650 (net), £21,930 (VAT), £131,580 (gross). This resulted in a profit for Plant of £1,096.50.

### *Deal 34*

136. Citiflyte's invoice, dated 26 June 2018, records that it sold 4.76 units of No2 Burnt Wire at £4,474.80 per unit and 20.26 units of Dry Bright Wire to Plant. The invoice totals were £116,773.27 (net), £23,354.66 (VAT), £140,127.93 (gross). An invoice issued by Plant on 26 June 2018 records that these metals were sold to NRM. Although the invoice is silent as to the unit price the total sums stated on the invoice were £117,952.80 (net), £23,590.56 (VAT), £141,543.36 (gross), leading to a profit for Plant of £1,179.53.

137. On 3 August 2018 Citiflyte issued Plant with a credit note in the sum of £8,333.33 (net), £1,666.67 (VAT), £10,000 (gross). This credit note was issued in respect of its 26 June 2018 invoice in relation to "quantity of stock poor quality" of the goods supplied.

### *Deal 35*

138. An invoice, dated 6 July 2018, issued by Citiflyte records that it sold 2.58 units of Hair Wire at £3,984.75 per unit and 15.48 units of Dry Bright Wire at £4,266.90 to Plant. The invoice totals were £76,332.27 (net), £15,266.45 (VAT), £91,598.72 (gross).

139. Plant sold the same quantities of Hair Wire and Dry Bright Wire to PPX at £4,025 and 4,310 per unit respectively. Plant's invoice to PPX, dated 9 July 2018 records total sums of £77,103.30 (net), £15,420.66 (VAT), £92,523.96 (gross) resulting in a profit of £771.03.

#### *Deal 36*

140. The description in Citiflyte's invoice, dated 3 August 2018, of what it provided to Plant states, "Inert waste removal - £13,092.75" and "Hire of Welfare Units - £6,336.00". With VAT of £3,885.75 the total invoice (gross) was £23,314.50. Plant provided these services to RN Surfacing Limited which it invoiced on 3 August 2018 at £19,625 (net), £3,925 (VAT), £23,550 (gross), a profit of £196.25.

#### *Deal 37*

141. A Citiflyte invoice, dated 31 August 2018, describes its sale to Plant of, "tractor units and trailers" for a total of £34,996 (net), £6,999.30 (VAT), £41,995.80 (gross). although no invoice was provided by Plant, its "VAT Detailed Report" for the period shows a corresponding "sale of assets" sold to CPR Commercial Export Limited ("CPR") under an invoice issued on 29 August 2018 for a total sum of £35,350 (net), £7,070 (VAT), £42,420 (gross), a profit for Plant of £353.50.

#### *Deal 38*

142. An invoice issued by Hy-Mac on 4 September 2018 records that it supplied Plant with a "Rock Bucket 50 Ton Design. The invoice was in the sum of £6,300 (net), £1,260 (VAT), £7,560 (gross) and clearly stated that no warranty "is given or implied".

#### *Deal 39*

143. According to its invoice, dated 7 September 2018, Hy-Mac supplied a "Rotation Grab 35 Ton Design" to Plant. The invoice was in the sum of £9,600 (net) £1,920 (VAT) £11,520 (gross). It was stated on the Hy-Mac invoice that no warranty "is given or implied".

#### *Deal 40*

144. A Hy-Mac invoice, dated 18 September 2018, records the sale of a "Grapple 5 Tine to fit 30 Ton Handler" to Plant. The invoice was in the sum of £7,850 (net) £1,570 (VAT) £9,420 (gross). It was stated on the Hy-Mac invoice that no warranty "is given or implied".

#### *Deal 41*

145. An invoice issued by Hy-Mac, dated 20 October 2018, records the sale of a "Liebherr 952 Waste Handler" to Plant at £10,700 (net), £2,140 (VAT), £12,840 (gross). The invoice stated that no warranty "is given or implied" by Hy-Mac on this purchase.

#### *Deal 42*

146. An invoice issued by Hy-Mac, dated 22 October 2018, records the sale of a "Crusher Bucket. 30/35 Ton Spec" to Plant at £10,200 (net), £2,040 (VAT), £12,240 (gross). The invoice stated that no warranty "is given or implied" by Hy-Mac on this purchase.

#### *Deal 43*

147. An invoice issued by Citiflyte, dated 18 October 2018, details its sale of 10.93 units of "granules" to Plant at £3,943.17 per unit. The total amounts stated on the invoice were £43,098.85 (net), £8,619.77 (VAT), £51,718.62 (gross). Plant supplied the same quantity of granules to PPX at £3,983 per unit. The total sums stated on Plant's invoice, dated 15 October 2018, were £43,534.19 (net), £8,706.84 (VAT), £52,241.03, a profit to Plant of £435.34.

#### *Deal 44*

148. Citiflyte's invoice, dated 18 October 2018, records that it sold Plant 26.98 units of Bright Wire at £4,114.22 a unit. The invoice totals were £111,020.78 (net), £22,205.74 (VAT), £133,234.44 (gross). Plant sold the same quantity of Bright Wire to PPX at £4,278 per unit Plant issued two invoices to PPX, the first, for 14.10 units, was on 16 October 2018

and the second, for 12.88 units, the following day, 17 October 2018. The total sum on the first invoice was £60,319.80 (net), £12,063.96 (VAT), £72,383.76 (gross) and the second, 17 October 2018 invoice, £55,100.64 (net), £11,020.13 (VAT), £66,120.77 (gross). Plant's profit as a result of this deal was £4,391.74.

#### *Deal 45*

149. An invoice, dated 22 September 2018, issued by Hy-Mac records that it supplied Plant with a "Grapple 5 Tine to fit 30 Ton Handler". The total price was £8,880 (net), £1,776 (VAT), £10,656.

150. With this deal, as with deals 38, 39, 40, 41 and 42, above, Mr Doyle explained that there was no onward sale by Plant as the equipment was not satisfactory and would cost more to repair than it was worth. Although he initially said that the plant and equipment had been sold to a dealer in Ireland to be scrapped, at the hearing, when the absence of any reference in the bank records to such a sale was pointed out to him, he said that there had not been a sale but that he had arranged for these items to be transported to Ireland and scrapped.

#### **Payments**

151. Most of the transactions described above involved back to back transactions in which the deals were concluded from supplier to customer within a four-day period, with most transactions being dealt with on the same day. Neither Hillhead nor Plant were left holding any additional stock and appear to have encountered no difficulty in either sourcing or selling the goods. In many of the transactions, the sales by Hillhead and/or Plant preceded the corresponding purchase by several days.

152. Although HMRC contend that Mr Doyle failed to disclose the full banking records for both Hillhead and Plant precluding a full reconciliation of payments in respect of all deals, it was accepted that there is no record of any further request being made for documents following HMRC's initial requests leading Mr Doyle to understand that everything asked for had been provided.

153. However, where the existence of transactions can be corroborated by the bank statements, it can be seen that Hillhead and Plant were paid by their customers before the supplier was paid.

154. In relation to Hillhead, for which all bank statements other than for the period between 22 November 2018 to 22 December 2018 had been provided to HMRC, the bank statements show that in all of the above deals Hillhead's main customer, Pallet Price, always paid Hillhead before Hillhead paid its supplier, Citiflyte. Although the sales and payments generally match, Pallet Price did fall behind with its payments with the result that there was sometimes a delay of two to three weeks before Hillhead paid Citiflyte.

155. While it is not a legal requirement to do so HMRC contend that it is usual commercial practice to add references to payments although this is disputed by Mr Doyle. However, despite making multiple payments to Citiflyte at the same time Hillhead rarely added references to its payments to Citiflyte. Only one payment, in Deal 13, was given a reference in accordance with a Citiflyte invoice number.

156. Although Mr Doyle believed that all banking records had been provided, as further records had not been requested by HMRC, a substantial amount of records, from 21 March 2018 to 22 June 2018, for Plant were missing. Partial records were produced for subsequent periods but not bank statements from 21 August to 31 August 2018 and 26 October to 22 November 2019.

157. From those statements provided it can be seen that some transactions do not match the name of the customer on the invoice and the bank payments. For example, Plant's invoices numbers 4 and 5 (Deal 26) are to BPM Contracts Limited but the payments were made by BPM Interiors Limited (the previous name of the company before 21 November 2017). Mr Doyle explained in evidence that he checked the invoice was paid rather than which company paid it. Also in all of its transactions, except the deals with Hy-Mac, customers paid Plant before it paid its supplier.

158. Citiflyte's invoices to Plant contained at least four different bank account payment instructions and payments to Citiflyte bore different recipient references, some were made to Citiflyte BA, others Citiflyte Ltd with the reference CK35005906. However, most of the deals were paid by multiple part payments without references which made tracing difficult.

159. In Deal 43, a third party banking platform, Racing FX was used by Plant to make a payment of £5,000 to Citiflyte.

## **Suppliers**

### ***Citiflyte***

160. Citiflyte supplied Hillhead with cans of Danish Coca-Cola. It also supplied Hillhead Plant with scrap metal, inert waste removal, tractor units and trailers. All the transactions led to tax losses.

161. It was incorporated on 31 October 2017. Its application for registration at Companies House gave as its UK Standard Industrial Code ("SIC") 70229 which includes "management consultancy activities services" and "production management consultancy services (other than construction)".

162. On 15 January 2018 a Mr John McIntosh submitted an application, Form VAT1, to register it for VAT. The VAT1 stated that the company's main business activity was "Data processing, consultancy and related activities" and gave an estimated turnover for the first 12 months of £82,000. The form also stated that its PPOB was Mr McIntosh's home address in Birmingham. The application was rejected by HMRC on 17 January 2018 as the bank account details (in the name "Overbite") were not in the company's VAT registration name. The bank account details were then deleted from the application on its resubmission and Citiflyte was registered for VAT with an effective date of registration of 31 October 2017.

163. It had two registered office addresses, the first in Warwick from 31 October 2017 to 15 February 2018 and subsequently at Cawder Hall Farm in Essex from 15 February 2018 to its dissolution on 5 February 2020.

164. On incorporation Rosemary Lass was listed as director of the company, holding the totality of the shares (with an aggregate value of £1). John McIntosh was appointed as director from 20 November 2017 to 20 January 2018. Rosemary Lass' appointment was terminated on 10 February 2018 with Kelly Ann McSkeane being appointed as director on the same day. Ms Lass' 100% shareholding was transferred to Ms McSkeane on 15 February 2018. Jay Makwana was then appointed on 1 June 2018. Ms McSkeane resigned on 1 January 2019 but this was not notified to Companies House until 9 August 2019. On 13 January 2020 notification was given to Companies House that Jay Makwana had resigned on 1 January 2019 with Matthew Ferguson being appointed on 2 January 2019.

165. The directors in office during the period in which disputed transactions took place, from May – October 2018, were therefore Kelly Ann McSkeane and Jay Makwana.

166. On 25 October 2018, after the disputed transactions had been completed, the company filed a confirmation statement at Companies House in which its principal activity was

described as “Non-specialised wholesale trade, Management Consultancy activities other than financial management.”

167. Citiflyte filed a NIL VAT return for VAT period 01/18. It did not file any subsequent VAT returns despite issuing sales invoices to both Hillhead and Plant in excess of £1 million.

168. HMRC issued central assessments of £470 and £506 were raised for VAT periods 04/18 and 07/18 respectively which were not paid.

169. Having received VAT detailed reports from Plant indicating that it had received supplies from Citiflyte, Officer Mee attempted, unsuccessfully, to contact Citiflyte by telephone with the company failing to return calls and/or respond to messages.

170. Having received further VAT summaries from Plant indicating it had received supplies from Citiflyte, together with Citiflyte invoices in relation to such supplies, given its failure to file VAT returns and the lack of contact from Citiflyte, a decision was taken to deregister the company for VAT. Officer Mee notified the company by letter of 16 January 2019 that it was deregistered with effect from 15 January 2019. That letter was returned on 26 February 2019 with a handwritten note on the envelope stating, “not here anymore”.

171. On 4 July 2019 HMRC issued Citiflyte with a notice of assessment for periods 07/18 and 10/18 in the sum of £234,099 plus £2,534.21 interest. The assessment letter was sent to the two directors’ residential addresses in the light of the fact that the deregistration letter sent to the company’s registered address had been returned. The directors subsequently filed notices of termination of appointment as directors, backdating the termination dates to 1 January 2019 (see paragraph 164, above).

172. HMRC issued a further assessment on 26 November 2019 in the sum of £84,677 plus £536.15 interest having received detailed VAT reports and Citiflyte invoices from Hillhead. This assessment was sent Mr Makwana’s address as Ms McSkeane’s termination as a director had been filed at Companies House. The total amount assessed remains unpaid and no appeal has been received by HMRC relating to any of the action taken against Citiflyte.

173. Citiflyte was wound up on HMRC’s petition on 5 February 2020 with a debt on file of £404,695.42.

174. Officer Mee’s initial investigations into Citiflyte also revealed the following which were not disputed by Mr Doyle:

(1) Citiflyte’s PPOB at Cawder Hall farm was also the PPOB for Promac, a company for which John Doyle carried out consultancy activities, and Cawder Trading Limited (“Cawder”), of which Mr Doyle was a director. However, Mr Doyle did explain in evidence that Cawder Hall farm was not a farm as such but had been converted into what was essentially a business park where various businesses operated from various buildings that had once been used for agricultural purposes;

(2) Elden Marsh Limited which had John McIntosh, Rosemary Lass and Kelly Ann McSkeane as directors, had failed to submit VAT returns and central assessments were issued. Officer Mee deregistered the company on 15 January 2019;

(3) Ms Lass and Mr McIntosh had been involved in setting up numerous companies and appeared to act as formation agents

(4) Ms McSkeane had also been a director of Agri-trans Limited (“Agri-trans”) with the other director being Brian Donaghy. This company was wound up on HMRC’s petition with a VAT debt of £274,560.55;

(5) Mr Makwana was a director of Shannaghmore Enterprises Limited. The company had not filed any VAT returns. Officer Mee deregistered the company for VAT on 12 February 2019;

(6) Citiflyte had directors in common with Countrywide (Lass, McIntosh, McSkeane) and Countrywide Business Limited, another defaulting supplier to Hillhead Plant.

175. Mr Doyle said that he had visited Citiflyte but had never inspected the goods at its premises. He was unable to describe the premises saying he could not remember it at all other than there was an office there where he met Jay Makwana.

### ***Hy-Mac***

176. Hy-Mac was incorporated on 16 February 2017. It has had three registered office addresses, the first in Crawley from 15 February 2017 to 30 January 2018, then at Great Portland Street, London between 30 January 2018 to 13 June 2018 and finally in Dartford, Kent, from 13 July 2021 to the present. On incorporation its sole director and shareholder was listed as a Mr Anthony O’Gorman. His appointment was terminated on 1 December 2020 when James O’Gorman was appointed as director until 5 February 2021. At that date a Dr Anthony O’Gorman was appointed as a director – Dr A O’Gorman and Mr A O’Gorman have the same month and year of birth and, as HMRC contend, it appears that they are the same person.

177. Hy-Mac was registered for VAT with an effective date of registration of 1 February 2018. Its main business activity on its VAT1 application for VAT registration was described by Anthony O’Gorman as “sales of machinery and parts” and “construction machinery (wholesale)”. Its estimated turnover was stated to be £500,000 and its declared PPOB was a residential address in Crawley.

178. Hy-Mac filed NIL returns for VAT periods 04/18, 07/18, 10/18 and 99/99 even though during September and October 2018 it made various undeclared supplies of heavy machinery parts to Plant.

179. Having been provided with the 11/18 VAT detailed report of Plant on 8 January 2019, which included supplies from Hy-Mac, Officer Mee attempted to establish contact with Hy-Mac by telephoning the mobile telephone number provided by Anthony O’Gorman in the VAT1 application form and leaving messages asking him to contact her. However, the director failed to respond to any of Officer Mee’s communications. In the circumstances a decision was taken by HMRC to deregister Hy-Mac for VAT. This took effect from 24 January 2019. Officer Mee sent a letter, dated 24 January 2019, to this effect to the company.

180. On the basis of the VAT records obtained from Plant, including 6 Hy-Mac invoices revealing sales of heavy plant parts, HMRC issued Hy-Mac with a notice of assessment on 10 July 2019 for VAT period 10/18 in the sum of £10,706.00. The total amount assessed remains unpaid and no appeal has been received by HMRC relating to any of the action taken against Hy-Mac.

181. In the course of checking that the VAT due on these supplies had not been declared in error under another registration, Officer Mee noted that Anthony O’Gorman had been involved with other VAT registered entities. This included Zadac Trading Limited, which was dissolved upon the petition of HMRC with an outstanding VAT debt of £358,511.07. Anthony O’Gorman had also applied for VAT registration for other entities:

(1) Anthony O’Gorman trading as Hy-Mac which was registered for VAT with effect from 12 June 2019. It had the same PPOB and contact telephone number as Hy-Mac. Its main business activity was described on its VAT1 as “buying and selling machinery trucks and tractors”. No bank account details were provided to HMRC; and

(2) Hy-Mac Industries Limited. This company was also VAT registered with effect from 12 June 2019 and had the same address and contact details as Hy-Mac. Its main business activity was described as “sales of mining quarry industrial machinery wholesale” and its business name was shown as “Hy-Mac”. Again no bank account details were provided to HMRC.

182. On 11 July 2019 Officer Mee wrote to Anthony O’Gorman in respect of both of these entities, explaining that, owing to the fact that she had not been able to contact him by telephone or letter in relation to his associated business, Hy-Mac, she was unable to establish that taxable supplies were being made, and had therefore cancelled these VAT registrations with effect from 11 July 2019. Both of these letters included Officer Mee’s contact details should Mr O’Gorman have wished to contact her. However, no returns were submitted by these entities and no response was received to either letter which were not returned to HMRC.

183. A check of HMRC systems revealed that although details for eight bank accounts that had been recorded as belonging to Anthony O’Gorman were held, none matched the details on the Hy-Mac invoices obtained from Plant.

184. In addition to the companies and businesses mentioned above, Anthony O’Gorman was also the director of Hy-Mac Construction Machinery Limited (“Hy-Mac Construction”). This was registered for VAT with effect from 14 April 2020 with its PPOB being an address in Worthing, West Sussex. The two contact telephone numbers that were given included one matching that given for Hy-Mac and the other entities. Details of two bank accounts were also provided although neither of which was that specified on the invoices obtained from Plant.

185. Hy-Mac Construction submitted a VAT repayment return which was reduced by HMRC as output tax was not declared on one of the related invoices which the company claimed was a result of teething problems with the accounting system. Hy-Mac Construction was made the subject of supply chain monitoring by HMRC. A note of a telephone interview with Anthony O’Gorman on 29 October 2020 recorded that Mr O’Gorman told HMRC:

- (1) Before Hy-Mac Construction he had another VAT registered, company, Hy-Mac;
- (2) He moved the business over from Hy-Mac to HM Construction and stopped using Hy-Mac, as he intended to sell Hy-Mac Construction at some point;
- (3) He said Hy-Mac was successful. When asked whether he used the same suppliers and customers in HM Construction, he said suppliers and customers changed all the time. He did not use an accountant or agent and did all the business records himself;
- (4) When asked about the details of how he funded his purchases, he said that some customers paid up front, or he got credit from his suppliers. He said he also had money in his bank account. He raised his voice and swore at this point, as he did when the officers observed that his VAT returns showed that he was not running at a profit; and
- (5) He thought he had records for Hy-Mac showing proof of sales and purchases.

186. During a second telephone interview with HMRC on 2 December 2020, Mr O’Gorman said that:

- (1) He had stopped using Hy-Mac the previous year. It was used for the same thing, but he bought and sold only in a small way;
- (2) He would provide invoices for sales and purchases by Hy-Mac; and

(3) He was not aware that there was a VAT debt on file for Hy-Mac. He stopped getting correspondence because for a time last year he had to go back to Ireland due to a domestic situation.

187. On 4 December 2020 HMRC sent a letter to Mr O’Gorman attached to an email. It requested, among other things, the purchase and sales invoices issued by Hy-Mac. In the absence of a response a follow-up email and letter was sent on 4 January 2021 again requesting these documents. The Hy-Mac invoices requested by HMRC have not been provided by Mr O’Gorman and the VAT debt against Hy-Mac remains unpaid.

188. Mr Doyle’s evidence with regard to Hy-Mac and Mr O’Gorman was that the equipment bought by Plant from Hy-Mac was not fit for purpose and the expense of repairing it outweighed the cost and he therefore made the decision to scrap it. However, despite efforts to do so Mr Doyle has been unable to contact Mr O’Gorman and decided to take a hit on the transactions having understood that he had been “set up”, saying “when you get shafted you get shafted”

189. By resolution dated 8 February 2021 the company changed its name to Pumpmaster Sales and Services Ltd.

190. In evidence Mr Doyle said that he did not visit Hy-mac, which he understood to be located near Gatwick Airport.

### ***Countrywide***

191. Countrywide was incorporated on 23 February 2016. Its sole shareholder and director on incorporation was a Terence Kirby. He resigned as a director on 6 January 2018 although this was not notified to Companies House until 3 July 2018. Jamie Johnston was a director from 1 November 2016 to 8 December 2016 and Christopher Lea was appointed as a director from 6 May 2018. Therefore, according to Companies House records, the company did not have a director at the time of the denied transactions in March 2018. However, this would not have been apparent had enquiries been made at the time of the transactions as Companies House was not notified of Mr Kirby’s resignation until July 2018.

192. The company has had various registered office addresses, all in Northern Ireland. Between 23 February to 14 November 2016 it was an address in Derry/Londonderry, from 14 November 2016 to 27 April 2018 the registered office was in Strabane, from 27 April to 3 July 2018 it was at a different address in Derry/Londonderry to that used previously and from 3 July until its dissolution the company’s registered office was in Strabane, again at a different address to that previously used.

193. Countrywide was registered for VAT with an effective date of registration of 25 February 2016. Its declared intended trade classes was “Temporary and permanent recruitment, Labour recruitment” and “Human resources provision on a long term or permanent basis” and its trading name was stated as being “UKIR Recruitment”. However, it did not indicate on its VAT1 that the business would supply a provision of labour, or buy goods from the EU in the next 12 months.

194. The estimated turnover on the VAT1 was £350,000 and its PPOB was declared as an address in Derry/Londonderry. The VAT1 was submitted to HMRC in the name of Countrywide’s director, Terence Peter Kirby, whose address was that of the company’s initial registered office. Contact details which included a telephone number, a fax number, an email address and website were provided to HMRC as were bank account details.

195. Countrywide did not submit any VAT returns for its 03/16 or 06/16 VAT accounting periods. HMRC therefore issued a central VAT assessment, in the sum of £784, for its 03/16 period. This was not paid. Officer Presho explained that although Countrywide remained



registered for VAT HMRC's systems indicated it was a missing trader which he presumed was due to undelivered correspondence in relation to the central assessments.

196. Having undertaken a review of HMRC's VIES system on 20 June 2018 Senior Officer Sam Logan identified £209,646 of EU acquisitions that had been made by Countrywide. These included goods and services, from companies in the Netherlands and Hungary, principally in VAT period 03/18. Invoices provided to HMRC by Plant show that during March 2018 (its 03/18 VAT period) Countrywide supplied Plant with mixed scrap and paving blocks.

197. HMRC Officer Kitty Harvey, who was until her recent retirement the officer conducting the investigation into Countrywide, attempted to arrange a visit to Countrywide's PPOB but received no response to a telephone call she made on 27 June 2018. Neither was there any response to her letters, dated 28 June 2018, addressed to Countrywide and Mr Kirby, advising them that she intended to visit the company at its PPOB on 11 July 2018.

198. Although Officer Harvey did visit Countrywide's PPOB on 11 July 2018 she discovered that the business was not being conducted from that address but did speak to a worker at that address who, having checked his records, had no contact details for Countrywide. However, he did recall Mr Kirby coming to the premises to make enquiries about renting an office but that he had not subsequently returned.

199. Following that visit, Officer Harvey noted that a new address for Countrywide had been registered at Companies House, Unit 1a Dublin Road, Strabane. She therefore wrote to the company at that new address advising of her intention to visit for a VAT inspection on 25 September 2018. However, when she visited the premises on 25 September 2018 Officer Harvey was unable to locate Unit 1a. She did, however, speak to the receptionist at O'Neill's Sports at 1 Dublin Road who had not heard of Countrywide. Enquiries of the Royal Mail website revealed that neither Unit 1a Dublin Road nor Countrywide's previous registered address were valid postal addresses.

200. By letter dated 27 September 2018 sent to its registered office, Officer Harvey notified Countrywide that it would be removed from the VAT register unless it contacted HMRC by 4 October 2018. In the absence of any response Officer Harvey wrote to it again on 9 October 2018 stating that its VAT registration had been cancelled with immediate effect.

201. Officer Harvey wrote again to Countrywide on 22 November 2018 to request attendance at a meeting on 3 December 2018 at HMRC offices in Derry/Londonderry to discuss the company's failure to submit its VAT returns. No response was received and, on 6 December 2018, a second request was sent asking the company to attend a meeting on 20 December 2018. That letter warned that in the light of the company's failure to submit any VAT returns for periods 03/16 to date, civil evasion penalties may be imposed. Again no response was received.

202. On 7 January 2019 Officer Harvey notified Countrywide of HMRC's intention to raise a best judgement VAT assessment for its 09/18 VAT period. Again there was no response by Countrywide. Therefore, by two letters both dated 30 January 2019, Officer Harvey formally notified the company that it had been assessed to VAT for its 09/18 VAT accounting period in the sum of £38,435 and that it was the subject of a civil evasion penalty in the sum of £36,513. The assessment was calculated using a ten percent mark-up on the EU acquisitions identified from the HMRC VIES system as having been acquired by the business.

203. Countrywide has never paid that assessed VAT and penalty and the company was dissolved by compulsory strike off on 20 April 2021.

204. In addition to Countrywide, Mr Kirby was the director of the following companies:

- (1) Penharrick Limited, from 5 April 2018 – 1 September 2018;
- (2) Derry City Traders Limited (“Derry City Traders”), from 1 June 2018 – 2 January 2019; and
- (3) Decktun Limited, from 2 December 2015.

205. Penharrick Limited filed its first VAT return for its VAT Period 01/18 as a NIL return and then did not file any further VAT returns. Central Assessments were issued against the company which was subsequently deregistered for VAT on 13 February 2019. Mr Kirby resigned as a director on 1 September 2018 but did not notify of this until 2 March 2019.

206. Christopher Lea (director of Countrywide from 6 May 2018) was also a director of Penharrick Limited. He was also a director of Pink Square Power Limited (previously Pink Square Contracting Limited) which was deregistered for VAT on 13 February 2019 in the light of its failure to file returns and pay central assessments.

207. Derry City Traders was deregistered for VAT on 11 February 2019 as no returns were filed. Although Mr Kirby resigned as director on 2 January 2019 Companies House were not notified of this until 5 November 2019.

208. Decktun Limited, which was never registered for VAT, was dissolved via compulsory strike off on 20 March 2018.

209. In evidence Mr Doyle said that he had met Mr Kirby in 2015 a “couple of times” in Derry and Strabane at social events and at industry fairs. He said that he had visited Countrywide’s office in Derry for a meeting but that he could not describe the premises, “it was just an office.”

210. Mr Doyle also explained that the deals between Plant and Countrywide came about following a telephone call from Mr Kirby which, he said, came “out of the blue”.

211. At the hearing Mr Doyle supplied documents, comprising a letter of introduction from Countrywide, a copy of its certificate of incorporation, a VIES check dated 17 May 2017 (some 10 months before the first of the disputed transactions on 8 March 2018) confirming the validity of its VAT number and copies of Mr Kirby’s passport and driving licence.

### **Customers**

212. In evidence Mr Doyle explained that he would not need to query anything about either Hillhead’s or Plant’s customers as they:

“... were buying stuff off me so [I] wouldn’t be querying anything about them.”

He said that he was introduced to people at trade fairs but that he also found buyers for the Coca-Cola and metals by searching online. He also confirmed that prior to the deals concerned he did not know of any business that dealt with sales of Coca-Cola.

### **Connections between individuals/companies**

213. On 23 January 2019 Mr Doyle was appointed as a director of Cawder, a company which shared the same registered address as Citiflyte. He had that directorship in common with Brian Donaghy, who was also a director of Agri-trans for which Kelly Ann McSkeane (another director of Citiflyte) was also a director. Agri-trans was wound up on HMRC’s petition with a VAT debt of £274,560.55 (see paragraph 174(4), above).

214. Brian Donaghy was also a director of Countrywide Wholesale Limited (a company which for a time shared the same registered address with Countrywide) and Promac, a company for which Mr Doyle carried out consultancy work.

215. The directors of Countrywide, Terence Kirby and Christopher Lea, shared a directorship with the directors of Citiflyte, Rosemary Lass and John McIntosh, as directors of Penharrick Limited. In addition, the director of Citiflyte, Matthew Ferguson, shared a directorship with Terence Kirby (Countrywide) of Derry City Traders, which was deregistered for VAT on 11 February 2019 (see paragraph 207, above).

216. Mr Doyle shared a directorship with Finbarr McMahon for MPS Enterprises. Mr McMahon became a director of Hillhead Haulage following Mr Doyle's resignation on 31 March 2017 (both companies are declared as associated businesses in Hillhead's VAT1 application form dated 25 May 2017). Although it was dissolved on 27 February 2018 with a VAT debt, Hillhead Haulage was established with a new Company Registration Number under the sole directorship of Karen Judge (Mr Doyle's partner and bookkeeper for Hillhead and Plant) on 29 March 2018. In evidence Mr Doyle explained that this was because he wanted to ensure that the "Hillhead" name remained under his control.

217. Mr McMahon was a director of various companies which shared registered addresses with those of Mr Doyle at Kumarans accountants. These included MPS Heavy Haulage which was dissolved in March 2014 with a VAT debt of £396,350 with some of its assets being bought by Mr Doyle's company Cliffside. MPS Plant Limited is currently in liquidation, its statement of affairs indicate that it has a VAT debt of £13,268.70. Other companies which used that address were MPS Enterprise and Promac.

218. A previous address for MPS Plant was at Cliffside Industrial Estate in Grays before changing it to an address in Dartford, the same as address as used by Hy-Mac and other companies of Anthony O'Gorman, Hy-Mac's director. Hillhead Haulage was also based at this Dartford address until its dissolution.

219. The Cliffside Industrial Estate address in Grays was also the registered address of MPS Enterprises and Promac. Brian Donaghy (director of Promac) and Finbarr McMahon shared a directorship of MPS Rail Limited, which was registered for a time at Mr Doyle's residential address in Watford 70 Queens Road and then at the office of the accountants Kumarans.

## LAW

220. We now turn the applicable legislation and decisions of the courts which set out the right to deduct input tax and how such an entitlement can be lost. This applies equally to the appeals of both Hillhead and Plant.

221. The right to deduct input tax arises from Articles 167 and 168 of Council Directive 2006/112/EC of 28 November 2006 (previously Article 17 of the Directive 1977/388/EEC, the Sixth Directive) which has been incorporated into UK domestic law by ss 24 – 26 of the Value Added Tax Act 1994 ("VATA"), the material parts of which (as in force at the time of the transactions with which these appeals are concerned) provided:

### **24.— Input tax and output tax.**

(1) Subject to the following provisions of this section, "*input tax*", in relation to a taxable person, means the following tax, that is to say—

- (a) VAT on the supply to him of any goods or services;
- (b) VAT on the acquisition by him from another member State of any goods; and
- (c) VAT paid or payable by him on the importation of any goods from a place outside the member States,

being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.

...

(6) Regulations may provide—

- (a) for VAT on the supply of goods or services to a taxable person, VAT on the acquisition of goods by a taxable person from other member States and VAT paid or payable by a taxable person on the importation of goods from places outside the member States to be treated as his input tax only if and to the extent that the charge to VAT is evidenced and quantified by reference to such documents or other information as may be specified in the regulations or the Commissioners may direct either generally or in particular cases or classes of cases; ...

**25.— Payment by reference to accounting periods and credit for input tax against output tax.**

(1) A taxable person shall—

- (a) in respect of supplies made by him, and
- (b) in respect of the acquisition by him from other member States of any goods,

account for and pay VAT by reference to such periods (in this Act referred to as “prescribed accounting periods”) at such time and in such manner as may be determined by or under regulations and regulations may make different provision for different circumstances.

(2) Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him. ...

**26.— Input tax allowable under section 25.**

(1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies, acquisitions and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business—

- (a) taxable supplies; ...

222. Paragraph 4(1) of schedule 11 to VATA provides:

(1) The Commissioners may, as a condition of allowing or repaying input tax to any person, require the production of such evidence relating to VAT as they may specify.

...

223. Regulations 13 and 29 of the VAT Regulations 1995 provide:

13.—(1) Save as otherwise provided in these Regulations, where a registered person—

- (a) makes a taxable supply in the United Kingdom to a taxable person, or
- (b) makes a supply of goods or services to a person in another member State for the purpose of any business activity carried out by that person, or

(c) receives a payment on account in respect of a supply he has made or intends to make from a person in another member State,

he shall provide such persons as are mentioned above with a VAT invoice ...

...

29.—(1) ... save as the Commissioners may otherwise allow or direct either generally or specially, a person claiming deduction of input tax under section 25(2) of the Act shall do so on a return made by him for the prescribed accounting period in which the VAT became chargeable.

(2) At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of—

(a) a supply from another taxable person, hold the document which is required to be provided under regulation 13;

...

provided that where the Commissioners so direct, either generally or in relation to particular cases or classes of cases, a claimant shall hold, instead of the document or invoice (as the case may require) specified in subparagraph (a)... above, such other documentary evidence of the charge to VAT as the Commissioners may direct.”

224. Therefore, although a trader is entitled as of right to claim a deduction of input tax and either set it against his output tax liability or, if the input tax credit due to him exceeds the output tax liability, receive a repayment an exception to this principle was identified by the European Court of Justice (“ECJ”) in its judgment, dated 6 July 2006, in the joint cases of *Axel Kittel v Belgium & Belgium v Recolta Recycling SPRL* (C-439/04 and C-440/04) [2006] ECR I – 6161 (“*Kittel*”) where it stated:

“[51] ... traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on the legality of those transactions without the risk of losing the right to deduct the input VAT.

[52] It follows that, where a recipient of a supply of goods is a taxable person who did not and could not know that the transaction concerned was connected with a fraud committed by the seller, Article 17 of the Sixth Directive must be interpreted as meaning that it precludes a rule of national law under which the fact that the contract of sale is void, by reason of a civil law provision which renders that contract incurably void as contrary to public policy for unlawful basis of the contract attributable to the seller, causes that taxable person to lose the right to deduct the VAT he has paid. It is irrelevant in this respect whether the fact that the contract is void is due to fraudulent evasion of VAT or to other fraud.”

...

[56] ... a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with fraudulent evasion of VAT must, for the purposes of the Sixth Directive, be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods.

[57] That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice.

[58] In addition such an interpretation, by making it more difficult to carry out fraudulent transactions, is apt to prevent them.

[59] Therefore, it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and do so even where the transaction in question meets the objective criteria which form the basis of the concept of “supply of goods effected by a taxable person acting as such” and “economic activity”.

...

[61] ... where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with the fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct.”

225. That ECJ decision was considered in *Mobilx Ltd (in Administration) v HMRC; HMRC v Blue Sphere Global Ltd (“BSG”); Calltel Telecom Ltd and another v HMRC* [2010] STC 1436 (“*Mobilx*”) in which Moses LJ, giving the judgment of the Court of Appeal, said:

“[59] The test in *Kittel* is simple and should not be over-refined. It embraces not only those who know of the connection but those who “should have known”. Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraud and if it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact. He may properly be regarded as a participant for the reasons explained in *Kittel* .

[60] The true principle to be derived from *Kittel* does not extend to circumstances in which a taxable person should have known that by his purchase it was more likely than not that his transaction was connected with fraudulent evasion. But a trader may be regarded as a participant where he should have known that the only reasonable explanation for the circumstances in which his purchase took place was that it was a transaction connected with such fraudulent evasion.”

226. It is clear, from the approach taken by Christopher Clarke J (as he then was) in *Red12 v HMRC* [2010] STC 589, and adopted by Moses LJ in *Mobilx* that the Tribunal should not unduly focus on whether a trader has acted with due diligence but consider the totality of the evidence.

227. As Moses LJ said In *Mobilx* , at [83]:

“... I can do no better than repeat the words of Christopher Clarke J in *Red12 v HMRC* [2009] EWHC 2563:

[109] “Examining individual transactions on their merits does not, however, require them to be regarded in isolation without regard to their attendant circumstances and context. Nor does it require the tribunal to ignore compelling similarities between one transaction and another or preclude the drawing of inferences, where appropriate, from a pattern of transactions of which the individual transaction in question forms part, as to its true nature e.g. that it is part of a fraudulent scheme. The

character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and "similar fact" evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.

[110] To look only at the purchase in respect of which input tax was sought to be deducted would be wholly artificial. A sale of 1,000 mobile telephones may be entirely regular, or entirely regular so far as the taxpayer is (or ought to be) aware. If so, the fact that there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of input tax. The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately think it unlikely that the fact that all 46 of the transactions in issue can be traced to tax losses to HMRC is a result of innocent coincidence. Similarly, three suspicious involvements may pale into insignificance if the trader has been obviously honest in thousands.

[111] Further in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them."

228. It is not necessary for the trader to know the specific details of the fraud with which his transaction is connected to deprive it of the right to deduct input tax. In *Megtian Ltd v HMRC* [2010] STC 840 Briggs J (as he then was) said at [38]:

“... I consider that there are likely to be many cases in which facts about the transaction known to the broker are sufficient to enable it to be said that the broker ought to have known that his transaction was connected with a tax fraud, without it having to be, or even being possible for it to be, demonstrated precisely which aspects of a sophisticated multifaceted fraud he would have discovered, had he made reasonable inquiries. ”

Roth J, at [52] in *POWA (Jersey) Ltd v HMRC* [2012] STC 1476 expressly agreed with what Briggs J had said in *Megtian* .

229. In *Fonecomp Limited v HMRC* [2015] STC 2254 it was argued that the words “should have known” as used by Moses LJ in *Mobilx* meant “has any means of knowing” (per Moses LJ at [51]) and that Fonecomp could not have found out about the fraud even if it made inquiries because the fraud did not relate to the chain of transactions with which it was concerned. Arden LJ (as she then was, with whom McFarlane and Burnett LJJ agreed) observed, at [45]:

“... there is nothing in *Kittel* which would lead to the conclusion that HMRC has to show that the transaction provides tangible assistance in carrying out the fraud.”

At [48] she said:

“Lack of knowledge of the specific mechanics of a VAT fraud affords no basis for any argument that the decision of either tribunal was wrong in law: what is required is simply participation with knowledge in a transaction ‘connected with fraudulent evasion of VAT’ ...”

She continued at [51]:

“However, in my judgment, the holding of *Moses LJ* does not mean that the trader has to have the means of knowing how the fraud that actually took place occurred. He has simply to know, or have the means of knowing, that fraud has occurred, or will occur, at some point in some transaction to which his transaction is connected. The participant does not need to know how the fraud was carried out in order to have this knowledge. This is apparent from [56] and [61] of *Kittel* cited above. Paragraph 61 of *Kittel* formulates the requirement of knowledge as knowledge on the part of the trader that “by his purchase he was participating in a transaction connected with fraudulent evasion of VAT”. It follows that the trader does not need to know the specific details of the fraud.”

230. *Mobilx* was also considered by the Upper Tribunal (Proudman J and Judge Sinfield) in *AC (Wholesale) Ltd v HMRC* [2017] UKUT 191 (TCC) which stated that:

“[27] ...the ‘only reasonable explanation’ test is simply one way of showing that a person should have known that transactions were connected to fraud.

...

[29] It is, to us, inconceivable that *Moses LJ*’s example of an application of part of that test, the ‘no other reasonable explanation’, would lead to the test becoming more complicated and more difficult to apply in practice. That, in our view, would be the consequence of applying the interpretation urged upon us by Mr Brown [counsel for the appellant]. In effect, HMRC would be required to devote time and resources to considering what possible reasonable explanations, other than a connection with fraud, might be put forward by an appellant and then adduce evidence and argument to counter them even where the appellant has not sought to rely on such explanations. That would be an unreasonable and unjustified evidential burden on HMRC. Accordingly, we do not consider that HMRC are required to eliminate all possible reasonable explanations other than fraud before the FTT is entitled to conclude that the appellant should have known that the transactions were connected to fraud.

[30] Of course, we accept (as, we understand, does HMRC) that where the appellant asserts that there is an explanation (or several explanations) for the circumstances of a transaction other than a connection with fraud then it may be necessary for HMRC to show that the only reasonable explanation was fraud. As is clear from *Davis & Dann*, the FTT’s task in such a case is to have regard to all the circumstances, both individually and cumulatively, and then decide whether HMRC have proved that the appellant should have known of the connection with fraud. In assessing the overall picture, the FTT may consider whether the only reasonable conclusion was that the purchases were connected with fraud. Whether the circumstances of the transactions can reasonably be regarded as having an explanation other than a connection with fraud or the existence of such a connection is the only reasonable explanation is a question of fact and evaluation that must be decided on the evidence in the particular case. It does not make the elimination of all possible explanations the test which remains, simply, did the person claiming the right to deduct input tax know that, by his purchase, he was



participating in a transaction connected with fraudulent evasion of VAT or should he have known of such a connection.”

231. It is not disputed, as noted by the Upper Tribunal in *AC (Wholesale)* at [30], that the burden of proof in this appeal is on HMRC and that the civil standard of proof, the balance of probabilities, applies. As Moses LJ said, in *Mobilx* at [81]:

“It is plain that if HMRC wishes to assert that a trader's state of knowledge was such that his purchase is outwith the scope of the right to deduct it must prove that assertion.”

232. Although the standard of proof was not considered in *Mobilx* it is accepted that the civil standard, the balance of probabilities, applies (see *Re B* [2009] 1 AC 1). As Lady Hale, giving the judgment of the Supreme Court in *Re S-B (Children)* [2010] 1 AC 678, said at [34]:

“... there is no necessary connection between the seriousness of an allegation and the improbability that it has taken place. The test is the balance of probabilities, nothing more and nothing less.”

233. However, as the Court of Appeal confirmed in *HMRC v Citibank NA & Another* [2017] EWCA Civ 1416, the principle in *Kittel* does not require either a pleading or proof of dishonesty.

#### **DISCUSSION**

234. To determine these appeals (which we heard together pursuant to the directions made by Judge Vos on 6 May 2021) it is necessary to address the issues set out by Sir Andrew Morritt C at [29] of *Blue Sphere Global v HMRC* [2009] STC 2239:

- (1) Was there a tax loss;
- (2) If so, did this loss result from a fraudulent evasion of VAT;
- (3) If there was fraudulent evasion, were the transactions of either Hillhead, Plant or both, which are the subject of these appeals, connected with that evasion; and
- (4) If such a connection was established, did the appellant know or should it have known that its transactions were connected with a fraudulent evasion of VAT?

#### **Loss**

235. Given that Citiflyte, which supplied Danish Coca-Cola to Hillhead and scrap metals to Plant, Countrywide, which supplied scrap metals and paving stones to Plant and Hy-Mac, which supplied plant and machinery to Plant, have failed to declare and pay VAT (of more than £1 million in total) due on sales made to both Hillhead and Plant we have no hesitation in concluding that there was clearly a loss of VAT that should have been paid to HMRC.

#### **Fraudulent evasion**

236. Mr Foulkes contends that in his evidence Mr Doyle did not appear to contradict HMRC's assertion that the circumstances surrounding the tax losses occasioned by each supplier could not be explained by innocent business failure or mistake and that the defaults were plainly fraudulent. However, in response, Mr Doyle says that he did not go so far as Mr Foulkes contends he did. He explained that what he said was that he did not know of any fraud himself.

237. We will come to whether Mr Doyle, and therefore Hillhead and Plant, knew or should have known that the loss of VAT was caused by fraud in due course. However, we are satisfied that the loss was the result of the fraudulent evasion of VAT.

238. Although Citiflyte filed a return for its 01/18 VAT accounting period it did not submit any VAT returns for subsequent periods despite making supplies to both Hillhead and Plant (see paragraph 167, above). It did not respond to the correspondence/assessments issued by HMRC on 4 July 2019 (see paragraph 171, above) which were sent to the addresses of the directors, Ms McSkeane who notified Companies House on 9 August 2019 that she had resigned on 1 January 2019 and Jay Makwana who notified Companies House that he had resigned as director also on 1 January 2019 (see paragraph 164, above). Citiflyte was wound up by HMRC's petition on 5 February with a debt on file of £404,695.42 (see paragraph 173, above)

239. Hy-Mac filed NIL VAT returns for its accounting periods 04/18 – 10/18 and 99/99 despite making supplies to Plant during October 2018 (see paragraph 178, above). It did not account for VAT on these supplies or provide the purchase and sale invoices that were requested by HMRC (see paragraph 187, above) and the VAT debt remains unpaid (see paragraph 187, above).

240. Countrywide, which was dissolved on 20 April 2021 (see paragraph 203, above), was a missing trader which failed to submit any VAT returns or account for VAT on its supplies to Plant. The only action taken in response to HMRC's letter of 28 June 2018 appears to be that, on 3 July 2018, within five days of HMRC's letter being sent, its director, Mr Kirby, notified Companies House of his resignation as director which had, he said, taken place on 6 January 2018 (see paragraph 191, above).

241. In our judgment, other than fraud, there is no explanation or reason for such actions by these companies or their failure to make VAT returns or account for VAT on the supplies to Hillhead and/or Plant.

### ***Connection***

242. As all three companies, Citiflyte, Hy-Mac and Countrywide were the direct suppliers of Hillhead and/or Plant there can be no question that the transactions with which these appeals are concerned – which we have concluded resulted in a fraudulent loss of VAT – were connected to that fraudulent VAT loss.

### ***Knew/Should have known***

243. Mr Doyle says that all of the business undertaken by Hillhead and Plant was carried out in a professional manner, in good faith with all companies appearing to be compliant with correct credentials at the time. There were, he said, no known fraudulent activities.

244. He contends that allegations against him have been compiled on insinuations and accusations by a team of people within HMRC who seem to have limitless time and financial resources with no accountability for their actions. He says that that HMRC has tried to make a case against him “seemingly from other party's actions” and that he does not have the knowledge, resources, or finances to match HMRC. He also contends that it is unreasonable to allege that, without experience or education in relation to missing trader businesses, even if a person did not know that transactions were connected to a fraudulent loss of tax it is enough that he should have known of that connection.

245. However, the law, as stated by the Court of Appeal in *Mobilx*, is clear on this issue. It includes not only those who knew that their transactions were connected to fraud but also those who “should have known” of such a connection, ie those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion of VAT (see paragraph 225, above).

246. Having carefully considered all of the circumstances of this case, we have come to the conclusion, for the reasons explained below, that at the very least Mr Doyle, and therefore

Hillhead and Plant, should have known that the transactions in question in this case were connected to the fraudulent evasion of VAT.

*Reasons for conclusion*

247. There was no specific factor or “smoking gun” piece of evidence that led us to our conclusion. Rather, it was the overall circumstances surrounding the deals entered into by Hillhead and Plant and their ability to engage in transactions which were not only inconsistent with Mr Doyle’s background and experience in the construction industry (see paragraphs 8 – 13, above) but also contrary to the declared intended trade of the companies (to undertake construction projects in the case of Hillhead - see paragraph 24, above – and to supply plant for hire to the construction industry and machinery in the case of Plant – see paragraph 31, above).

248. The transactions which were undertaken by the companies also, in our judgment, bear features that we consider would concern a legitimate and reasonable businessman or trader but did not appear to have that effect on Mr Doyle.

249. Such features include, but are not limited to, the following (and no weight should be attached to the order in which they are listed):

(1) The connections and links between the companies and their directors (see paragraphs 214 – 220, above) and the fact that neither Hillhead nor Plant were left with any unwanted stock it would appear highly improbable that the transactions concerned were bona fide commercial transactions between unconnected parties.

(2) The same company, Citiflyte, which was at the time newly established and which, according to its application for registration at Companies House, was engaged in management consultancy (see paragraph 161, above) was able to supply such disparate items as soft drinks to Hillhead and scrap metal to Plant.

(3) Notwithstanding his lack of experience in selling soft drinks Mr Doyle was not surprised and did not think it “odd” to be offered the Danish Coca-Cola from someone (Jay Makwana) who, on his evidence, was also involved in the construction industry and who he had met only two or three times before doing business with him (see paragraph 48, above).

(4) The provision of scrap metals by Countrywide ostensibly a recruitment agency (see paragraph 193, above)

(5) The absence of any insurance for the goods (see paragraphs 35 and 73, above).

(6) The failure to carry out any meaningful of inspections of goods before purchase. Mr Doyle did say that he had seen the Danish Coca-Cola at Citiflyte that was purchased by Hillhead. However, he agreed that, other than receiving photographs of copper on occasions and asking his brothers to check a load if it was in Northern Ireland), on most occasions he did not carry out inspections of the metals etc acquired by Plant himself (see paragraph 54, above).

(7) The lack of due diligence. The little due diligence that there was appears to have been undertaken by Mr Doyle’s partner, Ms Judge, who did not give evidence. Mr Doyle’s view was that, “I don’t discuss my business affairs with others. I would not expect them to disclose their affairs with me.” That said, some Countrywide documents were produced at the hearing although these pre-date the transactions by ten months (see paragraph 211, above).

250. In addition we agree with the submission made by Mr Foulkes, the deals entered into by Hillhead and Plant with which their appeals were concerned were too good to be true.

251. First, there was the overall scale of trade undertaken with suppliers in unfamiliar markets as can be seen from the increased turnover of Hillhead (see paragraph 25, above) and Plant (see paragraph 31, above). Mr Doyle's explanation for engaging in such trade, to generate new haulage business is, in our judgement, simply not credible given that in each case it was the supplier that transported goods directly to customer (see paragraph 73, above).

252. Secondly, it was not necessary for either Hillhead or Plant to source the goods. These were offered to the companies, which therefore did not have to expend any effort, at a time when Mr Doyle said his personal and financial circumstances were difficult (see paragraph 20, above), eg the Danish Coca-Cola was offered to Hillhead by Jay Makwana of Citiflyte (see paragraph 71, above) and the offers to Plant from Countrywide came "out of the blue" (see paragraph 210, above).

253. Third, Mr Doyle was able to find customers for Hillhead and Plant without too much difficulty despite his inexperience in dealing in such goods (see paragraph 212, above).

254. Mr Doyle's explanation that, "selling is selling, doesn't matter what the product is the principle is the same", may have an element of truth. However, although he described how he made many telephone calls and was not immediately successful, it would appear that this did not hinder his ability to find a significant customer for the Coca-Cola (Pallet Price) to which Hillhead was able to sell almost as soon as, or on occasions before, it purchased the goods.

255. Fourth, as is apparent from the bank statements that Mr Doyle provided to HMRC, suppliers, other than Hy-Mac, did not press for payment. Rather they waited until payment had been received by Hillhead and Plant from their customers (see paragraph 151 -159, above). This not only removed any financial risk for Hillhead and/or Plant, which does not appear to have any commercial rationale, but was also contrary to the payment or transfer of title terms as stated on the invoices of, eg Citiflyte (see paragraph 71, above).

256. With the Hy-Mac deals, which, as we have observed were an exception to the rule that both Hillhead and Plant were paid by customers before paying their suppliers, Mr Doyle initially claimed that all the items bought from Hy-Mac were sold to a trader in Ireland to be scrapped but, having been asked why there was no evidence such as any receipts of these sales in Plant's banking transactions, now says the goods were given away (see paragraph 150, above). In any event payments were received from Promac at similar times to the payments being made to Hy-Mac which slightly exceeded the Hy-Mac purchase payments. These ensured that Plant was not out of funds after paying Hy-Mac.

257. Fifth, neither Hillhead nor Plant added any value to the transactions and, despite Mr Doyle trusting them not to do so, there was no commercial reason why the suppliers did not deal directly with the customer.

258. For these reasons we not only consider that Mr Doyle, and therefore Hillhead and Plant, should have known the transactions were connected to fraud but that it is more likely than not that he actually knew of that connection.

#### **DECISION**

259. Therefore, for the reasons above, both appeals are dismissed.

#### **COSTS**

260. This appeal was categorised as "complex" pursuant to Rule 23 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. As neither Hillhead nor Plant applied to be excluded from the costs regime under Rule 10(1)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, the full costs-shifting regime is applicable.

As a result, the Tribunal has a general discretion as to costs which were sought by HMRC if successful, which it has been.

261. However, as we have not had any submissions on costs we direct that that, given our decision and if advised to do so, HMRC may either file and serve written submissions in support of an application for costs on the Tribunal and Hillhead and Plant (which may respond within 28 days of receipt with HMRC to reply within 14 days thereafter) within 28 days of release of this decision or alternatively make an application for an oral hearing within that time.

262. In the absence of any application for an oral hearing and should HMRC apply for its costs, we will decide the matter on the basis of written representations.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

263. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**JOHN BROOKS  
TRIBUNAL JUDGE**

**Release date: 21<sup>st</sup> FEBRUARY 2023**