



TC06208

Appeal numbers: TC/2014/06344

TC/2015/03798

VAT – Zero-rating denied – Whether satisfactory evidence goods had left United Kingdom – Whether within defence to denial of zero-rating (as in R (on the application of Teleos plc and others) v Commissioners of Customs & Excise) – Whether supplies part of fraud and if so whether appellant knew or should have known – Appeal dismissed

VAT – Denial of input tax – Whether fraudulent tax loss – Whether transactions connected with such loss – Whether appellant knew or should have known of connection – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

C F BOOTH LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE JOHN BROOKS
GILL HUNTER**

**Sitting in public at the Royal Courts of Justice, Strand, London WC2A on 19, 20,
23 and 26 – 30 June, 3 – 6 and 13 July 2017**

Tarlochan Lall, instructed by Keystone Law, for the Appellant

**Howard Watkinson and Joshua Carey, instructed by the General Counsel and
Solicitor to HM Revenue and Customs, for the Respondents**

DECISION

1. C F Booth Limited (“CFB”) appeals against two decisions of HM Revenue and Customs (“HMRC”).
2. The first, contained in a letter of 8 July 2014 and upheld on 10 October 2014 following a review, was to issue an assessment in the sum of £160,281.50 under s 73 of the Value Added Tax Act 1994 (“VATA”). The effect of this assessment was to deny a claim by CFB to zero rate eight supplies of metal to a Belgian registered trader, Metaux Group Belge (“MGB”) on the basis of CFB’s failure to produce satisfactory evidence that the goods supplied had left the United Kingdom. HMRC also considered that CFB did not fall within the defence to the denial of zero-rating as set out by the Court of Justice of the European Union (“CJEU” – which we use throughout the decision and which should be read as the European Court of Justice or ECJ as appropriate) in *R (on the application of Teleos plc and Others) v The Commissioners of Customs and Excise* (Case C-409-04) [2007] ECR I-7797 (“*Teleos*”).
3. Additionally, in an alternative argument set out in their Consolidated Statement of Case, relying on the principle enunciated by the CJEU in *Mecsek-Gabona Kft v Nemzeti Adó Főigazgatósága* (Case C-273/11) [2013] STC 171 (“*Mecsek-Gabona*”), HMRC contend that CFB’s supplies to MGB, on which zero-rating was denied, were part of a VAT fraud committed by MGB of which CFB knew or should have known and had not taken every step within its power to prevent its own participation in that fraud.
4. HMRC’s second decision, contained in a letter dated 17 March 2015, was to deny CFB input tax in the sum of £2,607,776 (£188,482 in CFB’s 03/13 VAT period, £467,580 in VAT period 04/13, £295,359 in VAT period 05/13, £649,844 in VAT period 06/13, £603,747 in VAT period 07/13, £257,595 in VAT period 08/13, £102,088 in VAT period 09/13 and £43,081 in VAT period 02/14) on the basis that the 655 purchases of various metals, on which the input tax was incurred, were connected to the fraudulent evasion of VAT and that CFB knew or should have known of the connection.
5. This decision, which relied on the principles set out in the decision of the CJEU in the joined cases of *Axel Kittel v Belgium & Belgium v Recolta Recycling SPRL* (Case C-349/04 and C-440/04) [2008] STC 1537 (“*Kittel*”), was upheld on 20 May 2015 following a review.
6. CFB appealed to the Tribunal against the first decision (the “MGB appeal”) on 21 November 2014 and against the second decision (the “*Kittel* appeal”) on 18 June 2015. Having concluded that the evidence of the activities and processes of CFB over the whole period covered by the two appeals was relevant to the case put in each of them as regards the actual or constructive knowledge of CFB, Judge Berner directed, on 13 August 2015, that two appeals be consolidated.

7. Mr Tarlochan Lall appeared for CFB. HMRC were represented by Mr Howard Watkinson and Mr Joshua Carey.

Evidence

8. In addition to the documentary evidence, contained in 23 lever arch files, which included correspondence between the parties, reports compiled by HMRC Officers who visited CFB (and other companies/businesses), copy invoices, weighbridge tickets etc., we heard from the following witnesses:

- (1) HMRC Officer Russell White, who had been aware of CFB from working on HMRC's Scrap Metal team in Sheffield. He succeeded HMRC Officer Day as the allocated officer for CFB on or around 27 September 2013 following a reorganisation of duties in his team. Officer White continued and extended the investigations already in place and was responsible for writing the letters, of 8 July 2014, to deny the right to zero rate sales to MGB and 17 March 2015, to deny recovery of input VAT, which form the basis of these appeals. Officer White also gave evidence in relation to Mr Rubbish Limited ("Mr Rubbish");
- (2) HMRC Officer Emma Martin (formerly Raglan) who gave evidence in relation to Barnsley Metal Company Limited ("BMC");
- (3) HMRC Officer Lee Mitchell whose evidence concerned This N That Trading Limited ("TNTT");
- (4) HMRC Officer Jan Baltruschat who gave evidence in relation to Paragon Commodity Trading Limited ("PCT") for which he is the assigned defaulter officer;
- (5) HMRC Officer Gary Saul whose evidence concerned Wentworth Distribution Limited ("WDL");
- (6) HMRC Officer Julie Marshall whose evidence was in respect of Acorn Commodity Limited ("ACL");
- (7) HMRC Officer Ann Goy who gave evidence in relation to HW Services North West Limited ("HWSNW");
- (8) HMRC Officer Marion Gibrill who gave evidence in regard to IBY Limited ("IBY");
- (9) HMRC Officer Nigel Ward whose evidence concerned Worksop Scrap Metal and Salvage Limited ("Worksop");
- (10) HMRC Officer Robert Payne who gave evidence in relation to Intake Recycling Limited ("Intake");
- (11) HMRC Officer Gail Darnes whose evidence concerned Recycling Solutions (UK) Limited ("Recycling");
- (12) HMRC Officer Mary Kinman in relation to SWAT Tyres and Recycling ("SWAT");

(13) Mr Jason Ellis, an employee of CFB from 1 October 2007 who is responsible for the completion of export documents and planning and arranging the loading schedules for export material. Mr Ellis assists Scott Booth (a director and shareholder of CFB) with managing hedging facilities used by the company to minimise certain commercial risks and provides administrative assistance in connection with processing sales once they have been concluded. Mr Ellis had no experience of trading in metals before being employed by CFB and was previously, between 23 October 2003 and 7 December 2011, a director of Ellwood Trading Ltd (“Ellwood”) which was denied input tax in the sum of £1,085,034.65 for the VAT periods 03/06 and 04/06 on the basis that the transactions formed part of an overall scheme to defraud the Revenue and that Ellwood knew or should have known that this was the case. Mr Ellis was subsequently disqualified from acting as company director for a period of 12 years from 7 December 2011 following an investigation by the Insolvency Service. The schedule of unfit conduct to Mr Ellis’s disqualification undertaking states that, between 14 March and 11 May 2006, Mr Ellis caused Ellwood to participate in transactions which were connected with the fraudulent evasion of VAT and that he either knew or should have known of that connection;

(14) Mr Stuart Bailey, an employee of CFB since 2007, who dealt with sales, working closely with Scott Booth. He dealt with the sales to MGB, the subject matter of the MGB appeal. Before being employed by CFB, Mr Bailey was a director of two companies, New Century Technology International Ltd (“New Century”) from 4 December 2000 to 19 June 2001 and Hippo Technologies Ltd (“Hippo”) between 21 September 2001 and 12 December 2001. He became an employee of both companies shortly after his resignation as a director and remained employed by Hippo until 2003 and by New Century, as a sales manager, until 31 July 2007, shortly before he commenced his employment with CFB. Both New Century and Hippo were investigated by HMRC’s Criminal Investigation department as part of Operation Divert, an investigation into Missing Trader Intra-Community (“MTIC”) VAT fraud. As it had ceased trading, Hippo was deregistered for VAT in late 2002 and HMRC attempted to raise a small assessment against it. New Century was assessed for overclaimed input tax of £19,858.00 in its VAT period 08/07 (during which Mr. Bailey left the company to start his employment at CFB) on 4 December 2009. New Century did not appeal against that assessment;

(15) Mr Jason Booth (son of Kenneth Booth, see below), a director of CFB since 28 August 2012 whose role within the company is as a ‘buyer’ and who dealt with suppliers Premier Metals Leeds which subsequently incorporated as Premier Metals (Leeds) Limited (“PML”), Arthur Brook Limited (“Arthur Brook”) and BMC, three of the main suppliers to CFB in the *Kittel* appeal;

(16) Mr Howard Ratcliffe, CFB’s in-house accountant, employed by CFB since October 1994 and who is responsible for financial reporting completion of the company’s VAT returns;

(17) Mr Scott Willers, an employee of CFB since 2009, who describes himself as part of CFB’s buying team. He prepares weekly and daily price lists which are circulated to CFB’s suppliers and had no experience of trading in metals

before commencing employment with CFB. Mr. Willers dealt with the purchases by CFB from Manholme Asset Management Ltd t/a Yorkshire Metal Recycling (“Yorkshire Metal”);

(18) Mr Kenneth Booth, a director of CFB from 31 January 1992 who has worked for the company for over 50 years starting when he was 15. In 1986, together with his brother James, he assumed responsibility for the day-to-day operation and management of CFB, succeeding their father who had been its managing director until then. He has oversight of the company’s trading operations and was the main point of contact between CFB and HMRC during meetings and visits leading up to these appeals; and

(19) Mr James Booth, a director of CFB from 31 January 1992, who commenced work for CFB on leaving school in 1972. Although he is responsible, with his brother Ken, for the day-to-day management of the company, James oversees CFB’s internal management and administrative operations with the assistance of his son Thomas Booth.

9. For convenience and to avoid confusion (without intending any disrespect), as in the hearing, we refer to the directors of CFB, Mr Jason Booth (“Jason”), Mr Kenneth Booth (“Ken”) and Mr James Booth (“James”) and Mr Scott Booth (“Scott”) by their first names.

10. We should also mention that we were disappointed to find that, in addition to factual matters, the witness statements, particularly those of HMRC officers, contained opinions and conclusions to be drawn from the evidence. As the Tribunal (Judges Berner and Walters QC) observed in *Megantic Services Limited v HMRC* [2013] UKFTT 492, at [15], such evidence:

“... is not a matter of fact but a matter of opinion. It is merely a view of a witness on a matter on which the tribunal itself must reach its own conclusion, and as such is of no value as evidence. Such evidence may rightly be excluded on that basis. In most cases, however, we would not see it as necessary, or indeed proportionate, for a forensic exercise to be undertaken, either by the parties or by the tribunal, to identify any such matters in each witness statement and for the tribunal formally to direct that they be excluded. Generally speaking, we think that the parties can rely upon the good sense of the tribunal to disregard purported evidence that represents conclusions that the tribunal itself must reach. That can usually conveniently be the matter of submission at the substantive hearing, rather than a formal application to exclude.”

11. We have adopted a similar approach in this case.

12. We consider the MGB appeal and the *Kittel* appeal separately. However, it is first convenient to briefly set out the background to CFB and its awareness of VAT fraud within its trade sector that is common to both appeals.

Background

13. CFB, which has over 300 employees, is currently one of the largest private sector employers in Rotherham. It was established in 1920 by Charles Frederick Booth, the grandfather of Ken and James, its current principal shareholders and directors who succeeded their late father around 1986 and who intend to pass it on to their sons in due course.

14. Notwithstanding its incorporation on 27 August 1949, CFB has continued to operate as family business from its Rotherham and Doncaster sites, as is apparent from its directors and shareholders comprising Ken, who was appointed as a director on 31 January 1992 and who owns 29.8% of the company's shares, James, who was also appointed director 31 January 1992 and who has an individual shareholding of 25.76% and jointly owns 8% of the shares, Jason and Scott the sons of Ken who were appointed directors on 28 August 2012 and who own 0.5% and 0.45% of the shares respectively. The other director is Christopher Wilkinson, who was appointed on 31 January 1992 and has a 7.71% shareholding. CFB's other shareholders are Donald Booth (19.02%), Charles Wilkinson (4.18%), Jane Compton (4.18%), Benjamin Booth (0.4%), Jacob Booth (0.4%), Thomas Booth (0.4%) and Vivian Hull (0.17%).

15. Of the directors who did not give evidence, Christopher Wilkinson was not present at any meeting with HMRC and it is understood by HMRC that he manages CFB's Doncaster recycling facility. Scott is concerned with CFB's sales.

16. CFB was registered for VAT from the introduction of the tax on 1 April 1973. It submits its VAT returns monthly and has been doing so since its 07/06 VAT accounting period. It is the representative member of a VAT group comprising (as at 31 March 2013):

- (1) Booth Doncaster (Non-Ferrous & Alloys) Limited;
- (2) Booth Roe Metals Limited;
- (3) Booth Stainless & Nickel Alloys Limited;
- (4) Car Shredders Limited;
- (5) L E Jones (Demolition) Limited;
- (6) Non-Ferrous Smelting Co Limited;
- (7) Fibretox Industrial Services Limited
- (8) Rotherham Stainless & Nickel Alloys Limited; and
- (9) Thorpe Waste Removals Limited,

all of which are non-trading. The VAT group also includes the following (nature of business):

- (10) Booth Transport Limited (transport);
- (11) C F Booth (Doncaster) Limited (metal recycling);
- (12) C F Booth (Engineering) Limited (engineering);

- (13) Demex Limited and its subsidiary company Albion Jones Limited (demolition, excavation and metal recycling);
- (14) Hooton Lodge Limited (property rental);
- (15) North Derbyshire Metal Products Limited (property rental); and
- (16) Northfield Aluminium Limited (non-ferrous ingot manufacture).

17. CFB's business has expanded from consisting almost exclusively of domestic trading in scrap metal in the mid-1980s, when Ken and James assumed responsibility for its management, to include the manufacture of ingots, made possible by the introduction of furnaces at its premises to enable metals to be melted on site. It has an overdraft facility of £21 million to assist its high value large volume trade

18. The company's manufacturing brochure, which is included on its website, describes how CFB:

“... has developed into a large metal recycling facility and is now a key figure in the import and export of materials Worldwide. In 2012 the company achieved the Queen's Award for International Trade which emphasises our position in the metal recycling industry.

Our ingot manufacturing department has been in operation since the 1980s and has developed into one of the largest manufacturers of copper based products in the United Kingdom.”

19. CFB is a longstanding member of the British Metal Recycling Association (“BMRA”). It is regulated in accordance with the Scrap Metal Dealers Act 2013 under which it is required to record the description of the metal, including its type (or types if mixed), form, condition, weight, any marks identifying previous owners or other distinguishing features, the date and time of receipt and details of the suppliers for all metal received (s 13 of the Act) and also record similar details in respect of all metal sold (s 14 of the Act). In compliance with the Scrap Metal Dealers Act, CFB produces weighbridge tickets for all purchases and sales and these have been provided to HMRC in connection with these appeals.

20. In evidence Mr Ratcliffe explained that, at any point in time, it is unpredictable how long stock will remain on CFB's premises and whether or how it is processed, as stock may be used for manufacturing goods CFB produces. As such he said that it has not been possible to trace stock to compile records to establish what stock is actually held by CFB at any point in time.

21. Additionally, as will become apparent from the description of the deals below, there is some inconsistency in the description of metals, particularly copper, as recorded on the weighbridge tickets, invoices and other records in the transaction chains that have been traced to CFB. The various descriptions include copper plate, plate, copper cathode, cathode plate, Grade A plate and cathode. However, in their evidence both Jason and Mr Willers confirmed that, notwithstanding its different descriptions, the material concerned was copper cathode, the purest form of copper of the type used for physical settlement of copper traded through the London Metal Exchange (“LME”) where it is traded in quantities of 25 tonnes.

22. Jason also explained how slight variations in weight could also arise. A lorry load of copper cathode would be approximately 25 tonnes, but that the banding or strapping and pallets are also included and would have to be deducted. He said that banding was:

“... sometimes 11 kilos, sometimes 25 kilos. If it was plastic banding, it could be 9 kilos, just depending on what needs to come off, ... We don't pay for rubbish or plastic or wood; we only pay for metal.”

23. In his evidence, James described how the purchasing team use a price list of metals based on market values taken from the LME. These are compiled weekly or more frequently if necessary, by Mr Willers and made available to suppliers on a CFB database and which forms the basis for negotiating prices.

24. Although there is no comparable list for sales these are also led by market values (taken from the LME), ie prices customers are prepared to pay and the supply of material available. Sales take the form of either spot sales, where CFB sells metals for delivery and payment on an agreed date, or forward sales where terms are agreed for future delivery and payment. When negotiating spot sales, prices are agreed for each transaction taking account of the price sought by CFB, market prices and what a customer is prepared to pay. It is normal practice to offer the same material to more than one customer with a view to securing the best sale price.

25. Jason explained that when CFB agreed to purchase materials from Arthur Brook, BMC and PML it did so separately on each occasion and that there was no commitment to undertake any particular level of trade. He said that these trades were in line with the majority of CFB's trading activities in which it negotiates each purchase on its own particular terms. Once a price is agreed, it is for the supplier to arrange delivery and CFB does not commit to the purchase of the material unless and until it arrives on site. In his witness statement (which was taken as his evidence-in-chief) Jason explains that:

“Once a price has been agreed and before the material arrives if there has been any sudden movement in price, that can cause difficulties. CFB's preferred method is to agree an 'unders-price' as opposed to a 'flat price'. A flat price is a fixed price which would expose CFB if there is a sudden movement in the price against CFB, although CFB can benefit if the price moves in its favour. An unders-price is a price that is under the price taken from the LME. There are screens in CFB's buying and selling offices so that LME prices can be monitored throughout the day. When a purchase is negotiated, a price under the LME price is often agreed, so it may be £300 under the LME price. Prices are negotiated throughout the day but most are negotiated in the morning. CFB would require delivery of material on that day if it is possible. If delivery is not possible on that day, the price would not be renegotiated unless there is a significant move in the market. This is especially so if an unders-price has been agreed as that price gives some flexibility for movement in prices once a price has been agreed and by the time CFB receives delivery. Another factor is how much material is being offered. Where the amount is significant, CFB may

hedge to manage the risk of significant movements in market values. When the material arrives at CFB's premises, it is checked for the description and quality and if CFB's staff is satisfied, the agreed unders-price is paid. This allows flexibility for movements in price, helps manage risk of changes in market values and avoids disputes with suppliers. On delivery, a weighbridge ticket is prepared by CFB's staff and that ticket with the delivery note is passed to the trader who negotiated the price for checking and approving for payment."

26. CFB's accountant, Mr Ratcliffe, explained that CFB would make advance payments to certain traders from whom it regularly purchased goods on account of material expected to be delivered. In each case CFB did not have an agreement to purchase material and was only committed to buying the goods once they had been delivered to and accepted by CFB. Mr Ratcliffe gave Domefab Limited trading as DSM and Yorkshire Alloys Limited ("YAL") as examples of companies that had been advanced monies by CFB.

27. In the case of DSM a payment of £50,000 had been made on 28 March 2013 after there had been some transactions between the companies over the previous three months. With YAL there had been some six weeks trade before payments of initially £50,000 were made increasing to £100,000. Mr Ratcliffe explained that the accounts were regularly monitored to ensure that acceptable deliveries of goods were made for which the advance payments had been made. The ledger produced by Mr Ratcliffe shows that CFB commenced making advance payments to BMC on 25 January 2013, two days after it had first supplied CFB and that on occasions almost £600,000 had been advanced at any one time.

28. Mr Ratcliffe also explained that CFB has historically used a self-billing agreement with its suppliers under which CFB produces an invoice, which is usually described as a purchase invoice. Mr Ratcliffe was of the view that smaller merchants agree to a self-billing arrangement because CFB has larger and more accurate weighbridges. However, when cross-examined he denied that CFB's weighbridges were more accurate than somebody else's and clarified his position saying that some of the smaller merchants would not have access to their own weighbridge and use CFB's weighbridge to verify quantities.

29. Between 2000 and 2013, as set out in the table below, CFB's turnover increased from £42,038,000 to £262,739,000 before falling to £197,430,000 in 2014.

Financial Year End	Turnover (£)	Operating Profit (loss) (£)
31 March 2000	42,038,000	85,000
31 March 2001	48,682,000	1,298,000
31 March 2002	49,839,000	2,191,000
31 March 2003	53,570,000	148,000
31 March 2004	61,666,000	919,000
31 March 2005	71,385,000	2,698,000
31 March 2006	94,958,000	3,077,000

31 March 2007	169,722,000	8,272,000
31 March 2008	165,890,000	3,570,000
31 March 2009	145,591,000	2,912,000
31 March 2010	139,565,000	3,128,000
31 March 2011	236,934,000	3,201,000
31 March 2012	273,282,000	3,849,000
31 March 2013	262,739,000	3,138,000
31 March 2014	197,430,000	(4,130,000)

30. The director's report contained in the Report and Financial Statements of CFB for the year ended 31 March 2011 explains that:

“... Turnover is significantly higher than in the prior year which is a consequence of the increase in metal prices during the period together with a recovery in the levels of global demand. Metal prices recovered significantly in the last quarter of the year of the previous year and the higher working capital requirement also continued.”

31. The “significant” increase in turnover in the year to 31 March 2012 was similarly explained in the directors' report in the accounts for that year as being:

“... a consequence of similar prices of 2011 together with extra volume following the recovery in the levels of global demand. Metal prices remained high, as in the previous year and the higher working capital requirement has continued throughout the period.”

The 2013 accounts explain that:

“Turnover [for the year] is 3.9% less than in the prior year which is a consequence of lower metal prices. Volume was similar to 2012 following the continued recovery in levels of global demand.”

The subsequent 25% decline in turnover in 2014 is explained in the directors' report in that year's accounts as being a consequence of lower metal prices and reduction in the tonnage sold.

32. Charts produced by Jason, taken from LME prices, show that between 2011 and 2015 there had been a general decline in the price of metals, eg the average the price of copper was £5,496.04 in 2011, £5,014.35 in 2012, £4,669.01 in 2013, £4,164.62 in 2014 and £3,646.58 in 2015.

Awareness of VAT Fraud

33. In his evidence James explained that the problem of VAT fraud is widely recognised in CFB's trade sector. He told the Tribunal that to combat this CFB has developed a checklist with the assistance of its then accountants, Ernst and Young (“EY”), which was based on Notice 726 (to which we refer in greater detail below). James said that this checklist has been used by CFB's staff to exercise judgement as to whether or not to deal with any particular trader.

34. The checklist, with a space for comments at the bottom, which was used from 2007 until about 2012, states as follows:

REASONABLE LIST OF CHECKS ON NEW COMPANIES FOR
VAT TO BE PAID ON GOODS SUPPLIED

Company Name

1. What due diligence checks have you made on your customers/suppliers?
2. Do we have a market/use for the goods?
3. Does the new supplier have knowledge of the trade?
4. Are the prices negotiated representative of the market value – ie not offered to us cheaply?
5. Have they supplied these goods before, either to us or to another customer?
6. Verbal references obtained from within the industry.
7. Where practical, meet with a representative at their site to appraise operations.
8. Obtain copy of VAT registration certificate.
9. Verify VAT registration with HMRC (via helpline) and/or via Europa EU taxation website.
10. Obtain credit report eg Dunn & Bradstreet/Experian.com
11. Delivery notes to be obtained for all receipts.
12. Are they submitting their own invoices or do they wish us to issue self-billing invoice (obtain self-billing agreement).
13. Check VAT number on invoice with details already supplied.
14. Are they a member of a recognised trade organisation – eg BMRA?
15. Ownership of the suppliers business has changed.
16. Trade with the supplier is resumed after a long period of inactivity – eg 18 months.
17. The supplier is offering large quantities of a material not normally supplied.

35. The checklist was subsequently adapted with the addition of further items at different stages. The latest version produced in evidence contained, in addition to the items set out above, the following:

18. Has our customer carried out due diligence on their supplier/s?
 19. Have we supplied HMRC with all the required information relating to potential customer?
- | | |
|---------------------------------------|--------------------------|
| VAT cert. | <input type="checkbox"/> |
| Letter of Introduction | <input type="checkbox"/> |
| Cert of Incorporation (Ltd Companies) | <input type="checkbox"/> |
| Potential Customers' Name | <input type="checkbox"/> |

Potential Customers' Address (Official Office)	<input type="checkbox"/>
Potential Customers' Address (Business Site)	<input type="checkbox"/>
Potential Customers' VAT Reg Number	<input type="checkbox"/>
Potential Customers' Contact Details	<input type="checkbox"/>
Details of Directors and/or Responsible Members	<input type="checkbox"/>

20. Have we checked that the company is not the subject of a VAT enquiry?

21. Have we informed the company that they must let us know if they ever become or have previously been the subject of a VAT enquiry?

22. Has the customer been informed that CF Booth's standard terms of business mean that we have confirmation that the customer has carried out due diligence and that there is no VAT evasion in the supply chain?

23. Has the customer been informed that CF Booth's standard terms of business enable us to demand the amount of VAT if CF Booth finds out about a problem of VAT evasion in the supply chain and have they been informed that the standard terms of business can be seen in CF Booth's purchase contract and purchase invoices?

36. Evidence of how the checklist is applied in practice was given by Mr Stuart Bailey who explained that he and Scott undertake due diligence on customers and take precautions to protect CFB against commercial risks by carrying out checks and asking customers to send information to establish their credibility. Such information would normally be requested by email to enable CFB to ascertain how long they had been established and registered for VAT. Mr Bailey also said that he would obtain an Experian report. However, he also told us that in 2012, 2013 and 2014 he did not know what MTIC fraud was and could not recall being told that the reason for undertaking due diligence was to protect CFB from the risk of fraud. Mr Bailey also explained that he did not usually deal with suppliers but "mainly customers".

37. With regard to due diligence on suppliers Jason, in his evidence, explained that he did not usually "go and do much due diligence" and, although he had accompanied Mr Willers on due diligence visits to suppliers including PML and JKL Wakefield Limited t/a Eric France Metals ("JKL"), this was the responsibility of Mr Willers, "who does our due diligence files".

38. Mr Willers said that he assumed responsibility for due diligence in 2013 when CFB started to request verification of suppliers' VAT numbers from HMRC's Wigan office. He explained that he began to put due diligence packs together and had become aware of the risks to CFB posed by VAT fraud around that time. Mr Willers confirmed that he would usually visit a potential supplier on his own but would occasionally be accompanied by Jason on such visits.

39. We now turn to the appeals, first the MGB appeal.

MGB APPEAL

Facts

40. On 24 April 2012 Mr Stuart Bailey received the following email, headed “Introduction”, from the director of MGB, Daniel Attias:

“Dear Stuart,

I now work for myself and all business negotiations are to be with my company.

I send you my Company documents for the information of your Company.

Can you please send to me a copy of your documents of the Company?

I know that you exist but we need to correct paperwork.

The email then provided MGB’s details including its VAT registration number and concluded:

Please for all future Contracts you send to my Company.

Tomorrow I will come to see you with all the documents of the Company.”

41. The next day, 25 April 2012, Stuart Bailey received an email from Goskun Asku stating that “we are the accounting office of Mr ATTIAS Daniel, manager of [MGB]”, attached to which were company documents which were in French, a language Mr Bailey confirmed in evidence he did not speak. Mr Bailey said that although he “obviously” did not understand the documents, he did not ask for them to be translated but just assumed that they were just “more information” on Mr Attias’s company. Rather than go through HMRC’s Wigan office, CFB undertook a VIES check on the validity of MGB’s VAT registration on 7 September 2012 and an extract from MGB’s website appears to have been printed on 18 September 2012. However, CFB’s due diligence form was not completed, neither was any credit check on MGB obtained.

42. Mr Bailey recalled that Mr Attias made telephone contact with CFB and subsequently visited on several occasions. He told us that initially Mr Attias did not indicate how much material MGB wished to purchase and that each of the deals with MGB was negotiated separately as spot deals. It was agreed that payment would be made before materials would be released from CFB’s premises.

43. Between 12 October 2012 and 5 March 2013, CFB made the sales to MGB as set out in the table below:

Deal	Invoice Date	Type of Goods	Quantity (tonnes)	Gross Value £	VAT due* £	Freight Forwarder
1	12/10/12	Mixed Copper	25.00	123,318.25	20,635.54	NS Clarke Transport Ltd
2	01/11/12	New Copper	20.02	94,030.74	15,671.79	NS Clarke Transport Ltd

		tube				
3	12/11/12	Milberry	25.22	117,947.89	19,657.98	NS Clarke Transport Ltd
4	06/12/12	Mixed Copper	24.72	120,875.11	20,145.85	NS Clarke Transport Ltd
5	28/01/13	Shredded Copper	24.92	123,845.10	20,640.85	CPS Logistics Ltd
6	29/01/13	Copper tape	25.04	124,616.32	20,769.38	CPS Logistics Ltd
7	15/02/13	Dry bright wire	25.00	130,159.25	21,693.20	CPS Logistics Ltd
8	05/03/13	Milberry	25.00	126,301.50	21,050.25	CPS Logistics Ltd
			Total	961,589.16	160,263.84	

* VAT due if not zero-rated

44. The following documents for each of the above Deals were subsequently provided to HMRC by CFB in support of its claim that its sales to MGB should be zero-rated:

- (1) Sales invoices issued by CFB to MGB in respect of each of the deals, giving a description, quantity (weight) and price of the goods. MGB's EU VAT registration number is not recorded on the invoices;
- (2) Contracts between CFB and MGB, there being a separate contract in respect of each sale. Although the contracts refer to a deposit of €50,000 "to be paid prompt" Mr Bailey, in his evidence, said it was "just a standard contract" and that the reference to the deposit was "just a passage that had been left in" and was not applicable to these sales as MGB paid the "full amount" before the goods were released by CFB. Also, some of the contracts refer to the "quantity/commodity" of goods "as per photos". However, no photographs were provided to HMRC or produced in evidence;
- (3) Transfrontier Shipment of Waste Contracts;
- (4) Transfer/Delivery Notes;
- (5) Weighbridge tickets which refer to the vehicle registration number and records the description and weight of the goods;
- (6) CMRs which refer to the vehicle registration, the place designated for delivery (being Bruxelles Belgium), and description of the goods;
- (7) "Annex VII Information accompanying shipment of waste" documents which show the date of shipment, the first carrier and description as the "waste" ie the goods.
- (8) Certificates of Shipment, which in deals 1, 2, 3 and 4 were issued by Global Freight Systems and deals 5, 7 and 8 by CPS Logistics Limited ("CPS"); and

(9) Payment credit advices from NatWest showing payment, in Euros, to CFB from MGB “by order of” Global Reach Partners.

45. The Certificate of Shipment in Deal 1 refers to the consignee as MGB, the shipper as CFB, the port of loading as “Rotherham” and port of discharge as “Belgium” as it does for Deal 2. However, other than an MGB stamp, the contents of the CMR for Deal 2 are illegible. Two different copies of the CMR have been provided for Deal 3, one is illegible other than an MGB stamp and while the details of the other can be read, it does not have an MGB stamp on it. The Certificate of Shipment for Deal 3 states that port of loading is Dover and that of discharge is Brussels.

46. The CMR for Deal 4 is also illegible, other than an MGB stamp. As in the previous Deal, the Certificate of Shipment in Deal 4 states that Dover is the port of loading and Brussels the port of discharge. CFB provided three different copies of the CMR for Deal 5 to HMRC. The first, with its contents written by hand is almost illegible but with the CFB and MGB stamps clearly legible. The second copy, although legible, is hand-written and does not contain an MGB stamp. The third copy, with most of its contents typed, is legible but contains neither an MGB nor an CFB stamp. The sender/carrier on this copy of the CMR is noted, in handwriting, as CPS. The Certificate of Shipping, for Deal 5, gives CFB’s Rotherham address as the “collection point” and does not state any port of discharge.

47. No Certificate of Shipping was provided to HMRC or produced in evidence in respect of Deal 6. Two different CMRs were provided for this deal with one being barely legible other than the MGB stamp. The carrier shown on the second, more legible, CMR is CPS.

48. CFB provided two copies of the CMR for Deal 7. Other than one having an MGB stamp absent in the other copy they are identical. The consignee is noted as MGB c/o Camponi Handels UG, Gutersloh, Germany, which is also stated as the place of delivery. However, the “recovery facility” to where the goods are to be sent recorded on the Annex VII document is in Brussels.

49. Two different copies of the CMR have been provided for Deal 8. One blank apart from an upside down MGB stamp and the other, as in Deal 7, above, showing the consignee as MGB c/o Camponi Handels UG, Gutersloh, Germany, with delivery to Gutersloh in Germany. Although it has a CFB stamp there is no MGB stamp on the document. Also, as in Deal 7, the Annex VII document does not refer to the goods being delivered to Germany, instead it records that the recovery facility is MGB in Brussels.

50. Information provided by the German Tax Authorities to HMRC confirms that Camponi Handels UG was founded in August 2012 to sell a Dutch energy drink in Germany. Documents showed that a UK firm had declared selling digital cameras to Camponi Handels UG in October 2012. The director of Camponi Handels UG said that he was given the identity of the customer by his supplier and he was paid a commission for the deal.

51. The transaction was not declared in the returns of Camponi Handels UG. The freight forwarder that purportedly delivered those goods was CPS. Camponi Handels UG was also said to have received further goods from a UK supplier in December 2012 with CPS being the freight forwarder. However, the German Authorities found no evidence that Camponi Handels UG had ever carried out an active business operation as its office had been cleared out whilst the director had a long stay in hospital and concluded that the company was being used by UK firms for MTIC fraud.

52. The director of Camponi Handels UG, when asked, denied any knowledge of a supply of copper scrap in March 2013 and said that the signature on the CMR was not his. When he provided a sample of his handwriting it was clearly different to that on the CMR.

53. Information provided to HMRC by the Belgian Tax Authorities indicates that MGB was incorporated in Belgium on 6 March 2009 as SPRL Kucuk Selim. There appears to have been various changes in the shareholding in the company before its entire share capital was transferred on 7 February 2012 to Danial Attias, who was also appointed “general manager” for an “indeterminate term” at the same time. Also, on 7 February 2012 the company changed its name to MGB and extended its “corporate purpose” to dealing in ferrous and non-ferrous metals in Belgium or abroad.

54. The information received by HMRC from the Belgian Tax Authorities also records that their Officers visited MGB’s registered office in Anderlecht on 30 October 2012 but could find no trace of MGB. On a further visit, on 19 November 2012, they were told by the owner of the building, a Mr Yilmaz Toko, that MGB was renting an office, for which a deposit had been paid, but that it was being refurbished.

55. However, on 23 November 2012, Officers from the Belgian Tax Authorities met with a Mr Goskun Aksu at offices in Molenbeek-St-Jean. Their report records that he told them that he was acting in his capacity as accountant of MGB and that:

“... the new general manager is Mr Danial Attias. He is resident in France but travels often to England on business. Here is a copy of Mr Attias’ passport. The activity of the company is import/export of metal. The previous general manager exercised the activity of a café owner. Mr Attias recently opened a bank account with ING. I spoke to the general manager [Mr Attias] yesterday (by telephone) and he told me that he had paid a deposit of €15,000 for the rental of a warehouse on rue Démosthène.”

Mr Aksu also told the Officers that he would show them an email received from MGB on 12 October 2012 in which Mr Attias has asked him for a business plan and that it was intended to purchase two truckloads of copper a week.

56. On 6 December 2012, in response to an e-mail from the Belgian authorities, Daniel Attias explained that he was an agent working on commission for a Turkish company called Apexi Geri which had warehouses in Germany. The email also stated that Mr Attias had rented a warehouse and had opened a bank account with ING and

that he had sent the rental deposit payment through Global Reach Partners. In a further email to the Belgian Tax Authorities, dated 13 December 2012, Mr. Attias gave Apexi Geri's address as Camponi Handels UH in Gutersloh.

57. The Belgian Tax Authorities made a further attempt to visit MGB's registered office in Anderlecht on 15 May 2013 but could find no trace of the company or any evidence of any activity involving trading metals at the premises. The next day, 16 May 2013, Officers from the Belgian Authorities spoke to the owner of the building, Mr Toko, who told them that he did not know if MGB was still renting from him. This was because he was due to meet Mr Attias some four months earlier to complete the formalities, but this did not happen as Mr Attias said that he had become ill and he had not responded to his subsequent attempts to contact him by telephone. Mr Toko said that he did not know whether Mr. Attias was still alive.

58. Despite repeated requests from the Belgian Tax Authorities, Mr Attias did not provide MGB's purchase invoices. Neither did MGB declare €6.3 million intra-Community acquisitions of copper from Van Dalen UK Limited ("Van Dalen"), Metal Interests Limited ("Metal Interests"), CFB and WH Marren Limited ("Marren"), between 31 August 2012 and 28 March 2013, the majority of which purportedly used N S Clarke Transport Limited ("N S Clarke") and CPS as the freight forwarders and was liable to €1.47 million in acquisition tax, €1.47 million in output tax and fines of €5.87 million.

59. Most of these transactions involved metal being collected from Sheffield, Rotherham and Leeds. Van Dalen was assessed for output VAT in the sum of £1.4 million on its sales to MGB and did not appeal the assessment. Metal Interests was assessed for output VAT of £462,000.00 on its sales to MGB and did not appeal the assessment. Marren was assessed for output VAT due of £267,000.00 on its sales to MGB. It appealed against the assessment.

60. Mr Attias had engaged in similar transactions during 2011-12 when he was working as sales director for Euromet Belgium BVBA ("Euromet") which, like MGB had changed its name (from Rinaldi), its director and its purpose to general trading in metals and raw materials. Since Euromet's VAT registration number was reopened on 1 August 2011 it had failed to submit any VAT returns and its VAT registration number was cancelled on 1 December 2011. Also, similar to MGB, Euromet, which has its registered address at a rented office, failed to declare acquisitions totalling €4,175,503.54 from three UK companies, FJ Church & Sons, Marren and CFB which had supplied the majority of the goods (all of which were varieties of copper worth €2,291,338.98) between 18 November 2011 and 26 April 2012. Euromet was subsequently assessed to VAT of €876,855.74.

61. On 11 February 2014 HMRC MTIC Officers visited the freight forwarder named in CFB deals 1 – 4 with MGB, N S Clarke, and spoke to a director, Mr Nigel Clarke. Mr Clarke said that loads collected from Marren that were supposed to have been exported to Belgium had, in fact been delivered direct to either Van Dalen or CFB in the United Kingdom.

62. Although the delivery notes stated that the goods were from Fulham Metals they were not. Mr Clarke showed the Officers documents for 25,180kg of Dry Bright Copper Wire emanating from W H Marren, with a collection note dated 19 November 2012 showing collection from Fulham Metals that was in fact delivered to CFB. Mr Clarke also showed the Officers documents for 25,000kg of Dry Bright Copper Wire emanating from W H Marren, with a collection note dated 15 November 2012 showing collection from Fulham Metals that was again delivered to CFB. Mr Clarke confirmed that N S Clarke had never taken the goods out of the UK into another EU Member State.

63. HMRC Lanyard Team Officers (which Officer Lee Mitchell explained specialise in visits to freight forwarders) visited N S Clarke, on 13 April 2015 and spoke with its director Mr Shaun Clarke. He explained that Global Freight had instructed him in relation to the four deals. Although the paperwork did not include collection notes from CFB, there were delivery notes where N S Clarke had delivered the goods. N S Clarke had delivered the goods to Van Dalen in Chatham in Deals 1 and 3, Sims Metal Management (Alfreton) Limited in Deal 2 and Premier Waste & Recycling in Rotherham in Deal 4. All of the goods in deals 1-4 were not therefore removed from the UK, but were transported to other locations in the UK.

64. N S Clarke's invoices to Global Freight for the four transactions showed a delivery address in Belgium. Three of the N S Clarke delivery notes also stated that the goods were from Fulham Metals and provided the address of that company. The remaining delivery note stated that the goods were supplied by Douglas Waste Management. Two CMRs provided by N S Clarke showed MGB as the consignee of the goods and a delivery address in Brussels. In an email, dated 18 June 2015, to HMRC (Officer White) Shaun Clarke clarified that he was instructed to:

“... collect on CMRs as if they were going to be delivered to [MGB] at Belgium... Dan Brown requested that we put the CMR details on the invoices as if it was going to Metaux in Belgium”.

65. HMRC Lanyard Team Officers visited Global Freight Systems Ltd on 7 April 2015 and spoke to the office manager, Mr Dan Brown, who said that there had been some 26 MGB deals carried out involving CFB, Van Dalen and Leeds Metal Exchange where the goods were supposed to have, but had not, been exported. Mr Brown said, in relation to the CFB deals, that Mr Attias of MGB would contact him to say that a load needed collection; he would be given a collection reference, to quote to CFB, and delivery instructions. Deliveries were actually made to Fulham Metals. After some time, payments from MGB for the deliveries stopped.

66. CPS is the freight forwarder named on the transaction documents for CFB's deals 5-8 with MGB. Although HMRC Lanyard Team Officers attempted to visit CPS in March 2015 they were unable to do so as the company had been placed into compulsory liquidation. At the time that CPS is said to have transported goods from CFB to MGB, its director was Mr David Shaun Hughes, the brother of Mr Marcus Hughes who assisted in the running of the company and took the lead in explaining the business to HMRC MTIC Officers on their visit to CPS on 26 February 2013. Mr Marcus Hughes was also a director of Abbey Electrical Wholesale Ltd (“AEW”).

AEW never rendered any VAT returns and featured as a buffer trader in the HMRC criminal investigation Operation Euripus. On 17 April 2008 Mr. Marcus Hughes pleaded guilty to conspiring to cheat the public revenue and was sentenced to 6 years imprisonment.

67. During a visit to CFB by HMRC, Officers Day, Gray and French on 31 July 2013 there had been a discussion regarding MGB. CFB's directors were advised that HMRC had concerns regarding these deals that goods may not have been delivered outside the United Kingdom.

68. On 2 December 2013 HMRC wrote to CFB stating that there was no evidence of the vehicles which moved the goods purportedly sent to MGB having been recorded on any automatic number plate recognition cameras operating at UK ports on or around the dates of shipment. The letter also requested that CFB provide further due diligence documentation. CFB replied on 23 December 2013 providing the information it held, together with a table explaining why it considered evidence of export of the goods to be satisfactory.

69. However, on 8 July 2014 HMRC issued the decision, the subject of this appeal, to raise an assessment to disallow zero-rating of the supplies to MGB. In response to the request by CFB, contained in a letter of 29 July 2014, for a review of the decision to issue the assessment, HMRC which upheld the original decision, in a letter dated 10 October 2014, wrote, inter alia:

“You state that we have not questioned the export evidence. At face value the documentation is satisfactory however, apart from a [MGB] stamp on the CMRs provided, there is nothing that actually shows these goods did actually leave the UK and the stamp on the CMRs appears to be false. Officer White has kept you fully informed of the progress of his investigation and has fully explained his reasoning. While I can accept that you were not aware the stamp might be false at the time in question you did not obtain full documentation to demonstrate that the goods had left the UK”

The letter continues:

“... while I accept that the deposit might have been returned on production of documentation which appeared at first glance to be satisfactory, I have seen no evidence that such a deposit was considered. In addition you do not hold documentation that covers the physical removal of goods from the UK.”

70. As noted above, CFB appealed to the Tribunal against the decision on 21 November 2014.

Law

71. Section 30 VATA provides:

30.— Zero-rating.

(1) Where a taxable person supplies goods or services and the supply is zero-rated, then, whether or not VAT would be chargeable on the supply apart from this section—

(a) no VAT shall be charged on the supply; but

(b) it shall in all other respects be treated as a taxable supply; and accordingly the rate at which VAT is treated as charged on the supply shall be nil.

(2) A supply of goods or services is zero-rated by virtue of this subsection if the goods or services are of a description for the time being specified in Schedule 8 or the supply is of a description for the time being so specified ...

...

(8) Regulations may provide for the zero-rating of supplies of goods, or of such goods as may be specified in the regulations, in cases where—

(a) the Commissioners are satisfied that the goods have been or are to be exported to a place outside the member States or that the supply in question involves both—

(i) the removal of the goods from the United Kingdom; and

(ii) their acquisition in another member State by a person who is liable for VAT on the acquisition in accordance with provisions of the law of that member State corresponding, in relation to that member State, to the provisions of section 10; and

(b) such other conditions, if any, as may be specified in the regulations or the Commissioners may impose are fulfilled.”

72. Regulation 134 of the VAT Regulations 1995 (the “Regulations”) provides:

Where the Commissioners are satisfied that –

(a) a supply of goods by a taxable person involves their removal from the United Kingdom;

(b) the supplies are to a person taxable in another member State;

(c) the goods have been removed to another member State...

the supply, subject to such conditions as they may impose shall be zero rated.”

73. Tertiary legislation in relation to zero-rating of dispatches is in the form of Public Notice 725 (parts of which have force of law). Paragraphs 4.3, 5.1, 5.2 and 5.5 of the that Notice (from the version published in October 2012 and in force at the time of the trade with MGB) provide as follows:

<i>4.3 When can a supply of goods be zero-rated?</i>
<i>The text in this box has the force of law</i>
<i>A supply from the UK to a customer in another EC Member State is liable to the zero-rate where:</i>

You obtain and show on your VAT sales invoice your Customer's EC VAT registration number, including the 2-letter country prefix code, and

The goods are sent or transported out of the UK to a destination in another EC state, and

You obtain and keep valid commercial evidence that the goods have been removed from the UK within the time limits set out at paragraph 4.4

...

5.1 Evidence of removal

A combination of these documents must be used to provide clear evidence that a supply has taken place, and the goods have been removed from the UK:

- the customer's order (including customer's name, VAT number and delivery address for the goods)
- inter-company correspondence
- copy sales invoice (including a description of the goods, an invoice number and customer's EC VAT number etc)
- advice note
- packing list
- commercial transport document(s) from the carrier responsible for removing the goods from the UK, for example an International Consignment Note (CMR) fully completed by the consignor, the haulier and signed by receiving consignee
- details of insurance or freight charges
- bank statements as evidence of payment
- receipted copy of the consignment note as evidence of receipt of goods abroad
- any other documents relevant to the removal of the goods in question which you would normally obtain in the course of your intra-EC business
- Photocopy certificates of shipment or other transport documents are not normally acceptable as evidence of removal unless authenticated with an original stamp and dated by an authorised official of the issuing office.

"5.2 What must be shown on documents used as proof of removal

The text in this box has the force of law

The documents you use as proof of removal must clearly identify the following:

- *the supplier*

- *the consignor (where different from the supplier)*
- *the customer*
- *the goods*
- *an accurate value*
- *the mode of transport and route of movement of the goods, and*
- *the EC destination*

Vague descriptions of goods, quantities or values are not acceptable. For instance, ‘various electrical goods’ must not be used when the correct description is ‘2000 mobile phones (Make ABC and Model Number XYZ2000)’. An accurate value, for example, £50,000 must be shown and not excluded or replaced by a lower or higher amount.

If the evidence is found to be unsatisfactory you as the supplier could become liable for the VAT due.

...

5.5 What if my customer collects the goods or arranges for their collection and removal from the UK?

If your VAT registered EC customer is arranging removal of the goods from the UK it can be difficult for you as the supplier to obtain adequate proof of removal as the carrier is contracted to your EC customer. For this type of transaction the standard of evidence required to substantiate VAT zero-rating is high.

Before zero-rating the supply you must ascertain what evidence of removal of the goods from the UK will be provided. You should consider taking a deposit equivalent to the amount of VAT you would have to account for if you do not hold satisfactory evidence of the removal of the goods from the UK. The deposit can be refunded when you obtain evidence that proves the goods were removed within the appropriate time limits.

Evidence must show that the goods you supplied have left the UK. Copies of transport documents alone will not be sufficient. Information held must identify the date and route of the movement of goods and the mode of transport involved. It should include the following:

Item	Description
1	Written order from your customer which shows their name, address and EC VAT number and the address where the goods are to be delivered.
2	Copy sales invoice showing customer’s name, EC VAT number, a description of the goods and an invoice number.
3	Date of departure of goods from your premises and from the UK.
4	Name and address of the haulier collecting the goods.
5	Registration number of the vehicle collecting the goods and the name and signature of the driver and, where the goods are to be taken out of the UK by a different haulier or vehicle, the

- name and address of that haulier, that vehicle registration number and a signature for the goods.
- 6 Route, for example, Channel Tunnel, port of exit.
 - 7 Copy of travel tickets.
 - 8 Name of ferry or shipping company and date of sailing or airway number and airport.
 - 9 Trailer number (if applicable).
 - 10 Full container number (if applicable).
 - 11 Name and address for consolidation, groupage, or processing (if applicable).

74. If “commercial evidence” of dispatch indicates compliance but is subsequently shown to be false, eg because the goods did not leave the UK, a trader that has acted in good faith and taken every reasonable measure to ensure that the intra-Community supply it was effecting did not lead to its participation in fraud may, relying on *Teleos*, still be entitled to zero-rating. The effect of *Teleos* was explained by the Upper Tribunal (Judges Berner and Clark) in *HMRC v Arkeley Limited (in Liquidation)* [2013] UKUT 393 (TCC) as follows:

“21...In our view, *Teleos* establishes that, where there is no allegation that the taxable person was acting otherwise [than] in good faith or that the taxable person failed to take reasonable steps to ensure that he was not participating in tax evasion, the focus must be on the evidence required to establish the right to zero-rating. The taxable person cannot be required to prove the fact of export in any other way.

22. What this means is that in a case where bad faith is not alleged, and where it is not argued that the taxable person was a participant in fraud, whether an actual participant or a participant by virtue of knowledge or means of knowledge of the fraud (see *Kittel v Belgium, Belgium v Recolta Recycling SPRL* (Joined cases C-439/04 and C440/04) [2008] STC 1537; referred to at [65] of the CJEU judgment), the only question is whether the documents received by the supplier are sufficient evidence of the export. That is the case whether or not the tax authority has itself accepted the evidence. If that evidence is sufficient, and that is a matter for the Tribunal in the case of dispute, the application of zero-rating will not be precluded even if it is later discovered that the goods have not been exported. Absent an allegation of knowledge or means of knowledge of fraud, the only relevant factor is the evidence available to the taxable person that the goods have left the UK.”

75. It is also clear from the decision of the CJEU in *Mecsek-Gabona* that zero-rating can be denied if a trader knew or should have known that its transactions were part of a tax fraud committed by the purchaser and it had not taken every step within its power to prevent that fraud. As the CJEU stated at [55]:

“In the light of all the foregoing considerations, the answer to Questions 1 and 2 is that Article 138(1) of Directive 2006/112 is to be interpreted as not precluding, in circumstances such as those of the

case before the referring court, refusal to grant a vendor the right to the VAT exemption for an intra-Community supply, provided that it has been established, in the light of objective evidence, that the vendor has failed to fulfil its obligations as regards evidence, or that it knew or should have known that the transaction which it carried out was part of a tax fraud committed by the purchaser, and that it had not taken every reasonable step within its power to prevent its own participation in that fraud.”

Discussion and Conclusion

76. It is accepted that to succeed in its claim for the MGB transactions to be zero-rated, it is for CFB to establish the goods in these transactions have left the UK and that it had obtained and kept valid commercial evidence of this. However, the evidence, particularly that of N S Clarke and Global Freight Systems which Mr Lall said he could not dispute, was that the goods involved in the MGB transactions did not leave the UK. Therefore, the supply of goods to MGB can only be zero-rated if, applying *Teleos*, documents held by CFB provide sufficient evidence of export. Additionally, CFB must establish that it acted in good faith and took every reasonable measure to ensure that the intra-community supply did not lead to its becoming a participant in the fraudulent evasion of VAT.

77. Mr Lall relies on *Teleos* and contends that, on the basis of the letter from HMRC to CFB dated 10 October 2014 (see above), which referred to the documents being “satisfactory” at “face value” and that they “appeared at first glance to be satisfactory, that the documents held by CFB provided sufficient evidence of export and consequently CFB should be entitled to zero rate its supplies to MGB. However, as Mr Watkinson contends, the issue is not whether HMRC “at first glance” considered the documents to be satisfactory evidence of export, but whether the documents do, in fact, provide sufficient evidence of this.

78. For there to be sufficient evidence it is necessary for the information contained in paragraph 5.2 of Notice 725 (which has the force of law), to be shown on the documents. This information includes a record of the route of movement of the goods which is not shown on any of the documents provided by CFB. Accordingly, CFB has not complied with legislative requirements for zero-rating and, irrespective of whether it acted in good faith and took every reasonable measure to ensure that it did not become a participant in any fraud, the MGB appeal cannot succeed.

79. While this is sufficient to dispose of the MGB appeal, Mr Watkinson urges us to make further findings in relation to this appeal and, taking a holistic approach, apply those findings and evidence in the MGB appeal to the issues in the *Kittel* appeal particularly in relation to CFB’s state of knowledge.

80. Mr Lall submits that the evidence does not show that CFB had any knowledge that the goods were going elsewhere than out of the UK. However, the evidence of Nigel Clarke of N S Clarke Freight Forwarders (albeit hearsay but nonetheless admissible under rule 15 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009) would suggest otherwise. Mr Clarke’s description to HMRC of

metal emanating from CFB and being diverted to other traders and metal originating from other suppliers eg Marren ostensibly destined for MGB but in fact delivered to CFB under cover of false documentation, stating that it had originally come from Fulham Metals, would seem to indicate that, by being a supplier and receiving metal as part of the same fraud, it is more likely than not that CFB must have had knowledge of what was happening and cannot have either acted in good faith or taken every reasonable measure not to become a participant in any fraud and consequently, even if the documentation had provided sufficient evidence of export (which it did not), it would not have been entitled to rely on *Teleos* in the MGB appeal.

81. Similarly, as CFB either knew or should have known of the fraud, had it been necessary to do so, we would have found that HMRC were entitled to rely on *Mecsek-Gabona* to deny CFB any entitlement to zero rate the MGB transactions.

KITTEL APPEAL

Facts

82. As noted above, CFB has been registered for VAT from 1 April 1973 and has been filing monthly VAT returns since its 07/06 VAT accounting period.

83. HMRC undertook a verification exercise into CFB's VAT returns for the periods 07/07 to 12/07 and withheld repayments of £5,569,566.17 whilst enquiries were ongoing. During the course of the verification, repayments totalling £2,792,176.86 were made to CFB and repayment of the balance (£2,777,389.31) was released to CFB on a 'without prejudice' basis on 22 December 2008.

84. During the verification process, on 10 October 2007, HMRC Officer McClelland had visited CFB and, having met with its in-house accountant Howard Ratcliffe, noted that he, "explained due diligence with reference to MTIC fraud and need for [CFB] to be extremely careful about who they buy from." Officer McClelland made a further visit to CFB on 16 October 2007 meeting Ken and James and noting that he "explained MTIC fraud and due diligence." On another visit to CFB, on 23 November 2007 where he met with Ken and Jason, Officer McClelland noted:

"Discussed suppliers that I have concerns with the supply chain. ... Discussed 09/07 period. Trader to supply break down of purchases. Mr Booth said he will fax through a break down of his purchases from producers of scrap, dealers, overheads and repairs so that repayment of part of P09/07 can be made. ... He said that at present they are withholding payment of VAT to their suppliers. Explained that the returns rendered by their suppliers are a separate matter. Mr Booth is very concerned about EFS (Jonathan France) who supplies metal for the foundry. He is very keen to claim back VAT from suppliers made by them. Said that deals still being verified."

85. In a telephone note taken by Officer McClelland on 28 November 2007 he recorded that:

“Mr [Ken] Booth rang to check on progress of verification. He was particularly concerned to find out if EFS (Jonathan France) and Fellowbrook have been verified. He is concerned that he may lose these suppliers.”

Officer McClelland explained that he could not say when the verification process would be completed.

86. A further visit to CFB took place on 6 December 2007 (HMRC Officers Kay and French) who recorded that Ken had:

“... queried what happened if any input VAT [was] not to be allowed. Explained that input tax may be disallowed if defaulter in the chain found and they knew, or should have known, that the transaction was connected with fraud. I stated that, from our previous meetings, I believed that the due diligence done prior to the verification of 07/07 was limited to checking suppliers had valid VAT numbers. [Ken] said that we may have been told this by H Ratcliffe but in fact the sale team did more checks on suppliers but that these were not recorded anywhere.

He showed me a list of due diligence questions they are now asking suppliers (CFB having sought advice from solicitors working in the VAT field). Said that I could not comment on the completeness of this but:

- Recommended they include asking suppliers/customers what due diligence checks they are doing to ensure transactions not connected with fraud.
- PN 726 gave guidance on areas should consider.
- Should avoid it becoming a tick box exercise ie need to critically look at all the data obtained before deciding whether or not to trade.

[Ken] advised me that he has refused to trade with some suppliers and with others he is refusing to pay them the VAT until it has been released by HMRC.

[Ken] has ongoing concerns about the serious effect withholding the repayments is having on the business and has reduced his confidence in who he can and cannot trade [with], and staff have had hours reduced. Confirmed that HMRC is aware of his concerns and is endeavouring to progress the claims as quickly as practical.”

87. Subsequently, Officer McClelland, on a visit to CFB on 19 December 2007 where he met with Ken, James and Scott, together with Ben Evans of EY, who were instructed by CFB explained that HMRC would not and could not give a definition of due diligence as that was “something that the directors of a company should exercise in order to satisfy themselves that companies they intended to deal with are genuine businesses able to supply goods from legitimate sources.” After being shown the due diligence undertaken by CFB in respect of a particular customer, Stenbridge, which Officer McClelland considered to be “superficial”, there was discussion about the need for more information about the directors responsible for the operation of the

company, their background and where they sourced the goods. As mentioned above, on 22 December 2008 HMRC repaid £2,777,389.31, the balance of monies withheld during the verification process to CFB on a 'without prejudice' basis.

88. On 2 February 2012 HMRC wrote to CFB in relation to its purchases from Recycling Logistics Limited to:

“... advise you that as a result of our enquiries in respect of your 12/10 and 01/11 returns we now know that 4 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 £81,000,000.** (emphasis as in the letter)

89. A similar letter was sent by HMRC to CFB on 28 June 2012, this time in relation to its 04/11, 11/11, 12/11, 01/12 and 02/12 VAT returns in respect of purchases from Quantum Metals Limited (two transactions) and AM Trading NE Limited (six transactions) which had been traced to a defaulting trader causing losses of £130,000. A further 'tax loss' letter was sent to CFB on 9 August 2012 regarding purchases from Quantum Metals Limited (four transactions) and AM Trading NE Limited (three transactions) resulting in a loss of £99,000. In each case the material traded was copper.

90. On 6 September HMRC issued CFB with another 'tax loss' letter this time in relation to ten transactions with Storage & Distribution Solutions Limited, two transactions with Gillot Alloys Limited and four transactions with Sovereign Commodities Limited during its 09/11, 10/11, 11/11, and 12/11 VAT periods which has resulted in a loss of £88,000 where the material traded had consisted of copper and mixed steel.

91. In a letter, dated 18 September 2012 following a telephone call to CFB on the same day, HMRC Officer Day advised CFB that because HMRC were “still experiencing problems with MTIC VAT fraud” she had been appointed as its “local control officer” and would be visiting its principal place of business, as arranged on 27 September 2012 to discuss the main business activities of CFB and inspect its VAT records. The letter also requested that after this initial meeting CFB should provide HMRC with details of its trading on a monthly basis.

92. As arranged, Officer Day, accompanied by Officer Johnson, visited CFB on 27 September 2012 and met with Ken, James, Scott, Jason and Howard Ratcliffe. The Visit Report states that the visit was part of the “MTIC monitoring project as it has been “established” that CFB “are involved in transactions leading back to evaded tax”. The Report continues:

“After brief introductions [Officer Day] explained the reason for the visit in respect of MTIC VAT fraud. [She] described how fraud had moved away from predominantly mobile phones and computer chips to other commodities, including scrap metal.

[Ken] went on to say that VAT should be removed on scrap metal transactions, as per other EU countries including Ireland and Italy.

[Officer Day] explained general MTIC concerns involving missing trader fraud. Referred to tax loss letters served to [CFB].

[Officer Day] explained a commodity at risk is copper cathode and enquired if [CFB] are trading in it currently. [Ken] advised that copper cathode is bought and sold on a regular basis. Copper Cathode can be sold on to UK or abroad.

...

[Officer Day] served Notice 726 suggesting due diligence be reviewed and checked to reduce exposure to fraud.

...

[Mr Ratcliffe] asked about tax loss chains, making reference to the tax loss letters issued to [CFB]. [Officer Day] explained that a trader in the supply chain has been found to have defrauded VAT.

[Ken] explained that they are actively trading with some of the tax loss suppliers including Storage and Distribution Solutions Limited and Gillot Alloys mainly.

...

Copper Cathode sheeted and made to produce slabs. Occasionally copper cathode resold. Slabs used and resold to Ministry of Defence. Copper greasy wire various end users in China, 20 – 30 tonnes per month.

[Jason] served “How to Spot MTIC fraud leaflet”, “Invalid Invoices Measures, and “The High Value Dealers” guide for reference as per the Money Laundering Regulations.

...

[Scott] explained that copper cathode originally from South American mines and African.

...

[Ken] stated that no copper cathode was on site at present.

All left the office and walked down the metal stairs into the warehouse for a tour of the premises. [Ken], [Jason] and [Mr Ratcliffe] present during the tour.

Noted copper wire in warehouse premises. No copper cathode observed during the tour of the premises. Several furnaces were in operation. Brass ingots being produced for onward sale to “Mercedes” of Germany to be made into bearings.”

93. The title of Public Notice 726, which Officer Day served during her visit to CFB on 27 September 2012, is *joint and several liability for unpaid VAT*. However, it is made clear (at section 1.3) that it should be read by all VAT registered businesses that trade in goods or services that are subject to MTIC fraud. Although the particular goods specified in paragraph 1.4 do not include metals, Officer White explained during cross examination that even though the Notice states (at section 2.4) that as “MTIC VAT fraud generally involves the wholesale of the specified goods and their removal from the UK, it is highly unlikely that manufacturers or retail suppliers of the

specified goods will be affected by these rules, the purpose of serving the Notice on scrap metal traders was to highlight section 6, *Dealing with other businesses – How to ensure the integrity of your supply chain*, and that they would have directed such businesses to this section, in particular part 6.1 which states:

“6.1 What checks can I undertake to help ensure the integrity of my supply chain

The following are examples of indicators that could alert you to the risk that VAT would go unpaid:

1) Legitimacy of customers or suppliers. For example:

- what is your customer’s/supplier’s history in the trade?
- has a buyer and seller contacted you within a short space of time with offers to buy/sell goods of same specifications and quantity?
- has your supplier referred you to a customer who is willing to buy goods of the same quantity and specifications being offered by the supplier?
- does your supplier offer deals that carry no commercial risk for you – eg, no requirement to pay for goods until payment received from customer?
- do deals with your customer/supplier involve consistent or pre-determined profit margins, irrespective of the date, quantities or specifications of the specified goods traded?
- does your supplier (or another business in the transaction chain) require you to make 3rd party payments or payments to an offshore bank account?
- are the goods adequately insured?
- are they high value deals offered with no formal contractual arrangements?
- are they high value deals offered by a newly established supplier with minimal trading history, low credit rating etc?
- can a brand new business obtain specified goods cheaper than a long established one?
- has HMRC specifically notified you that previous deals involving your supplier had been traced to a VAT loss and/or had involved carousel movements of goods?
- has HMRC specifically notified you that HMRC date stamps have been present on goods offered for sale by your supplier, or that there is evidence of HMRC date stamps being removed from packaging. This would strongly suggest that the goods had been subject to carousel movement, which should alert you to a significant risk that the transactions entered into with that supplier may be connected with the non-payment of VAT;

- has HMRC specifically notified you that other MTIC VAT fraud characteristics (such as third party payments) have occurred in transaction chains involving your supplier?”

94. The “How to spot missing trader fraud – a quick guide to helping you protect yourself or your business from organised criminals” leaflet, also served by Officer Day during her 27 September 2012 visit to CFB emphasises that:

It is important that you read this leaflet. If you do not take due care and HMRC can demonstrate that you knew or should have known that your trading was linked to fraudulent tax losses then you will lose your entitlement to claim the input tax linked to those transactions. Be suspicious if your business or those you are dealing with show any of the following characteristics.

- Newly established or recently incorporated companies with no financial or trading history.
- Contacts have a poor knowledge of the market and products.
- Unsolicited approaches from organisations offering an easy profit on high-value/volume deals for no apparent risk.
- Repeat deals at the same or lower prices and small or consistent profit.
- Instructions to make payments to third parties or offshore.
- Individuals with prior history of wholesale trade in ‘high value, low volume’ goods such as computer parts and mobile phones.
- Unsecured loan with unrealistic interest rates and/or terms.
- Instructions to pay less than the full price (and often even less than the VAT invoiced) to the supplier.
- Established companies that have recently been bought by new owners who have no previous involvement in your sector.
- New companies managed by individuals with no prior knowledge of the product, who hire specialists from within the sector.
- Entities trading from residential or short-term lease accommodation and serviced offices.

This list is not exhaustive – use your common sense and be suspicious.

How does it affect you or your business?

Missing trader fraud is stealing large amounts of VAT. The fraudsters steal money that could be used for essential public services such as hospitals and schools. The Government’s measures to combat such fraud place a responsibility on those who might deal with the fraudsters to take sensible precautions – those who fail to do so risk heavy financial penalties.”

95. On 1 October 2012 HMRC wrote to CFB referring to Notice 726 and the “How to Spot an MTIC fraud” leaflet advising that HMRC were “still experiencing problems with this type of VAT fraud.” The letter also requested that although they have done so through its local VAT office, CFB should now verify the VAT registration numbers of its customers and suppliers through HMRC’s Wigan office.

96. On 17 October 2012, shortly after the first of CFB’s transactions with MGB which had occurred on 12 October 2012 (see below), HMRC sent a ‘tax loss’ letter to CFB advising of losses in excess of £154,000 in seven of its transaction chains in VAT periods 12/11, 02/12, 03/12, 04/12 and 05/12 in which it had purchased copper from AM Trading (NE) Limited. HMRC “task force” officers visited CFB on 29 November 2012 as part of HMRC’s continuing strategy to tackle suspected supply chains linked to VAT fraud.

97. A further ‘tax loss’ letter was issued to CFB on 10 January 2013. This time in relation to losses of £149,000 which had been traced to CFB’s purchases of copper from Storage and Distribution Solutions Limited in 15 of its transaction chains during its 04/12 and 05/12 VAT periods.

98. Officer Day wrote to CFB on 24 January 2013 to advise that:

“Enquiries made by the task force during the visit established that there was a quantity of copper cathode at your premises which had been purchased from JKL Wakefield Limited t/a Eric France Metals. Details listed below:

Invoice date: 12/11/2012

Invoice number: 79384

Net: £347,139.00

VAT: £69,427.50

Gross: £416,566.80

In relation to this deal, we have growing concerns over the integrity of the supply chain.

Early indications are that a significant amount of VAT has been evaded in the supply chains in which JKL Wakefield Limited have traded. I must alert you that the indicators suggest that the tax loss linked to the trader is connected to the fraudulent evasion of VAT rather than any result of genuine business failure.

Further checks are being undertaken and I will advise you of the outcome in due course.”

The letter continued by requesting further information and documents in relation to that copper cathode deal which included customer details/sales invoices, associated CMRs/freight forwarder records and due diligence checks on JKL Wakefield Limited. The letter also asked if the copper cathode had been processed and sought a specific explanation of what had happened to be provided, together with supporting stock records, customer details and any associated shipping documents.

99. A further 'tax loss' letter, the seventh such letter to be sent to CFB, was issued on 31 January 2013. This concerned a loss in excess of £184,000 in nine of CFB's transactions in VAT periods 05/12, 07/12, and 08/12 in which it had purchased copper from S J MacDonald t/a Penfold Trade & Co Limited (one transaction) and Premier Waste and Recycling Limited (eight transactions).

100. CFB replied to Officer Day's letter of 24 January 2013 on 5 February 2013. The letter signed by Ken explained:

"Further to your letter of 24 January 2013, received on 31 January 2013, we will seek to answer your questions with regard to JKL Wakefield. As they are important suppliers of materials needed to meeting existing demand for our products from various customers, we wish to continue trading with them.

With regard to your further questions, as they are wide ranging, we need some clarification on what exactly you require. That should enable us to assist you with your enquiries.

JKL Wakefield Limited t/a Eric France Metals

At our meeting on 29 November, the pattern of our activity was explained. In summary, stock which is purchased enters our yard in Rotherham. Your letter acknowledges that "... there was a quantity of copper cathode at [our] premises ...". It is stockpiled. We purchase copper in various forms as well as copper cathode, principally in the form of plates. We have a separate stock pile of copper cathode. The stock is used in a number of ways.

As stated on our website "[CFB] is a specialist manufacturer of a wide range of copper alloys and a supplier of finished machined or proof machined parts, supplying all types of industries from small machine shops through to marine and aerospace work."

Stock piles of purchased metals are available for our various processing operations. The metal, including copper cathode, is taken by the foundry for melting to produce, for example, ingots, billets, slabs etc. Those products may be put to various uses. Once purchased, material is stockpiled. The different types of metals are piled separately. At that point, items representing the metals, including copper cathode, cease to be separately identifiable from other items on the pile and will lose traceability. That is especially so once items on any pile are melted. It is therefore not possible to trace any given stock items purchased into identifiable products which are sold on.

At our meeting on the 29 November, your colleague Mr Russell White seemed to understand and accept that unlike other companies, we do not buy copper cathode and simply trade it on as a commodity. We may trade surplus stock in favourable market conditions. However, the copper market is volatile, which also makes our pattern of trading surplus stock unpredictable and irregular."

The letter then referred to the questions raised by Officer Day in her letter of 24 January 2013 in relation to JKL Wakefield Limited t/a Eric France Metals and continued:

“As stated at the outset, we need to continue trading with this supplier in order to meet demand from our customer. Unless you advise us otherwise, we trust that adopting that course will not prejudice our entitlement to input tax.”

101. On 14 February 2013 HMRC issued another ‘tax loss’ letter to CFB. This concerned its purchase of copper cathode from JKL Wakefield Limited which has been the subject of the 24 January 2013 warning letter (see above). The letter referred to the previous ‘tax loss’ letters and noted that, including the losses exceeding £67,000 in this transaction, “the total loss to the public revenue therefore now exceeds £952,000. The letter, which was written by Officer Day, warned CFB that:

“It is your responsibility to determine which checks to carry out and whether to undertake transactions in the light of those checks. Examples of checks that you may wish to consider are listed in Notice 726 – Section 6”

102. On 8 March 2013 CFB commenced the transactions which are the subject matter of the *Kittel* appeal. We shall return to these transactions which are described in greater detail below.

103. Officer Day undertook a further visit to CFB in connection with the MTIC monitoring project, accompanied by a direct tax colleague Officer Williams, on 10 April 2013 where she met with Ken, James, Thomas Booth and Mr Ratcliffe. The visit report records that Ken asked for a further copy of Notice 726 which Officer Day provided, drawing attention to Section 6. The visit report also notes that Officer Day asked questions about some of CFB’s customers receiving non-processed copper goods.

104. A further visit to CFB, by HMRC Officers Day, Gray and French, took place on 31 July 2013, in addition to the discussion regarding MGB (see above) the Officers expressed their “ongoing concerns regarding MTIC trading in the scrap metal sector” and the need to examine CFB’s transactions due to suspected tax losses. The visit report records that there was:

“Discussion regarding the request for records including due diligence records connected to several traders in the May 2013 trading period. [Ken] referred to a copy of Notice 726, said that were already doing a lot of due diligence checks.

Arthur Brook Limited
[BMC]
Cox Recycling Limited
J P Morgan Chase Bank NA
JSJ Metal Recycling Limited
Global Metals Direct Limited
Metal Interests Limited
Premier Metals (Leeds) Limited
Towmaster Metal Company Limited

Global Metals Direct Limited – [Ken] expressed concern that they had only just been made aware of the deregistration by HMRC.

I [Officer Day] explained that it would be advisable to check all existing traders they deal with via HMRC Wigan periodically, for example on a monthly basis, because existing suppliers and customers may be deregistered from VAT. Directors [of CFB] expressed concern at doing this level of work.

I reinforced that it is their responsibility to carry out the due diligence checks on a regular basis, and not to focus on new suppliers and customers – to regularly check existing ones.

[Ken] asked if there were any suspicions concerning the traders subject to the recent request for records. I advised that I would be making enquiries and tracing the transactions of a number of traders in the May 2013 trading period and that I will update them in the course of those enquiries.

[Ken] wanted to know whether or not they should trade with the traders subject to the records request. I reinforced that it is their commercial decision as to who to trade with, I can't tell them."

105. In response to a question from Officer Gray, Jason and Ken confirmed that CFB has "no stock control system". Jason said that on receipt:

"... materials are stored in piles that most closely reflect the nature of the goods received. Where there is a demand for the goods in their raw state then these may be sold on. However, given the way in which the goods are received, possibly from different supply sources, it is difficult to establish a clear supply chain for goods that are being sold subsequently. Majority of goods are processed to provide added value in some way."

106. In relation to CFB's "Business Model" it is recorded in the visit report that the officers were told that:

"The Company is not structured into any specific formal reporting groups and there is no management reporting facility to monitor performance of individual operating areas/groups.

Products are sourced from established suppliers, subject to satisfying appropriate HMRC due diligence requirements. Supplies are regularly obtained through the winning of big tenders from government departments eg Ministry of Defence and public utility companies.

Directors advised that it is a highly competitive industry and the company is always looking to source products at the best prices and the most favourable terms. Tendered contracts usually require the payment of up front monies. The trade is highly competitive and commercial information about customers and suppliers is kept closely guarded for fear of it being leaked to competitors."

107. There was however, no evidence produced to corroborate the claim that CFB does in fact make supplies as the result of winning "big tenders" from Government departments such as the Ministry of Defence.

108. Officer Russell White wrote to CFB on 27 September 2013 to explain that he was succeeding Officer Day as its local control officer with responsibility for the verification of returns. The letter also notified CFB that 11 of its transaction chains in VAT periods 04/13 and 05/13, in which it had purchased non-ferrous metals, copper, copper cathode, tin and nickel, were connected to tax losses exceeding £591,113.25.

109. During a visit to CFB on 3 October 2013, with Officer Payne to collect business records, Officer White was told by Mr Ratcliffe that CFB no longer traded with BMC, Towmaster Metals Limited or Arthur Brook. On 14 October 2013 HMRC's "Organised Crime National Coordinator" wrote to CFB as follows:

VAT Fraud Alert Purchase and Sale of Metals

The purpose of this letter is to draw your attention to HMRC's concerns that MTIC (Missing Trader Intra-Community) VAT frauds are being perpetrated within the market of wholesale metals.

Annex A gives further information about trading in metals and MTIC fraud.

Annex A to that letter states:

MTIC Fraud in the Metals Sector

HMRC have found that Missing Trader Intra-Community (MTIC) fraud within the metals sector is particularly in evidence in, but not restricted to, the wholesale movements of copper.

Typical descriptions of the copper being traded within transaction chains linked to VAT fraud include but are not limited to dry bright copper, dry bright granules, heavy copper, dry bright wire, mixed copper and copper cathode, this includes LME graded copper."

110. HMRC issued a 'tax loss' letter, the tenth, on 12 November 2013 notifying CFB that 95 of its transaction chains in VAT periods 11/12 to 04/13 in which it had purchased a combination of ferrous and non-ferrous metals from Global Metals Direct Limited had been traced to tax losses in excess of £901,425 and the cumulative losses found in CFB's transaction chains now stood at £2,444,538.

111. A further 'tax loss' letter was issued on 3 January 2014 in respect of a purchase of copper/copper cathode from GLJ Recycling Limited and six purchases from Arthur Brook (which form part of the *Kittel* appeal, see below) resulting in a tax loss exceeding £229,698. Another 'tax loss' letter was issued to CFB on 3 February 2014 in relation to purchases of non-ferrous metals from BMC (52 transactions) and copper/copper cathode from Premier Metals Leeds Limited (9 transactions) resulting in tax losses of £1,153,261.

112. A further 'tax loss' letter was issued to CFB on 18 February 2014 in respect of tax losses exceeding £4,087,036.

Transactions etc.

113. Before describing the transactions, some of the participants in them (ie the suppliers to CFB and the defaulting traders) and considering the due diligence undertaken by CFB, it is convenient to first consider some of the transactions undertaken by CFB in VAT periods prior to those that have become the subject matter of the *Kittel* appeal. In particular, its transactions with JKL whose shadow director was a Mr Jonathan France. JKL was CFB's sole supplier of copper cathode in 2012 and 2013 until it began to purchase such metal from Arthur Brook and PML.

114. Mr Jonathan France was a director of Eric France and Son (Metals) Ltd ("EFS"), which went into liquidation in January 2002 with a total deficiency of £314,501. As a result of his conduct at EFS, Mr France was disqualified from acting as a company director for 14 years from 20 February 2004. The matters of unfitness recorded in the schedule to the disqualification undertaking included failure to keep, preserve and deliver up adequate accounting records when required to by the liquidator, receipt of a loan from EFS in breach of section 330 of the Companies Act 1985, failure to conduct stock takes, failure to explain a transaction carried out at a loss, receipt of a payment from the company shortly prior to its liquidation of £40,000, £25,000 of which was disguised as a dividend and failure to co-operate with the liquidator.

115. Following the liquidation of EFS Mr France traded, as a sole trader, under the name Jonathan Dean France from the same premises as had been used by EFS. He ceased trading on or around 30 September 2008 and was declared bankrupt on 3 December 2008 (and remains undischarged). HMRC's claim in the bankruptcy (including a penalty) calculated at more than £65 million, of which £22.6 million was VAT. During the period of trading as a sole trader Mr France had made supplies, often of high value copper cathode in transactions sometimes exceeding 100 tonnes per transaction. In the period from June to November 2006 this amounted to at least £9 million (including VAT).

116. Although an Experian Report, dated 21 February 2011, records JKL's directors as being Mr. Jody Firth and Mr. Albert Goddard, who were both appointed on 30 September 2008, it was Mr France who dealt with CFB and who met with a CFB representative on a due diligence visit to JKL, which traded from the premises that had been used by Mr France as a sole trader and EFS before that. JKL was a major supplier to CFB providing it with over £9 million worth of metal each month. This included purchases of £5,781.72 on 28 January 2013, £290,504.54 & £145,136.11 on 29 January 2013, £149,634.45 & £463,370.22 on 30 January 2013, £153,068.83 on 31 January 2013, £125,295.09 on 1 February 2013, £2,149.80 on 15 February 2013, £474,924.53 on 19 February 2013, £1,210.80 42 on 21 February 2013 and £285.12 on 22 February 2013.

117. JKL continued to trade until its own insolvency on 26 February 2013. HMRC's claim in that insolvency was more than £69.8 million, of which VAT was at least £50.2 million including VAT of more than £3.8 million due on net sales to CFB made between 18 July 2007 and 21 September 2012 that JKL had not declared. The directors of JKL, Messrs Firth and Goddard, each gave undertakings to be disqualified

as directors for 13 and 7 years respectively, with effect from June and October 2014 respectively, having been found to have allowed Mr France, an undischarged bankrupt, to act as a director of JKL.

118. After ceasing to be supplied by JKL, CFB bought copper from Premier Metals Leeds, a partnership between Mr Nicholas David Sandham and his wife Mrs Charlotte Sandham. Having purchased a yard in June 2012, after previously using a van and scales for the scrap metal business, on 6 February 2013 Premier Metals Leeds sent a letter of introduction to CFB. On 12 February 2013, CFB began to purchase metals from Premier Metals Leeds, making further purchases on 18, 20, 25 and 28 February 2013 buying £492,868.96 of goods from the partnership in a matter of two weeks. On 7 March 2013 Premier Metals Leeds was incorporated as a limited company, and the business of Premier Metals Leeds was transferred to it as going concern on 1 April 2013. The partnership ceased and PML began trading the following day.

03/13 Deals

119. During its 03/13 VAT accounting period CFB made eight purchases for which it has been denied input tax.

120. The first, on 8 March 2013, was for 24.73 tonnes of copper plate from Arthur Brook for £146,302.68. Arthur Brook had purchased 24.78 tonnes of ‘copper cathode LME grade’, for £144,995.71, from Matlock Recycling Limited (“Matlock”) on 7 March 2013 which had itself bought 79.796 tonnes of ‘copper cathode LME grade’, for £142,751.16, from European Steel Limited (“ESL”) the same day. Also on 7 March 2013 ESL acquired 79.796 tonnes of the same material, ‘copper cathode LME grade’, from TNTT for £142,289.36 (all prices in this and subsequent transactions chains are shown inclusive of VAT).

121. None of the witnesses for CFB could explain, or provide any commercial rationale for, this and subsequent deals, as to how, given its size and reputation in the trade sector, the companies preceding CFB in the deal chain could obtain the copper cathode (or other metals) in the quantities and price they did when CFB could not source the same material at such prices.

122. Also, on 8 March 2013 CFB bought 22.04 tonnes of copper from PML for £125,628.01. PML had acquired the same quantity of copper from Recycling on 8 March 2013 for £124,305.61.

123. On 18 March 2013 CFB bought 24.655 tonnes of “copper plate” from Arthur Brook for £149,113.44 (including VAT). On 14 March 2013 Arthur Brook purchased 24.675 tonnes of “Grade A plates HK certified” from Matlock for £147,252.12, Matlock had purchased 49.304 tonnes of “copper cathode LME grade” from ESL for £142,995.71 and ESL bought the same quantity of “copper cathode LME grade” from TNTT for £142,289.36.

124. CFB purchased 24.835 tonnes of “copper scrap” from Arthur Brook on 19 March 2013 for £143,645.64. Arthur Brook had acquired 24.885 tonnes of “copper

cathode LME grade” from Matlock on 19 March 2013 for £142,252.12. Matlock had bought 24.98 tonnes of the same material for £140,564.82 from ESL on 18 March 2013 which had itself acquired the same quantity of the same material on the same day from TNTT for £139,225.76.

125. On 20 March 2013 CFB bought 20.015 tonnes of “heavy copper scrap” from Arthur Brook for £141,086.04. Arthur Brook had purchased the same amount of “heavy duty cu 98%” from Matlock the day before for £142,003.15. Matlock had acquired 74.98 tonnes of “heavy duty cu 98%” from WDL for £416,950.60.

126. The next day, 21 March 2013, CFB purchased, again from Arthur Brook, 28.855 tonnes of “heavy copper scrap” for £143,761.32. Arthur Brook had acquired 24.877 tonnes of “Grade A plates HK certified” from Matlock. Matlock’s supplier of 24.924 tonnes “copper cathode LME grade” was ESL which had acquired 24.924 tonnes of “copper cathode LME grade” from TNTT.

127. Subsequent purchases by CFB, on 25 and 26 March 2013, when it bought 23.955 tonnes of “copper scrap” and 24.075 tonnes of “heavy copper scrap” from Arthur Brook for £139,130.64 and £139,827.60 respectively can be traced through the same transaction chain to TNTT. However, in each case the goods bought by Arthur Brook are described as “Grade A HK certified cathode” and those bought by Matlock and ESL as “copper cathode LME grade”.

Participants in 03/13 Deals

Arthur Brook

128. Arthur Brook is a long established company that has been VAT registered since the introduction of the tax on 1 April 1973. It was operated as a Brook family business until the appointment of Mr Wayne Griffiths as director on 29 February 2008. From then the outputs declared on its VAT returns began to significantly increase. In the VAT period 01/12 to 01/13 these nearly doubled to more than £9.3 million, increasing to £13.2 million in 04/13 before subsequently falling away.

129. HMRC Officers had visited Arthur Brook on 14 November 2012 in connection with supplies to a Dutch trader that had been deregistered from VAT and in respect of whom Arthur Brook had received third-party payments. The Officers explained HMRC’s concerns in relation to MTIC VAT fraud within the trade sector, the need to conduct due diligence and the role of HMRC’s Wigan Office in verifying VAT registration numbers and issued Arthur Brook with: Public Notice 726, the Statement of Practice in relation to input tax deduction and the “How to spot MTIC fraud” leaflet.

130. Since October 2013 Arthur Brook has been notified of tax losses in its supply chains totalling more than £1.8 million. On 18 February 2012 Arthur Brook was notified of a VAT assessment in the sum of £71,471.54 for VAT period 01/13 which was due because it did not hold adequate evidence for zero-rating supplies to a French trader.

PML

131. PML, as noted above, was incorporated on 7 March 2013. It was registered for VAT from 1 April 2013 following the transfer, as a going concern, of the business previously carried on by the partnership, Premier Metals Leeds. PML's director, as stated on the VAT registration application form was Mr Sandham. HMRC MTIC Officers Aveyard and Chisman visited PML on 12 June 2013 and met with Mr Sandham, manager Mr Phil Walker, accountant Mr Michael Jones and bookkeeper Ms. Elaine Frost. Mr Sandham explained that Ms Frost joined PML in March 2013 when it had taken on staff from JKL when that company had entered liquidation. When asked about consultancy staff Mr. Sandham advised that Mr Jonathan France was working for him (PML) as a consultant trader from March 2013 and that he used the PML office as a base from which to source new business for the company. Mr Sandham also confirmed that the sudden increase in outputs in VAT period 02/13 experienced by the partnership, Premier Metals Leeds, before the incorporation of the business, was due to trading in primary metals.

132. On 12 August 2013 HMRC notified PML that 34 of its transactions in its 06/13 VAT period had been traced to tax losses exceeding £2.53 million. Subsequently, by an assessment issued on 26 June 2015, HMRC denied PML the right to deduct input tax for VAT periods 06/13 and 09/13 in the sum of more than £9.618 million as almost all of PML's transactions from February to September 2012 have traced to fraudulent tax losses.

133. PML went into liquidation in November 2013. On 11 November 2013 HMRC MTIC Officers attended a Creditors' Voluntary Liquidation meeting at its premises at which Mr Sandham was unable to explain why PML had made extensive third party payments, saying that he was trying to get an answer from Mr. Jonathan France. Mr Sandham explained that he had been present when Mr France was told that JKL was going into liquidation and had been offered the opportunity, by Mr France, to bring a commodities business to PML with a 50/50 profit split between them. Mr Sandham said that he had been responsible for the scrap business with the other deals being left to Mr France. He said PML was always paid before it had to pay its supplier in the deals. Mr Sandham went on to say that Mr France had told the bookkeeper, Ms. Elaine Frost, not to tell him that CFB was currently withholding payment for a particular deal. He also said the he had been told by a driver that he knew that Mr France was now working for a company called C & C Metals Ltd.

134. In a report dated 20 September 2013, SKS (GB) Limited, on behalf of Mr France set out Mr France's version of his role at PML and the partnership, Premier Metals Leeds, that had carried out the business before its incorporation, which was that:

- (1) From December 2012 until August 2013 he had acted as a consultant for Premier Metals Leeds and subsequently PML mainly buying and selling primary metals;
- (2) When he had worked for EFS Mr. France had sub-contracted all skip work to Mr Sandham's business which continued when the business was JKL;

- (3) In January 2013 Mr France began working from PML's premises;
- (4) It became known in the business sector in February 2013 that JKL was in trading difficulties;
- (5) Mr. France realised that he could deal through PML with companies such as CFB who he had previously dealt with whilst at JKL;
- (6) Mr. France introduced PML to new customers, including CFB, and visited new and existing customers;
- (7) As PML's business picked up, Mr. France suggested that PML take on 3 of EFM's staff including Ms. Elaine Frost and Mr. Phil Walker; and
- (8) A further consultant, Mr. Mohammed Urfan, introduced several suppliers to PML to the company and after that Mr. France continued to sell primary metals to companies including CFB.

TNTT

135. TNTT was incorporated on 15 September 2011. It applied for VAT registration on 23 January 2012 stating that its business activity was the wholesale of general electrical household goods and via internet retail sales. TNTT was registered for VAT from 20 January 2012. On 20 February 2012 HMRC wrote to TNTT to advise it a company with which it did business had had its VAT registration cancelled and that any claim for input tax in relation to that company may need to be verified by HMRC.

136. On 26 February 2012 officers of HMRC Staines Lanyard team visited TNTT at its accountants following which an MTIC letter was sent with regards to alternative banking platforms. HMRC subsequently sent letters, dated 15 and 18 March 2013, to TNTT advising that HMRC could not confirm that a VAT number, of which TNTT had sought verification, was valid. A similar letter in respect of another company was sent to TNTT by HMRC on 12 April 2013.

137. In March 2013 TNTT was selected by HMRC for the 'Continuous Monitoring Project' which was established to identify and monitor traders trading in high risk commodities with the aim of preventing tax losses and to verify transactions to ensure that they are not connected to MTIC fraud.

138. At a meeting, on 4 April 2013, at the company's accountants, the director was issued with Notice 726 and the 'How to Spot MTIC Fraud' leaflet. Following a discussion as to how TNTT became involved in trading copper cathode, the director explained that he would sell anything for profit and just wanted to make money. At a subsequent meeting, on 9 May 2013, having provided HMRC with sales and purchase invoices between 2 and 17 April 2013 and a folder of banking information, the director was handed a 'tax loss' letter advising that all 43 transactions in which TNTT had been involved had commenced with defaulting traders resulting in a tax loss of £1,599,205.58. However, as subsequent attempts by HMRC to contact TNTT proved unsuccessful, on 4 July 2014 HMRC wrote to TNTT stating that its VAT registration had been cancelled with effect from 18 June 2013.

139. On 20 August Officer Mitchell, with Officer Piers Ginn, made an unannounced visit to the registered office of TNTT. The address was that of a large building on an industrial estate where the receptionist advised that there had been nobody present from TNTT for some time although the company did have a mailbox which contained unopened post including three letters from HMRC, a letter from Companies House and two letters from Lloyds Bank. A visit to the director's home address on 10 September 2013 proved equally fruitless and there was no response to the letter left there by the Officers.

140. During March 2013 TNTT supplied "LME Grade Copper Cathodes" to ESL which has been traced to the purchases by CFB in that month by Officer White. No output tax was declared on these sales by TNTT and, on 20 December 2013, TNTT was issued with an assessment in the sum of £212,801 by HMRC in respect of its 05/03 VAT period (ie from 1 March to 31 March 2013). TNTT did not appeal against this assessment which remains outstanding.

WDL

141. WDL was incorporated on 3 September 2008 as Wentworth Kitchens Sheffield Limited and was registered for VAT immediately on incorporation. Its VAT registration application stated that its business was that of "Kitchen Supplies". Following the appointment of a new director and change of name to Wentworth Distribution Limited on 4 May 2012, on 22 May 2012 there was a change in both the principal place of business, from Sheffield to London (the address stated was that of its accountants), and its business activity to that of "purchasing of precious metals ie silver/gold".

142. At a meeting at the principal place of business, on 28 August 2012, HMRC Officers, Baltruschat and Bradford met with WDL's director to explain that HMRC had seen an increase in VAT fraud within the metals trade sector and was attempting to identify and educate as many companies as possible of the threat and appropriate measures that could be taken to safeguard themselves. The Officers were told by the director that he had recently purchased WDL, a kitchen company that was in financial difficulties, on the recommendation of an accountant based in Sheffield. He said that although he was currently employed full-time by London Underground he wanted to take on a business dealing in precious metals.

143. Officer Saul made an unannounced visit to WDL (with Officer Whelan) on 27 June 2013. This was at the request of HMRC's Central Co-ordination Team ("CCT") in relation to its sales to Matlock although WDL's supplier was not known. As the director was not present, the office being that of WDL's accountants, a letter was left asking him to contact HMRC within seven days. In the absence of any response WDL was deregistered for VAT.

144. On 10 December 2013 Officer Saul issued an assessment in the sum of £1,106,764 on WDL. The assessment was based on 29 sales made by WDL to Matlock between 17 September 2012 and 18 July 2013, which include transactions subsequently traced to CFB, amounting to a total of £6,877,422.64 on which the VAT

is £1,375,484.52. As this remained outstanding Officer Saul issued a further assessment, for £184,195, on 18 August 2015. There has been no appeal against the assessments which remain unpaid. Additionally, there has been no contact by WDL with HMRC. On 7 January 2014 WDL was placed in liquidation.

Recycling

145. Recycling was incorporated on 17 January 2011. Its application for VAT registration described its business activities as recycling and supplying recycled goods. It was registered for VAT with effect from 1 April 2011. An unannounced visit by HMRC Officers to Recycling's principal place of business as recorded in its VAT registration application, on 11 March 2013, found that it was the offices of the accountants that had submitted the application. The Officers were told by the accountants that they were no longer instructed by Recycling. HMRC therefore, on 11 March 2013, issued a letter to Recycling cancelling its VAT registration. However, this letter was returned marked "addressee unknown" on 15 March 2013. Recycling was dissolved on 20 April 2013.

146. A further unannounced visit was authorised in August 2013 and HMRC Officers instructed to carry out defaulter action. This led to four visits being undertaken by Officers Darnes and Marshall on 16 January 2014.

147. The first was to the last known address of Recycling's director. However, the woman who answered the door stated that she lived there alone and had done so since 2011. A 'tax loss' letter posted to the address was subsequently returned to HMRC marked "return to sender". The second visit was to the director's previous address but the Officers could not obtain any answer. The Officers visited the address of the former director who, although he had resigned as director on 30 May 2012, was listed as owning 100% of the company's shares.

148. At a visit to Recycling's registered office (as shown on Companies House records), a building that served several businesses, the Officers were told, by a man who said that he had been in the premises for 12 years that he had never heard of Recycling. A 'tax loss' letter sent to that address was returned to HMRC marked "send back". There has been no contact between HMRC and Recycling and none of its books or records have been seen.

149. On 15 January 2014, at the request of Officer Darnes, information was supplied in relation to transactions between Recycling and PML which indicated that between 4 February and 3 April 2013 Recycling had issued 26 invoices to PML for metals, including copper, milberry copper wire, copper granules, copper dry bright and copper cathodes with a total (including VAT) of £5,304,009.97. Payment instructions stated on these invoices require payment to be made not to Recycling but the following third parties:

- (1) For invoices 1 – 5 payment was to be made to WBK Bank, Poznan Poland to the account of Eurowire;

- (2) For invoices 6 – 12 payment was to be made to Valartis Bank (Liechtenstein) AG to the account of N.E.W. Business Solutions AG; and
- (3) For invoices 13 – 26 payment was to be made to HSBC in Hong Kong to the account of Williams and Aston Group Limited

In the light of this information Recycling's date of deregistration was changed from 11 March 2013 to 3 April 2013.

150. In January 2014, a request was received from the Dutch Tax Authorities to obtain information relating to supplies Recycling had made using a particular freight forwarder. This indicated that Recycling had made 40 acquisitions from a Cypriot company, Triotrade Limited ("Triotrade"). As a result, HMRC made a request to the Cypriot Tax Authorities for information on Triotrade. The reply from the Cypriot Authorities stated that Triotrade:

"... is considered a suspect of committing fraud and on that basis at 13 September 2013 the decision had been taken to deregister the company with effect from 30 April 2013."

151. There is no record of Recycling having shown its EU purchases from Triotrade. Neither has it paid output tax in relation to its sales to PML. It submitted Nil VAT returns for 07/11, 10/11 01/12, 04/12, 07/12, and 01/13 and was issued with a central VAT assessment for £643 in 10/12. No further VAT returns were submitted to HMRC before Recycling was deregistered for VAT on 4 April 2013. On 18 July 2014 HMRC issued a 'best judgement' assessment on Recycling for £4,010,079. However, the assessment was subsequently withdrawn as Recycling was dissolved on 30 April 2013.

04/13 Deals

152. During its 04/13 VAT period CFB purchased goods from Arthur Brook (four transactions) and PML (four transactions) on which it has been denied input tax. On 17 April 2013, in two transactions, it purchased 99.6 tonnes of "copper cathode" from Arthur Brook at a cost of £538,892.01. In each case Arthur Brook had acquired 99.67 tonnes of "copper plate heavy" from Matlock. Matlock had purchased 99.66 tonnes of "copper plate (Grade A)" from WDL. CFB purchased three loads of "copper scrap" (25.475 tonnes at £142,609.06, 24.895 tonnes at £139,362.21 and 25.235 tonnes at £141,377.49) from Arthur Brook on 4 April 2013. Arthur Brook had purchased three loads of "copper plate 98%" (25.235 tonnes, 24.895 tonnes and 25.515 tonnes) from Matlock which had acquired 99.66 tonnes of "copper plate 98% (pallets)" from WDL.

153. The purchase of 24.996 tonnes of "heavy copper" by CFB from Arthur Brook for £122,008.42 on 5 April 2013 can also be traced back to the purchase of 21.815 tonnes of "copper plate 98%" by Arthur Brook from Matlock to that of the same quantity of "copper plate 98%" by Matlock from WDL.

154. CFB purchased 24.966 tonnes of "tin", 23.415 and 76.205 tonnes of "cathode", 50.57 tonnes of "copper" and 99.62 tonnes of "copper cathode", from PML on 17, 22, 26 and 30 April 2013 paying £415,433.53, £398,796.02, £122,535.38, £259,909.57

and £524,559 respectively. In each case PML had purchased either “tin” (25 tonnes) or “copper” (99.54, 100.07 and 99.435 tonnes respectively) from PCT.

Participants in 04/13 Deals

PCT

155. PCT was incorporated as Paragon Marketing on 16 September 2003. On 21 February 2012 it changed its name to Paragon Station Limited becoming Paragon Commodity Trading Limited (PCT) on 23 November 2012. On its VAT registration application form the main business activity was originally stated as “Inland Waterways Transport” and its trading name was to be “Canal and River Cruises.com”.

156. HMRC Officer Jan Baltruschat was requested by CCT to undertake an urgent unannounced visit to PCT to ascertain whether PCT had made sales of metal to PML during April and May 2013 and to identify from whom the metal had been purchased. The potential VAT risk identified was £2,028,817.94. The briefing provided to Officer Baltruschat by CCT indicated that since its 05/11 VAT period PCT had either submitted nil or small repayment VAT returns.

157. Officer Baltruschat with Officer Reardon visited PCT’s principal place of business on 15 July 2013. It was an accommodation address where information including the address of PCT’s director was given to the Officers. A letter was sent to the PCT’s principal place of business to inform PCT that if it did not contact HMRC within three days, arrangements would be made to deregister the company. PCT was deregistered on 16 July 2013. On 17 July 2013 Officer Baltruschat received an email from HMRC Officer Julie Marshall who had attempted to visit the director. However, the address given no longer existed having been demolished a year previously.

158. Officer Baltruschat was able to establish from information held by HMRC that between 5 April and 28 June 2013 that PCT had issued 40 invoices to PML for the sales of metal. The invoices also indicated that payment for the metal was to be paid into the account of Williams and Aston Group Limited at HSBC in Hong Kong (invoices 1 – 21), N.E.W. Business Solutions AG at the Valeris Bank in Liechtenstein (invoices 22 – 33) and Williams and Aston Group SP at the Raiffeisen Bank Polska SA, Poland (invoices 34 – 40). Additionally, some of the amounts stated on the invoices were in US dollars.

159. On the basis of this information, on 16 September 2013, a notification of VAT assessment was issued and an assessment subsequently issued. Although this was cancelled following a submission of a nil VAT return on 6 October 2013, as the assessment did not include the sales to PML, Officer Baltruschat corrected the error and to account for VAT underdeclared in the final VAT period issued a new assessment on 16 September 2013. PCT was wound up on 18 May 2015. On 9 September 2015 Officer Baltruschat sent notification to the Official Receiver that PCT’s current VAT debt was £3,057,153 with additional interest of £2,486.06.

160. See above in respect of Arthur Brook, WDL and PML.

05/13 Deals

161. CFB made further purchases from PML and Arthur Brook in its 05/13 VAT accounting period.

162. It made two purchases of “nickel” from PML on 7 May 2013. The first was for 23.725 tonnes at £280,856.56 and the second for 23.664 tonnes at £279,897.66. In both cases PML had acquired the same quantity of “nickel” from PCT.

163. On 8 and 9 May 2013, in a single deal, CFB bought 24.595 tonnes, 24.915 tonnes, 23.395 tonnes, 24.675 tonnes, 24.795 tonnes and 24.675 tonnes of “cathode” from PML at a cost of £132,576.88, £134,301.82, £136,889.21, £133,008.12, £133,654.97 and 133,008.12 respectively. PML had been supplied with 149.916 tonnes of “copper” by PCT.

164. CFB purchased 23.692 tonnes of “Nickel Cathode” from PML on 13 May 2013 for £272,931.83 which had been acquired by PML from PCT.

165. On 10 May 2013 CFB bought 24.895 tonnes of “cathode” from Arthur Brook for £135,030.48. Arthur Brook had purchased 24.895 tonnes of “copper plate 98%” from Matlock for £133,062.08 and Matlock’s supplier of 24.895 tonnes of “copper plate (grade A)” was WDL.

Participants in 05/13 Deals

166. See above in relation to Arthur Brook, PML, PCT and WDL.

06/13 Deals

167. In its 06/13 VAT accounting period CFB entered into 27 deals, 18 of which were with BMC. Given that each “deal” consisted in the purchase of many different metals at various weights and prices, rather than burden the body of this decision with the details of these transactions between CFB and BMC during this VAT period we have set out the details of these transactions in Appendix I.

168. In addition to the BMC transactions during its 06/13 VAT period, CFB purchased 23.6 tonnes of “copper” from PML for £118,519.20 on 24 June 2013. PML’s supplier (of 23.58 tonnes of “copper” for £116,551.22) had been PCT. CFB also purchased 23.83 tonnes of “Bright Wire” from PML on 27 June 2013 for £118,215.86. PML had acquired the same quantity of “Bright Wire” it sold to CFB on 27 June from Intertrade Global for £117,634.94 which had itself acquired it from Intake (for £118,673.40).

169. CFB purchased 25.175 and 24.895 tonnes of “cathode” from Arthur Brook on 13 June 2013 for a total of £269,116.22. Arthur Brook had bought similar quantities of “copper plate 98%” from Matlock which it had acquired from WDL. Purchases of “copper plate” (25.2 tonnes and 24.82 tonnes) from Arthur Brook by CFB on 21 June 2013 can also be traced to the 25.175 and 24.915 tonnes of “copper plate 98%”

bought by Arthur Brook from Matlock to WDL which sold 75.445 tonnes of “copper plate 98% (pallets)” to Matlock.

170. The sale of 25.255 tonnes of “Cu Cathode” to CFB for £128,739.85 by Arthur Brook on 25 June 2013 can also be traced through the sale of 25.275 tonnes of “copper plate 98%” to Arthur Brook by Matlock and Matlock’s purchase of 78.844 tonnes of “copper plate 98%” from WDL. However, the purchase, on 26 June 2013, by CFB of 24.975 tonnes and 25.115 tonnes of “Cu cathode” for £127,312.56 and £128,026.72 respectively, can only be traced to the “copper plate 98%” that Matlock sold to Arthur Brook.

171. On 28 June 2013 CFB bought 24.12 tonnes of “copper cathode” from PML for £539,752.02. PML had been supplied with the same quantity of “copper cathode” by Lords Metal Limited which had, in turn, been supplied by HWSNW. CFB’s purchase of 24.12 tonnes of “copper” from PML on 28 June 2013 can also be traced back to HWSNW via Lords Metal Limited.

Participants in 06/13 Deals

BMC

172. BMC was incorporated on 22 March 2007 and was registered for VAT from 5 May 2007. Its original director and shareholder was an Adam Whittaker who resigned on 24 February 2011 on the appointment as director of Mr John Christopher Cooper aka Mr Chris Cooper (“Mr Cooper”). On 3 June 2014 BMC entered into compulsory liquidation having created a VAT default of more than £2.6 million. In addition to BMC, Mr Cooper and his family, his son Mr Craig Cooper, his daughter Ms Collette Laite and his wife Mrs Margaret Cooper, have been involved in the establishment and/or operation of other companies, described below, in the scrap metal sector that have failed owing VAT to HMRC.

173. Fellowbrook Limited (“Fellowbrook”) was registered for VAT from 1 January 1996 to 18 September 2009. Its director was Mr Craig Cooper and Axholme House (a company formation agent) was the company secretary. In its application for VAT registration Fellowbrook declared its main business activity as road haulage but, in fact traded in scrap metal and is recorded as being one of CFB’s main cash suppliers in a visit report from 10 October 2007. During a visit on 18 August 2009 Fellowbrook’s bookkeeper told an HMRC officer that all the company’s trade was to be moved to a company called Brecks (Holdings) Ltd (“Brecks”). At this point Fellowbrook had four VAT returns outstanding. It entered compulsory liquidation on 12 August 2009 with outstanding VAT of £5.8 million. As a result of his conduct at Fellowbrook, Mr Craig Cooper was disqualified from being a company director for seven years.

174. Coombehill Ltd (“Coombehill”) was registered for VAT between 1 August 2004 and 14 December 2006. Its directors were Mr Craig Cooper and Axholme House with Ms Collette Laite as the company secretary. Mr Cooper was named as a director of Coombehill in an HMRC visit report. Although in its application for VAT registration Coombehill declared a main business activity of property letting it

actually traded in scrap metal. Coombehill failed to declare sales, including sales to CFB, and was assessed for VAT. Coombehill entered compulsory liquidation on 22 November 2006 with a final VAT debt of £7,249,270.21.

175. Brecks was registered for VAT from 20 April 1977 until 20 August 2010. From 2005 its directors were Mr Craig Cooper and Mrs Margaret Cooper and company secretaries were Mrs Cooper and Axholme House. Brecks entered compulsory liquidation on 23 July 2010 with a VAT debt of £704,358.93.

176. Towmasters Metals Ltd (“Towmasters”) was registered for VAT between 1 December 2005 and 6 July 2013. Its directors, from 2009, were Mr Cooper and Axholme House. On 8 June 2009 Mr Cooper wrote to HMRC to say that Towmasters was now trading in metal. HMRC wrote to the company, on 22 September 2009, to warn it of the risk of MTIC fraud in the scrap metal sector and on 3 February 2010 HMRC officers met with Mr Cooper to give advice in relation to MTIC fraud, indicators of the fraud and how HMRC’s Wigan validation unit operated. During a subsequent meeting, on 25 April 2012, HMRC MTIC officers again discussed MTIC fraud with Mr Cooper and issued him with Notice 726. HMRC Officers continue to make regular visits to Towmasters which was issued with two ‘tax loss’ letters. Towmasters entered creditors’ liquidation on 1 October 2013. Its largest creditors being Van Dalen UK Ltd, Cool Price Holdings and HMRC which was owed £4,623,142.18.

177. Towmasters had been a regular supplier to CFB, making total supplies of more than £30.5 million between VAT periods 05/11 and 06/13.

178. Mr Cooper was also the director of W M Darley Properties Ltd (“WMD”) which was registered for VAT from 7 July 2011 until 8 April 2015. Its company secretary was Axholme Secretaries. WMD traded in scrap metal. HMRC Officer Raglan, the allocated monitoring officer, visited WMD to “educate” Mr Cooper in relation to MTIC fraud and issue him with Notice 726. WMD entered a creditors’ voluntary liquidation on 30 April 2015 having created a VAT debt of £149,006.00.

179. In addition to the above companies, Mr Cooper was the director of four other companies which were wound up insolvent with VAT debts: Firglade Ltd (VAT debt £2.1 million), Berwick Supplies Ltd (VAT debt £53,473.73), Westside Plant Ltd (VAT debt £2.5 million) and Minto Properties Ltd (VAT debt £606,762.67).

180. To return to BMC, its VAT returns during the VAT periods between 08/07 and 08/10 inclusive, before Mr Cooper had become involved with the company, had shown maximum outputs of £1.3 million per quarter. However, after his appointment as director in 2011 BMC did not trade during the three months of its 05/11 VAT period.

181. HMRC wrote to BMC on 9 December 2012 advising that its 08/11 VAT return had not been filed. On 8 February 2012 BMC’s then accountants wrote to HMRC to explain that BMC had not filed its 08/11 VAT return because its computer and

business records had been seized by the Police on 23 January 2012. On 29 October 2012 Mr Cooper notified HMRC of a change in the company's address.

182. HMRC Officers visited BMC on 8 November 2012 and met with Mr Cooper who told them that BMC and Towmasters were trading from the same premises. He explained that BMC mainly dealt in non-ferrous metals, purchased stock mainly from Van Dalen (UK) Ltd ("Van Dalen") and sold it on quickly to Ronald Hull Junior, EMR Ltd or CFB, with minimal stock purchased from members of the public or trade. Purchases from members of the public or trade were said to be made in cash.

183. The HMRC Officers explained the issue of missing trader fraud in the scrap metals sector and that there was little commercial sense in large quantities of scrap metal being traded through a chain of companies as there would be insufficient profit in the deals. Mr Cooper advised the Officers that he undertook due diligence checks and verified VAT registration numbers through HMRC's Wigan Office. He was issued with Notice 726, the Input Tax statement of practice and the "How to spot MTIC fraud" leaflet.

184. On 3 April 2013, during a further visit to BMC, HMRC Officers were told by Mr Cooper that he had taken over BMC some 18 months earlier. He said that he had been unaware of the level of debt in the company at the time he took over and had gained various vehicles and plant when he took over. He explained that BMC had the front yard of the premises and Towmasters had the back but that they were run as separate businesses. When asked why there was no visible signage to show that the two businesses were trading from the same yard Mr Cooper said both businesses were known locally as "Coopers" and that people knew that BMC took non-ferrous metals and Towmasters ferrous metals.

185. Mr Cooper also told the Officers that BMC's main supplier was Van Dalen, that he always inspected the goods, that the goods normally left the same day that they were delivered and that BMC's large increase in trade in period 11/12 was due to trading with Van Dalen. The Officers issued Mr Cooper with copies of Notice 726, the Input Tax statement of practice and the "How to spot MTIC fraud" leaflet and again explained MTIC fraud to him.

186. On 6 June 2013 HMRC notified BMC of a requirement to give security for VAT in the sum of £510,850 (or £340,550 if monthly returns were submitted). The letter advised that making of taxable supplies without the required security being given would render BMC liable to criminal prosecution. Although BMC offered, through a letter of 14 June 2013 from its accountants, security of £100,000.00 this was rejected by HMRC in a letter of 26 June 2013 to Mr Cooper. On 23 July 2013 BMC's accountants wrote to HMRC stating that its main business activity would be changing from scrap metal to haulage with an anticipated annual turnover of approximately £360,000 and suggested that if security was still required it should be at "a figure commensurate with the turnover figure."

187. HMRC Officer Raglan (as she then was) was appointed as the monitoring officer for BMC and wrote to the company on 29 July 2013 to explain the background

to continuous monitoring and arrange a meeting. On 12 August 2013 Officer Raglan, together with Officer Ben Marchant-Williams, visited BMC and met with Mr Cooper. He confirmed that 90% of BMC's sales were to CFB, who sent an advance payment of £100,000.00 per week to BMC which then sourced the metals, which were mainly copper. Mr Cooper said that he dealt mainly with Jason at CFB and that bright wire came in and went straight out to CFB but other loads were sorted first.

188. Mr Cooper told the Officers that his main suppliers were: SYCP, Matlock, Loughton Metals and Adam Whitaker metals. He denied that BMC's large increase in outputs for VAT periods 02/13 and 05/13 was due to the company taking over from Towmasters but could not provide a reason for the increase. Ms Caroline Day, BMC's Accounts Assistant, who was also at the meeting with HMRC Officers, said that the only reason she could think of for the increased outputs was that BMC had "taken on Towmasters' mantle".

189. The Officers again explained the importance of due diligence checks and issued Mr Cooper with copies of Notice 726, the Input Tax statement of practice and the "How to spot MTIC fraud" leaflet. Mr Cooper said that it would be very difficult to match BMC's sales to its purchases as nothing was sold back-to-back

190. As BMC was still trading in scrap metal, on 16 August 2013 HMRC demanded payment of the security amount within 14 days. On 22 August 2013 HMRC notified BMC that two of its purchases from Coolprice Holdings Ltd ("Coolprice") in April 2013 traced to a tax loss exceeding £40,254.90 and on 27 August 2013 notified BMC that Coolprice had been deregistered for VAT. BMC's accountant wrote to HMRC on 22 August 2013 stating that Mr Cooper intended to stop trading scrap from 30 August 2013 and deal solely as a haulage contractor.

191. During its VAT periods 08/11 to 05/12 BMC's outputs had not exceeded £63,000 per quarter. However, there was a subsequent significant increase to more than £4.8 million in its 05/13 VAT period following which BMC filed no further VAT returns notwithstanding its continued trade. In particular, BMC did not declare any of the transactions, or account for any of the VAT arising in them, with CFB, its largest customer, during CFB's VAT periods 06/13 to 09/13.

192. On 12 November 2013 Officer Raglan wrote a pre-assessment letter to BMC notifying it of an intended assessment for £847,173.00 VAT due on undeclared sales made by BMC to CFB in VAT period 08/13 (minus the centrally issued assessment amount), for which BMC had not submitted a VAT return. In a letter, dated 18 November 2013, BMC was reminded by HMRC that it was a criminal offence to trade without providing security that had been required by notice but that, as BMC had appealed to the Tribunal, no further action would be taken until the Tribunal had released its decision. The appeal was subsequently withdrawn by Mr Cooper in an email to the Tribunal dated 20 February 2014.

193. On 26 November 2013 HMRC Officers returned to BMC and spoke with Mr Cooper who said that Towmasters had now gone. He stated that CFB had requested all of its machinery back and that "Mr [Ken] Booth came in yesterday and was quite

aggressive”. He explained that BMC had not traded with CFB for approximately a month and that he and his relatives had been arrested and that the company’s records and computers had been seized by the police. Mr. Cooper said that BMC was paying rent to WMD. The Officers saw invoices to BMC from other scrap wholesalers including Yorkshire Metal despite Mr Cooper claiming that he was only buying from members of the public.

194. HMRC notified BMC of an assessment for VAT due in the sum of £847,173 on 13 January 2014. This was in relation to BMC’s undeclared sales to CFB in its 08/13 VAT. The VAT due on BMC’s undeclared sales to CFB in its 11/13 VAT period was the subject of a central assessment in the sum of £882,214.

195. Officer Raglan returned to BMC (accompanied by Officer Wes McDonald) on 14 January 2014. The purpose of the visit was to ascertain whether BMC was still trading from the premises. They met with Mr Cooper who said that BMC was still trading but only in small amounts. He also told the Officers that he was struggling to complete the 08/13 and 11/13 returns because his accountant, Mr Mike Howley of Axholme House, had been sent to prison the previous week for three years. Mr Cooper said that he was part of an ongoing police and HMRC investigation was only purchasing from the public and making small supplies to Cronimet and Ron Hull. The Officers saw stationery at the premises such as compliments slips, invoices and weighbridge tickets in the name of WMD (see above) giving the same address as BMC.

196. On 28 January 2014 Mr Cooper requested BMC’s deregistration for VAT and its VAT registration number was cancelled with effect from 6 February 2014.

197. HMRC Officers Swash and Payne visited WMD at BMC’s business premises on 10 February 2014 and were told by Mr Cooper that the company would not be trading in metals but would buy metals on a small scale from members of the public. WMD’s purchase records showed that it had been purchasing from BMC’s previous suppliers including Yorkshire Metal Recycling (a supplier to CFB) and that these purchases had started when BMC ceased trading.

198. On 9 July 2014 HMRC notified BMC of a penalty in the sum of £190,788.92 in respect of VAT period 08/13. As previously noted BMC entered into compulsory liquidation on 3 June 2014. On 30 June 2015 HMRC notified BMC (now in the hands of the Official Receiver) of an assessment in the sum of £113,857 for VAT due on undeclared sales to Ron Hull Junior during its 08/13 VAT period.

199. CFB ceased trading with BMC around July 2013 when, as Ken explained, it became aware that the arrangement it had with BMC involved “unacceptable exposure” to CFB.

200. Mr Cooper entered an undertaking, on 20 April 2016, to be disqualified as a director for 13 years. The schedule of unfit conduct to the disqualification records that Mr Cooper caused or allowed BMC to participate in transactions connected with the fraudulent evasion of VAT, such connections being something which he either knew

or should have known about. The schedule continues noting that BMC's turnover had increased exponentially in a short period of time, that it had taken over Towmasters, that its profits reflected a pattern common in VAT fraud, that no contractual terms of trade were in evidence, that BMC failed to insure the goods which it traded, that BMC dealt in cash after such transactions became illegal, that BMC failed to carry out timely checks on its suppliers' VAT registrations and in some instances did not verify them at all and failed to carry out any financial due diligence in relation to its counterparties. The undertaking records that BMC entered liquidation with assets of £0 and liabilities of £3,066,823.

Intake

201. Intake was incorporated on 29 June 2011. It was registered for VAT with an effective date of 11 January 2013. On its application for VAT registration its proposed business was stated as being as "buying and selling of all types waste." However, Intake's director, Mr Ian Greaves, did not mention, either on the registration or subsequent meetings with HMRC, that he had been the sole director of Only Merchants Limited on which an assessment in the sum of £791,000 and "inaccuracy penalty" of £22,073, under schedule 24 of the Finance Act 2007, had been issued as a result of the undeclared output tax on the sale of metals (for VAT returns not submitted) and input tax claimed in reliance on invalid invoices. There was no appeal against either the assessment or penalty and Only Merchants Limited was dissolved on 23 November 2010 with an outstanding debt to HMRC.

202. Mr Greaves had also, from May 2012, been the sole director of Able IT Logistics Limited ("Able"), a company that traded in scrap metal and had failed to submit any VAT returns while he was a director – he told HMRC Officers that he had forgotten to file them. CFB was a customer of Able which had no business premises and utilised a mailing facility at a business centre

203. During a pre-arranged visit to Intake's trading premises on 14 February 2013, Officers Robert Payne and Sarah Lill were told by Mr Greaves that although Able was his company he no longer had anything to do with it. He explained that the premises Intake used were rented by his brother who ran Rother Waste, a small waste processing company and that he ran Intake from an office on a rent-free basis. Mr Greaves said that he had a history in waste recycling having worked with such companies. He also explained that he had commenced trading the previous month (January 2013) and that the activities undertaken were the purchase and sale of plastic, cardboard and glass as an intermediary and carrying out environmental and site compliance checks specific to the waste industry. Copies of Notice 726, the 'How to Spot MTIC Fraud' leaflet, and 'Input Tax Statement of Practice' were given to Mr Greaves by the officers. Mr Greaves confirmed that he did not intend to get involved in the wholesaling of metals or any similar commodity to any extent explaining that he wanted to make enough money to retire.

204. When the Officers returned for an unannounced visit on 23 July 2013 they were told by an employee of another company operating from the site that he had not seen Mr Greaves in his office for about two months, but was able to provide a mobile telephone number on which to contact him. Although there was further contact

between Mr Greaves and the Officers, information requested was not provided and a pre-assessment enquiry letter was issued on 30 September 2013. In the absence of any response a VAT assessment in the sum of £90,721 was issued on 9 December 2013. Three of the transactions included in that assessment were for consignments of metal that had been sold to Intertrade which includes deals that traced to CFB via PML. The assessment was neither paid nor appealed by Intake which was subsequently dissolved on 1 April 2014.

Matlock

205. Matlock was incorporated on 9 March 2012 and registered for VAT from 1 June that year. 162 of Matlock's transactions in VAT periods 03/12 to 03/14 inclusive have been traced to VAT losses in excess of £5.7 million. On 3 June 2014 Matlock was denied input tax in the sum of £188,783 on the basis that there was no evidence in support of its claim. HMRC notified Matlock on 4 December 2014 that it was to be assessed for VAT of £476,886 due on undeclared sales and on 2 September 2015 Matlock was notified that its claim for input tax in relation to purchase of metals and an assessment of £4.6 million was issued. Before the assessment was issued Matlock had been issued with Notice 726 and the 'How to spot missing trader fraud' leaflet and it had been issued with a 'tax loss' letter notifying losses of £580,962.

206. Matlock, which was not only the supplier to BMC but also the supplier to Arthur Brook in all of the transactions in which Arthur Brook supplied CFB, was deregistered with effect from 15 July 2015 leaving a VAT debt of £3.7 million. It was wound up on 10 August 2015.

HWSNW

207. HWSNW was originally incorporated on 1 August 2006 as HW Building Services Limited, changing its name to HW Services North West Limited on 27 June 2013. From 16 January 2012 its sole director and shareholder has been Mr Ahmed Riaz Bhatti. The application for VAT registration was made by the previous director and this indicated that the business activity of HWSNW was to be "Building sub-contractors". It was registered for VAT with an effective date of registration from 1 November 2006.

208. Following a claim for repayment of input tax, HMRC wrote to HWSNW on 15 October 2012 to explain that, despite attempts to do so, they had not been able to contact HWSNW and a telephone number was provided and a return call requested. A Notification of Changes to a VAT registered business was received by HMRC on 17 October 2012. This was acknowledged by HMRC on 23 October 2012 who explained that a series of security checks was undertaken in such circumstances.

209. Although Mr Bhatti was not present when HMRC made an unannounced visit on 26 February 2013, a visit was arranged for 1 March 2013 when he met with HMRC Officers Johnson and Gibrill. He explained that the company's main business activity was the building trade but that he started trading in metals/recycling in January 2013 but that this would only amount to a small percentage of its trade.

Officer Johnson noted that since January 2013 HWSNW had purchased almost £1m of metals. Mr Bhatti was handed Notice 726 and the Statement of Practice 'Input Tax deduction without a valid VAT invoice' and the documents explained to him. An MTIC awareness letter was sent on 4 March 2013.

210. There was a meeting between HMRC, Mr Bhatti and HWSNW's accountant on 31 July 2013 when some documents requested by HMRC were provided though many remained outstanding. A deregistration letter was sent on 25 September 2013 and although Mr Bhatti did respond he spoke to a colleague of Officer Goy, who was not available, and did not contact her the following day as requested or at all. HWSNW did not submit VAT returns for period 06/12 and 09/13 and no invoices were supplied for these periods. However, using information from invoices obtained for the 03/13 period and from contact with other monitoring officers, Officer Goy was able to issue a pre-assessment letter on 12 March 2014 totalling £2,397,018.41, copies of which were sent to the business address of HWSNW and Mr Bhatti's home address. The letter to HWSNW was returned by the Post Office marked "Return to Sender". No response was received from the letter sent to Mr Bhatti. The assessments were subsequently issued on 20 November 2014 and included supplies to Lords Metal Limited that have been traced to CFB.

07/13 Deals

211. During its 07/13 VAT period there were 27 deals for which CFB's claims for input tax were denied.

212. Between 3 and 31 July 2013 CFB entered into 19 transactions in which it purchased various metals from BMC (the details of which have not been recorded by CFB) at a cost of £100,168.92, £0.00, £102,828.96, £106,825.80, £104,428.08, £100,830.12, £102,010.08, £102,182.40, £100,604.64, £103,514.04, £101,895.48, £103,293.84, £103,329.36, 104,265.36, £100,555.85, £101,388.24, £100,492.92, £100,662.77 and £100,577.65 respectively.

213. The remaining transactions entered into by CFB in its 07/13 VAT period were with PML. On 21 July 2013 CFB bought 73.79 tonnes of "copper" from PML for £385,157.83 which PML had bought from ACL.

214. Three of CFB's purchases of "copper" (23.76 tonnes on 15 July 2013 for £120,320.64, 26.02 tonnes on 12 July 2013 for £135,824.40 and 25.2 tonnes also on 12 July 2013 for £123,984) had been acquired by PML from CMS Metals Limited which had purchased the copper from Millennium Energy Trading Limited ("Millennium") which had itself been supplied by SWAT.

215. Two further purchases of "copper" from PML by CFB during this period took place on 5 July 2013 when it acquired 24 tonnes for £126,950.40 and 21.76 tonnes for £112,929.95. The copper had been supplied to PML by CMS Metals Limited which had bought the goods from Millennium which had purchased the copper from SWAT. SWAT's supplier was IBY.

216. CFB purchased 24.35 tonnes of “copper” from PML on 24 July 2013 for £129,356.94. PML had been supplied by Lords Metal Limited which had itself been supplied by HWSNW. On 28 July 2013 CFB bought 50.49 and 50.53 tonnes of “copper cathode” from PML for £269,313.67 and £269,527.01 respectively. PML had acquired 101.04 tonnes of “copper cathode” from Startex Limited which had, in turn, purchased 101.04 tonnes of “copper” from Mr Rubbish Limited.

Participants in 07/13 Deals

ACL

217. ACL was incorporated on 11 January 2008 as Windsolar Limited. Its name was changed to Anoff Limited on 8 February 2012 and to Acorn Commodity Limited (ACL) on 27 November 2012. Its business was described as “Agents involved in the sale of a variety of goods, bookkeeping activities, Tax Consultancy and Financial Management”. ACL was registered for VAT, in its original name, from 1 June 2008.

218. Officer Marshall was asked to visit ACL as information from the business records of PML indicated that it had been supplied with metal by ACL. Officer Marshall had previously been requested, by CCT, to visit another two traders said to be located at the same address in Peterborough and had found that the building no longer existed, there was a cordoned off area in a residential street where it appeared that a building had been. She therefore attempted to contact ACL by telephone but was advised that the number was no longer available. On 22 August 2013, a letter was issued by HMRC to ACL cancelling its VAT registration with effect from that date although this was returned by the Post Office.

219. On 13 January 2013 HMRC received a request from the Dutch Revenue Authorities for information relating to supplies made to ACL using freight forwarder Y & OBV. The request indicated that ACL had undertaken three acquisitions from a Cypriot company, Triotrade, between 29 and 31 July 2013 purchasing \$2,676,798.85 of copper cathodes. Having supplied the information to the Dutch Authorities, Officer Marshall was informed that Triotrade was:

“... considered as suspect of committing fraud and on that basis at 13 September 2013 the decision had been taken to deregister the company with effect from 30 April 2013.”

220. On the basis of invoices issued to (and obtained from) PML for supplies of copper or tin by ACL (which had been sold to CFB by PML) Officer Marshall was able to make an assessment in the sum of £824,208 which was issued on 19 May 2014. The assessment has not been paid.

SWAT

221. SWAT was incorporated on 10 October 2012 as Swat Tyres Limited. It was registered for VAT as an intending trader on 1 December 2012 “setting up a new/used tyre company” planning to expand to include cambelts and clutches etc.” Although accepted for the Flat Rate Scheme it appears that the scheme was not operated, rather SWAT charged VAT at the standard rate and claimed input tax.

222. On 4 June 2013 SWAT changed its name to Swat Tyres and Recycling Limited. The change of name led to HMRC's Wigan Registration Unit being unable to confirm the validity of its registration number following a request made by Millennium (on 28 June 2013 as it had not received notification of the change of name at that date. Although SWAT notified HMRC of the change of name in an email dated 2 July 2013, this was not in time for a second verification request by Millennium on 3 July 2013 to be rejected as HMRC's records were not updated until 5 July 2013.

223. As a result of the verification requests by Millennium, an unannounced visit was made to SWAT by Officers Rogers and King on 5 July 2013. However, as the directors were not available, a letter was left to warn that SWAT's VAT registration number would be cancelled unless contact as made with HMRC. Following a telephone call from one of directors, Mr Christopher Hurford, the officers were able to return later that same day when they were told that in addition to the sale of tyres the business recycled metals, that it was intended to purchase a recycling machine to separate the metal from the rubber in tyres and that no deals had been undertaken with Millennium as SWAT was engaged in due diligence. Copies of Notice 726 etc. were provided to Mr Hurford.

224. Officer Rogers emailed Mr Hurford on 9 July 2013 to thank him for his time on 5 July 2013. On 10 July 2013 Officer Rogers received a reply from Mr Wayne Berry, the other director of SWAT from whom Officer Rogers requested information, including a list of SWAT's customers and suppliers and how contact was made with Millennium. During a telephone conversation with Officer Bright, the allocated officer for SWAT, Mr Hurford said that the information sought by Officer Rogers would be provided when Mr Berry returned from a fishing trip. He also told Officer Bright that he had spoken to Mr Berry after the visit on 5 July 2013 and understood that the deals with Millennium had already taken place. He said that the material, "granulated and copper", had been purchased from IBY who they had "fell on" dealing in stock at trade prices offering SWAT the opportunity for a large turnover. Mr Hurford also told Officer Bright that all records were sent to SWAT's accountant.

225. In a letter dated 18 July 2013, confirming what Officer Bright had told Mr Hurford on the telephone, HMRC advised that IBY's VAT registration had been cancelled and that accordingly any claim that SWAT made for recovery of input tax in connection with purchases from IBY would be disallowed. Following the provision of some information to HMRC, Officer Bright contacted SWAT and spoke to Mr Hurford who said that he had no knowledge of deals undertaken by the company outside its normal day-to-day activities. He explained that he had injected approximately £23,500 into the business which he had established with Sean Cronly-Dillon, who had left the business in debt for Mr Berry to sort out and been replaced by Mr Hurford, in June 2013, who was the "friend of a friend" with a background in scrap, paying £267 into the business. Mr Berry told Officer Bright that he had no knowledge of the transactions with Millennium.

226. Shortly after speaking to Mr Berry, Officer Bright received a call from Mr Hurford who told him that he was responsible for the deals, as Mr Berry was "all over the place."

227. A deal log submitted to HMRC by Millennium for its deals to 16 July 2013 included invoices from SWAT that had not been mentioned to Officer Bright in his discussions with the directors. On the basis of that deal log, Officer Bright was able to produce a schedule of the sales by SWAT to Millennium which it had not declared. Mr Berry responded to Officer Bright's requests to contact HMRC but denied any knowledge of deals with Millennium. On 7 August 2013 Officer Bright wrote to SWAT summarising the dealings with IBY and Millennium and issued a 'tax loss' letter in respect of supplies by IBY and a Notice to produce documents and provide information in respect of the company's transactions.

228. On 16 August 2013 Mr Berry told Officer Penry that all documentation had been passed to the accountants who should be contacted for this. On 22 August 2013 Mr Berry, who it subsequently transpired had resigned as a director on that day, told Officer Penry that he would contact the accountant and Mr Hurford and ask them to contact HMRC. However, there was no further contact from SWAT and its 07/13 VAT return was not submitted.

229. Therefore, on 23 September 2013 Officer Bright issued SWAT with a notice of assessment in the sum of £214,294.49 in respect of output tax on supplies to Millennium in supply chains involving CFB (amounting to £99,232.53). A formal advice of cancellation of registration was issued to SWAT on 26 September 2013.

230. During a telephone conversation on 27 September 2013, Mr Berry told Officer Bright that the company's bookkeeper had tried to submit the 07/13 VAT return and that she held all of the documentation. The bookkeeper subsequently confirmed that this was the case and that the information would be provided to HMRC. A package of records was received by HMRC on 9 October 2013 which included copies of due diligence checks on various companies including IBY and Millennium, list of trade contacts, confirmation of the termination of Mr Berry's appointment as director and miscellaneous invoices and receipts.

231. On 6 November 2013 HMRC's Debt Management Unit wrote to SWAT at its principal place of business requesting payment of £214,294.49 however, the letter was returned marked "addressee gone away". A final return has not been received from SWAT and its VAT liability remains outstanding

IBY

232. IBY was incorporated on 6 March 2012 as It's Behind You Limited changing its name to IBY Limited on 18 February 2013. As its original name would suggest, the company's declared business activity on its application for VAT registration, which took effect from 1 December 2012, was to "produce pantomimes". However, there is no evidence that it engaged in such activity. The only evidence held by HMRC suggests that it was involved in the sale of metals.

233. Its first VAT return, for the period 01/13, was a £nil return which was submitted following the issue of a central assessment for £619 on 15 March 2013. The second

VAT return submitted by YBL was also a £nil return and it failed to submit a final return for the period from 1 May 2013 to 17 July 2013.

234. IBY was deregistered for VAT following a visit to its recorded principal place of business on 3 July 2013 when officers, who were seeking to obtain business records in relation to sales of metals, could not find any trace of the company. HMRC have not been able to contact any officials of IBY or obtain business records from the company. However, HMRC held invoices issued by IBY to GPSE Limited and SWAT which had been obtained from those companies. On the basis of these invoices Officer Merriman was able to assess IBY in the sum of £572,743.

235. The effective date of IBY's deregistration was amended to 9 July 2013 following the provision of two further invoices by Officer Bright in relation to supplies it had made to SWAT. The date was further amended to 17 July 2013 as the result of the provision by Officer Penry of a further schedule in relation to supplies made to SWAT and a further assessment in the sum of £150,812 (of which £38,374 is in respect of supplies traced to CFB) was issued in 27 February 2014.

236. In the absence of any communication from IBY or any appeal against either its deregistration or assessments, IBY was wound up on 28 April 2014 on the petition of HMRC.

Mr Rubbish

237. Mr Rubbish was incorporated on 20 September 2009 and was registered for VAT with effect from 10 January 2013. Its main business activity was recorded as the "collection and distribution of reusable products". It did not submit any VAT returns to HMRC.

238. On 5 September 2013 Officer White received a request from HMRC's MTIC CCT to visit Mr Rubbish. Noting that the contact telephone number on the registration application was that of an accountant, Officer White telephoned the accountant to be told that he had no knowledge of Mr Rubbish and advised that his firm's number had been included on VAT registration application forms by companies of which he had no knowledge. As no response was received from a letter, dated 5 September 2013, which was sent to Mr Rubbish advising its VAT registration would be cancelled, it was deregistered for VAT with effect from 18 September 2013.

239. A pre-assessment letter was issued to Mr Rubbish on 6 November 2013 in respect of ten undeclared sales to DMS Traders Limited and Startex Limited (which were traced to supplies to CFB) in the total sum of £419,414.03. In the absence of a response to that letter an assessment in this amount was issued on 25 November 2013. The assessment has not been paid nor has there been an appeal against it. Mr Rubbish was dissolved on 6 May 2014.

08/13 and 09/13 Deals

240. Between 1 and 30 August, ie during its 08/13 VAT period, CFB entered into 15 transactions with BMC for various metals on which it has had its claim for input tax denied. Although the description of materials has not been supplied by either CFB or BMC, the dates and amounts involved in these deals is set out in Appendix II. Similarly, because of the lack of detail provided, we have set out the dates and amounts of the five transactions between CFB and BMC in CFB's 09/13 VAT period in Appendix III, below.

02/14 Deals

241. There were three transactions during the 02/14 VAT period on which CFB has been denied its input tax.

242. On 6 February 2014 CFB purchased 9.17 and 12.26 tonnes of "mixed copper" from Yorkshire Metal Recycling for £42,255.36 and £56,494.08 respectively. Yorkshire Metal had acquired 2.203 tonnes of "copper dry bright wire" and 21.327 tonnes of "mixed copper" from Worksop.

243. On 10 February 2014 CFB purchased 14.78 and 5.06 tonnes of "mixed copper" and 7.48 tonnes of "copper dry bright wire" from Yorkshire Metal at a cost of £68,638.32, £23,498.64 and £37,070.88 respectively. Yorkshire Metal had bought 7.48, 6.16 and 3.932 tonnes of "copper dry bright wire" and 19.378 tonnes of "mixed copper" from Worksop.

Participants in 02/14 Deals

Yorkshire Metal

244. Yorkshire Metal was registered for VAT with effect from 22 January 2007 having described its business activity as "property dealing/commercial property leasing" on its application for registration. Its directors were Mr David Hughes, who was also a director of Coombehill (see above) between 4 November 2002 and 11 November 2003, and his wife Mrs Victoria Hughes. In 2012 Yorkshire Metal acquired land, buildings and equipment and commenced trading in the scrap metal sector.

245. HMRC Officers visited Yorkshire Metal on 30 May 2012 and discussed MTIC fraud with its director Mr Hughes who told them that Yorkshire Metal had been established because he had spotted a gap in the market in Doncaster, CFB being the only scrap dealer to have a presence there. Mr Hughes said the plan was for Yorkshire Metal to buy from members of the public and demolition firms rather than other scrap traders and did not intend to make any wholesale purchases of metal. Mr Hughes was issued with relevant literature, including Notice 726 by the officers.

246. During a visit by HMRC Officers to Yorkshire Metal, on 28 April 2014, they were told by Mr Hughes that it been dealing with CFB for more than a year and that these deals had been arranged by Mr Scott Willers. The visit report records that Yorkshire Metal purchased from WMD (see above) and Worksop (see below). On 12

August 2015 HMRC issued a 'tax loss' letter to Yorkshire Metal notifying it of 66 transactions, in which the whole deal chain had been established, that commenced with a defaulting trader resulting in a tax loss of £96,542.

Worksop

247. Worksop was incorporated on 6 March 2013 and was registered for VAT on 17 June that year. Its business activity on its application for VAT registration was "scrap metal dealers". A pre-registration visit was made by HMRC Officers to Worksop's principal place of business on 20 August 2013 which was, in fact, the premises of its accountants rather than the trading address of Worksop. Officer Goulden left a letter with the accountant, warning of the company's possible deregistration, asking him to forward it to the director of Worksop.

248. On 28 August 2013, during an arranged visit to Worksop's trading premises, HMRC Officers Goulden and Payne met and spoke with the accountant and director who told them that they were involved in a business, ESS and Jay Enterprises, that had been deregistered for VAT because of a failure to provide evidence of dealing in metals. As there was evidence of trading by Worksop, Officer Goulden recommended in his report of the visit that although the business should be VAT registered:

"... we will monitor the first [VAT] return closely as the invoices provided so far would indicate a large payment to HMRC as little or no input tax should be declared."

249. Worksop did not file its VAT return for the period from its registration on 17 June to 31 October 2013 and a central assessment for £8,676 was issued by HMRC on 13 December 2013.

250. On 6 February 2014 HMRC Officer Ward made an unannounced visit to Worksop's trading premises. These were locked and he found a note on the gate requesting any post to be left with the taxi company next door. In the circumstances Officer Ward left a seven day deregistration warning letter with the taxi firm to which there was no response. In the absence of any response Worksop was deregistered with effect from 14 February 2014.

251. In May 2014 Officer Ward was made aware that Yorkshire Metal held three invoices for purchases it had made from Worksop on 5 and 8 February 2014 for goods subsequently sold to CFB. As Worksop had not filed any VAT returns and no central assessment has been issued for its final period to 14 February 2014, Officer Ward issued an assessment for the VAT shown on the invoices to Yorkshire Metal, £41,497.

252. See above for other participants in the 02/14 deals.

Due diligence

253. Having set out above, in general terms, the approach of CFB to due diligence it is necessary to describe how it was undertaken in relation to its four suppliers, Arthur Brook, PML, BMC and Yorkshire Metal.

Arthur Brook

254. The following documents were obtained by CFB as part of its due diligence in relation to Arthur Brook:

- (1) An Experian credit report. The report, dated 5 April 2012, indicates that at that date Arthur Brook was “very low risk” and had a credit rating of “95 out of 100” and a credit limit of £130,000;
- (2) A Companies House Registration certificate;
- (3) A VAT Registration certificate showing a trade classification of “dealing in scrap metal and other waste materials”;
- (4) ‘Arthur Brook’ headed paper with bank, company registration and VAT registration details in manuscript signed “regards Wayne” and stating “I have emailed Jason + Scott VAT and company cert docs”;
- (5) Europa VAT number validation check stating that Arthur Brook’s VAT number is valid;
- (6) A signed CFB self-billing agreement dated 14 June 2012; and
- (7) A completed CFB check list

255. The CFB checklist, with 18 points, which was completed by Mr Willers refers, in answer to point one, to the following due diligence checks as having been undertaken:

“Visit to site. Discussed with Wayne [Griffiths, director of Arthur Brook], materials prices and payment terms. Experian credit check completed. VAT no. verified on website”

256. In answer to point 7, “meet with a representative of the supplier at their site to appraise their operations” Mr Willers recorded that he had had a meeting with “Tom” but could not remember who Tom was or his connection or involvement with Arthur Brook. Mr Willers, who answered most points on the checklist with either a “yes” or “no” and nothing further, also recorded that Arthur Brook was not a member of the BMRA. With regard to his role, Mr Willers said that while he did visit Arthur Brook and “filled in the [due diligence] form” he was not responsible for any of the deals in which CFB purchased copper cathode from Arthur Brook.

PML

257. The following documents were obtained by CFB in relation to due diligence on PML:

- (1) An Experian credit report. The report, dated 1 May 2013, indicates that PML was a “high risk” company with a credit rating of “25 out of a 100” and a credit limit of £500;
- (2) A CFB self-billing agreement dated 2 May 2013;
- (3) Certificate of incorporation;

- (4) VAT online enrolment letter
- (5) Copy of a trade listing stating PML's name, address, telephone number and waste carrier's licence number;
- (6) Company information sheet detailing company number, directors, VAT registration number, address and bank details;
- (7) Photographs of trading premises and vehicles etc;
- (8) BMRA membership certificate; and
- (9) Completed CFB checklist.

258. The 18 point CFB checklist was completed, in manuscript (and is shown in *italic* below), by Mr Willers as follows:

1. What due diligence checks have you made on your customers/suppliers?

Experian Credit Check completed. Visit to site 7/2/13. Co. documentation gathered. Discussed prices payment and materials with owner.

2. Do we have a market/use for the goods?

Yes

3. Does the new supplier have a knowledge of the trade?

Yes

4. Are the prices negotiated representative of the market value – ie not offered to us cheaply?

All market value

5. Have they supplied these goods before, either to us or to another customer?

Other customers. Metal Interest

6. Verbal references obtained from within the industry.

Metal Interest (Patrick Knowles)

7. Where practical, meet with a representative at their site to appraise operations.

Meeting held 7/2/13

8. Obtain copy of VAT registration certificate.

Attached

9. Verify VAT registration with HMRC (via helpline) and/or via Europa EU taxation website.

Attached

10. Obtain credit report eg Dunn & Bradstreet/Experian.com

Attached

11. Delivery notes to be obtained for all receipts.

Yes

12. Are they submitting their own invoices or do they wish us to issue self-billing invoice (obtain self-billing agreement).

Both

13. Check VAT number on invoice with details already supplied.

Yes

14. Are they a member of a recognised trade organisation – eg BMRA.

BMRA

15. Ownership of the suppliers business has changed.

No

16. Trade with the supplier is resumed after a long period of inactivity – eg 18 months.

No

17. The supplier is offering large quantities of a material not normally supplied.

No

18. Has our customer carried out due diligence on their supplier/s?

Yes

259. In evidence Mr Willers said that he had not included any comment on the Experian report as if it would, in itself, have led to CFB not dealing with PML as the report was not the only determining factor in this. With regard to points 17 and 18, Mr Willers said he had asked the questions and recorded the answer as simply as “No” and “Yes”. He explained that in his experience:

“... if you do ask for any more detail, you’re at risk of looking like you’re prying and it, for want of a better word, gets the back up of a possible supplier so ... we didn’t have any documentation but just the verbal acknowledgement that they did do due diligence.”

260. When asked why Mr Willers and Jason had visited PML the day after CFB had received its letter of introduction, Mr Willers said that there was no more rush to deal with PML than any other prospective supplier. He explained that during the visit they discussed general materials and grades and prices and payment terms as opposed to any specific grade and volume. When asked how PML was able to buy metal at a cheaper price than CFB Mr Willers said:

“There are many people who can buy things cheaper than us [CFB] because they have the customer base or the knowledge of other traders and suppliers in the industry, else we would buy everything direct from source.”

261. As stated above, until June 2012, when the partnership Premier Metals Leeds had acquired a yard, Mr Nicholas Sandham had run his scrap business from a van with mobile scales. When asked about this Jason said that:

“... we knew about the Sandhams, they’re a big family, they’re like the Booths, that’s how we started, with the horse and cart, so it you are saying that this guy, that’s what he did, that’s how we started our business ... the Sandhams are a very well-known scrap family, like the Booths and like other people in different areas. I have dealt with most of the Sandhams and we still do.”

BMC

262. The following documents were obtained by CFB in respect of its due diligence on BMC:

- (1) An Experian credit report. The report, dated 4 December 2012, rated BMC as being “low risk” with a credit rating of “87 out of 100”, a credit limit of £9,700 and credit rating of £3,800;
- (2) An undated letter of introduction signed by the director, John Christopher Cooper;
- (3) An undated letter, signed by John Christopher Cooper, with details of the company registration number, registered address, trading address and bank details;
- (4) VAT registration certificate with trade classification shown as “recovery of sorted materials”;
- (5) Europa VAT number validation confirming validity of BMC’s VAT registration number;
- (6) Certificate of incorporation;
- (7) Photographs of BMC’s trading premises;
- (8) Documents in relation to BMC’s 05/13 VAT return including HMRC online return summary (which included details of VAT due, VAT reclaimed and that the total value of sales and purchases for that VAT quarter was £4,819,541 and £5,035,128 respectively), SAGE summary and print out from HSBC showing payment of the net VAT for the period;
- (9) CFB self-billing agreement dated 8 August 2012;
- (10) HMRC VAT validation check confirming validity of VAT registration number; and
- (11) Completed CFB check list.

263. The HMRC VAT validation check was requested by CFB in an email to HMRC dated 29 August 2013. HMRC responded by letter stating that they were “not able to confirm that this is a valid registration”.

264. The CFB due diligence checklist which had been completed by someone other than Mr Willers, although Ken did not know who it could be, recorded that there had been a site visit on 6 December 2012, that no verbal references had been obtained and BMC was not a member of any recognised trade association such as the BMRA. In

answer to point 13, “check VAT number” the response was “/”. Ken tried to explain this away saying:

“... on this particular [answer] there’s been an oversight where it says “check VAT number”. Instead of it being a tick, they’ve missed the bottom off the tick ... that’s a line and if you put another small line on the bottom, it would act as a tick, wouldn’t it?”

265. Although Towmasters, a company of which Mr Cooper had been a director, had been a regular supplier to CFB, with supplies of more than £30.5 million, the due diligence undertaken did not record Mr Cooper’s involvement with that company.

266. Also included within the due diligence documentation was a copy of a BMC VAT return for the period 05/13. This stated that the total value of BMC’s sales, excluding VAT, for the period to be £4,819,541 and its purchases £5,035,128.

Yorkshire Metal

267. CFB obtained the following documents in relation to its due diligence on Yorkshire Metal:

- (1) An Experian credit report. The report, dated 4 July 2012, rated Yorkshire Metals as “above average risk” and gave it a credit rating of “43 out of 100” with a credit limit of £18,000. The Experian report also described Yorkshire Metal as being concerned in “property investment” and the development and sale of real estate;
- (2) Environment Agency Certificate dated 25 April 2012;
- (3) Scrap Metal Dealers Certificate of Registration was issued to Mr Hughes under s 1 of the Scrap Metal Dealers Act 1964 on 2 May 2012 by Doncaster Council;
- (4) Certificate of incorporation;
- (5) Undated letter of introduction signed by David Hughes, managing director of Yorkshire Metal;
- (6) Bank details of Yorkshire Metal;
- (7) Certificate of Registration for Money Laundering Regulations issued by HMRC on 25 April 2012;
- (8) VAT Registration Certificate issued on 22 January 2007 and amended on 13 June 2013 with trade classification recorded as “wholesale of waste and scrap”;
- (9) HMRC VAT validation number checks confirming validity of Yorkshire Metal’s VAT registration number dated 21 November 2013, 6 January 2014, 8 January 2014, 24 January 2014 and 15 April 2014; and
- (10) Completed CFB checklist.

268. The undated 21-point checklist, which was completed by Mr Willers, does not record who he met when conducting a site visit but does record, inter alia, that Yorkshire Metal, while not a member of a trade organisation such as BMRC, is “well known locally in the trade. Good feedback” and that “site visits carried out (S Willers)”.

Subsequent contact with HMRC

269. On 17 April 2014 HMRC issued a ‘tax loss’ letter to update CFB on the verification of its 07/13 VAT return. The letter advised that a purchase it had made from PML, in which the whole chain had been established, had been traced to a defaulting trader resulting in a loss to the public revenue of £60,000.

270. A further ‘tax loss’ letter was issued on 23 May 2014 in which HMRC notified CFB that in the process of verifying its 02/14 VAT return, although it was possible to authorise a part repayment of £506,264.87 on a without prejudice basis, transactions involving Metal Interests, CMS Metals Limited, Yorkshire Metal and Arthur Brook (where the whole transaction chain had been established) had commenced with a defaulting trader resulting in a loss of tax exceeding £169,522.

271. Officer White, accompanied by Officer Payne, visited CFB on 23 May 2014 when CFB’s trade with BMC was discussed. During the meeting Ken told Officer White that CFB had loaned BMC some £200,000 (although Mr Ratcliffe had described the payments as advances in respect of future trade). When BMC “went bust” (see above) Ken had taken back machinery in lieu of repayment. He explained that he continued to trade with the various phoenix companies trading from BMC’s premises because “business is business” and there was material to be bought.

272. A letter, of 6 June 2014 from CFB to HMRC further explains its relationship with BMC as follows:

“We did not have any written agreement with BMC. The description ‘loan’ refers to payments on account of scrap metal we intend to purchase from BMC. CFB uses suppliers of scrap metals referred to in our trade as ‘senders’. BMC was one such sender. The senders supplement our buyers of stock and essentially assist us in sourcing scrap metal we may need to meet demand from our customers, and as such help us to manage that demand. Senders are active in the market and can normally source a range of scrap metal materials. BMC purchased material and sold on to us. There was no advanced agreement on what material they purchased and supplied to us. The sender offers us the material they have and we decide at the time whether we want to take it. The funds were advanced on account of such purchases. BMC became a sender after a period of trading with us. On this occasion, as soon as we became [aware] of their financial difficulties, we took steps to limit our loss. In this case, the amount of £200,000 advanced was applied to settle the VAT exclusive amount of £158,000 and the balance was written off.”

273. Further ‘tax loss’ letters were issued to CFB on 28 July 2014, in respect of four transactions with Yorkshire Metal, and 20 August 2014 in respect of four transactions with PML, resulting in tax losses exceeding £41,497 and £147,411 respectively.

274. As noted above, on 17 March 2015 HMRC wrote to CFB to deny input tax of £2,607,776. On 18 June 2015 CFB appealed to the Tribunal against this decision.

Law

275. It is not disputed that the burden of proof in the *Kittel* 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.”

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.”

276. A right to deduct input tax arises under 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 implemented into UK domestic law by ss 24-26 VATA and Regulation 29 of the VAT Regulations 1995. However, an exception to this right to deduct was identified in *Kittel* where the CJEU 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.

...

[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 the 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.”

277. This decision was considered by the Court of Appeal in *Mobilx Ltd (in Administration) v HMRC; HMRC v Blue Sphere Global Ltd; Calltel Telecom Ltd and another v HMRC* [2010] STC 1436 (“*Mobilx*”) where Moses LJ, giving the judgment of the court, 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.”

278. 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. 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."

279. It is not necessary for the trader to know the specific details of the fraud with which his transaction is connected. 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."

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

281. In *Fonecomp Limited v HMRC* [2015] STC 2254 it was argued that the words "should have known" 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 (with whom McFarlane and Burnett LJ agreed) said, 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.”

Discussion and Conclusion

282. In the *Kittel* appeal it is necessary to determine the following issues, to which Sir Andrew Morritt C referred at [29] in *Blue Sphere Global Limited v HMRC* [2009] STC 2239, namely:

- (1) Was there a tax loss;
- (2) If so, did this loss result from a fraudulent evasion;
- (3) If there was a fraudulent evasion, were the appellant’s transactions which were the subject of this appeal 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.

283. Before we address these issues, it is necessary to first consider whether HMRC are entitled to rely on *Kittel* to deny CFB recovery of input tax given that the present case, unlike *Kittel*, and indeed *Mobilx*, does not concern MTIC fraud. Mr Lall contends that *Kittel* cannot apply as the decision was designed to catch “contrived” or “classic” MTIC fraud and accordingly its application is limited to that type of case. Additionally, he submits that if there is an alternative approach that HMRC can adopt, eg by dealing with the fraud at defaulter level, *Kittel* cannot apply.

284. However, it is clear from [56] of *Kittel* (see above) that the CJEU did not place any restriction on the application of the principle to any particular type of fraud but rather appears to have had a general application to all forms of VAT fraud in mind. Indeed, the Court would have been aware of the opinion, in that case, of Advocate General Colomer who at [35] said:

“In reality, the methods used are as fanciful and complicated as the imaginations of the people who think them up. I therefore agree with Advocate General Poiares Maduro who, in point 8 of his Opinion in

Optigen and Others, finds that in every case the bottom line is that an amount received in respect of VAT is not declared.”

285. As Moses LJ said at [59] of *Mobilx*, “The test in *Kittel* is simple and should not be over-refined” nor, we would add, should it in the absence of any authority to the contrary be artificially restricted. We therefore consider that *Kittel* is applicable in the present case and turn to the issues identified in *Blue Sphere Global Limited*.

Fraudulent Tax Loss

286. Taking the first and second of the *Blue Sphere Global Limited* questions it is necessary to ask, was there a tax loss? And, if so, did that loss result from fraudulent evasion?

287. Although initially Mr Lall appeared reluctant to accept that there was a loss of tax caused by the defaulting traders (ie those traders that defaulted on the payments of their VAT liability) he did, in answer to questions from the Tribunal, concede that such a tax loss existed. However, he did not accept that such loss was fraudulent and contends that by failing to explain how the fraud works, or is supposed to work, HMRC cannot establish that there was a fraudulent loss of tax. This he submits is fatal to their case as, without such an explanation, it is impossible to conclude that anyone other than the immediate defaulters, or those around them, could or should have known of the connection to fraud.

288. We reject Mr Lall’s argument which is contrary to both *Megtian* and *Fonecomp* (see above) in which it was held that is sufficient for a trader to know, or have the means of knowing, that fraud has occurred without needing to be aware of its specific details or operation. Indeed, Mr Lall subsequently appeared to accept that, for what he referred to as a “*Kittel* accomplice”, knowledge of the exact nature of the fraud was not necessary.

289. We also reject Mr Lall’s suggestion that the definitions of theft and fraud contained in the Theft Act 1968 and Fraud Act 2006 provide any assistance in determining whether the loss of tax caused by the defaulting traders in the present case was fraudulent. Such an attempt to align the VAT legislation with the Theft Act was dismissed by the Criminal Division of the Court of Appeal in *R v Dealy* [1995] STC 217 which held that there was no requirement for there to be an intention to permanently deprive, as there is in the definition of theft, for there to be an offence of fraudulent evasion of VAT under what was then s 39(1) Value Added Tax Act 1983 (and is now s 72 VATA).

290. Referring to the comments of Dyson J (as he then was) during argument in that case, McCowan LJ, giving the judgment of the Court of Appeal said, at 222 – 223:

“... the 1983 [VAT] Act is indeed a draconian Act. Why should we say that the policy behind it is the same as that behind the 1978 [Theft] Act?”

The Court of Appeal also upheld, at 219 – 220, the following direction of the trial judge to the jury:

“Well, what does “evasion” mean? Evasion is an English word that means to get out of something. If you evade something, you get out of its way, you dodge it, and that, of course, is what this case is about. Was Mr. Dealy trying to dodge paying the VAT that his company, the limited company, Yorkshire Clothing Company Limited, owed to the Customs and Excise?”

Any person, or business, or company, that is registered for VAT, is, in effect, an unpaid tax collector for the Government, or the Customs and Excise because they run the VAT. Every three months, the person, or the firm, is required to send in a return to the Customs and Excise showing how much VAT he should be paying over to the Customs and Excise and he, or the firm as it usually is—of course, it is usually limited companies—is required to pay that amount of VAT at the same time as sending in the return showing how much should be paid. Those who are registered for VAT have one month immediately after the end of each three-monthly period, and within that month they have to send in the return and the money.

The reality, of course, is that you are looking at the end of that month's grace. You need not look too strictly at the dates on each count on the Indictment. In a sense, the dates are not important. They are not things that matter desperately. There is no magic in the particular dates. No doubt, many people registered for VAT sometimes send in their returns and the money a week late, or a fortnight late, and the VAT people, the Customs and Excise, do not do anything much about short periods like that. Therefore, you are not concerned with the exact date of each count on the Indictment.

However, the point is that there comes a time when the person who is concerned to send in the firm's VAT Return, or his own if he is an individual, and the cheque for the amount owing, knows that the time has finally come when he must pay by the 31st of the month, or soon afterwards, anyway, and, if that person then deliberately does not send in the VAT Return and the money, at the time when he takes the decision, quite deliberately, not to send in the return, because he does not want to pay, he is, in law, evading the tax.”

291. In *Abou-Rahmah and another v Al-Haji Abdul Kadir Abacha and others* [2006] EWCA 1492 Arden LJ summarised the test for dishonesty in civil proceedings saying:

“65. The subsequent decision of the House of Lords in *Twinsectra Ltd v Yardley* [2002] UKHL 12, [2002] 2 AC 164, [2002] 2 All ER 377 was widely interpreted as requiring both an objective and subjective test to be applied to the question of standard. In the case of the subjective test, that would mean that the Defendant would not be guilty of dishonesty unless he was conscious that the transaction fell below normally acceptable standards of conduct. The Privy Council in the *Barlow Clowes* case has now clarified that this is a wrong interpretation of the *Twinsectra* decision. It is not a requirement of the standard of dishonesty that the defendant should be conscious of his wrongdoing. *Snell's Equity* now refers to this as the “better view” (31st ed, para 28–46 as updated).

66. On the basis of this interpretation, the test of dishonesty is predominantly objective: did the conduct of the defendant fall below the normally acceptable standard? But there are also subjective aspects of dishonesty. As Lord Nicholls said in the *Royal Brunei* case, honesty has:

“a strong subjective element in that it is a description of a type of conduct assessed in the light of what a person actually knew at the time, as distinct from what a reasonable person would have known or appreciated” (p 389 and see generally pp 389 to 391).”

292. Adopting such an approach in the present case it is necessary to consider whether the losses caused by the defaulting traders resulted from fraudulent evasion. Taking each of the defaulters in turn the only possible conclusion that can be drawn in each case was that there was a deliberate and, on the approach approved by the Court of Appeal in *Dealy*, a fraudulent VAT default.

293. TNTT was a missing trader that failed to respond to HMRC enquiries and make any payment of or appeal against an assessment.

294. WDL has similarly not responded to enquiries by HMRC, neither has it paid or appealed against an assessment.

295. Recycling is another missing trader that was not known at its registered office. Although it appears to have made 40 acquisitions from a Cypriot company that the authorities in Cyprus consider to be a “suspect of committing fraud” it has not shown this on its VAT returns neither has it paid output tax in relation to sales to PML instead submitting £nil VAT returns for the periods in question.

296. PCT is a trader whose principal place of business, when visited by HMRC, turned out to have been demolished. It had issued invoices to PML for the sale of metals with instructions for third party payments to banks in Honk Kong and Poland and had not accounted for the VAT on those invoices and was wound up with a VAT debt of £3,057,153.

297. BMC was one of many companies, such as Fellowbrook, Combehill, Brecks, Towmasters, WMD, utilised by Mr Cooper for supplying metals, failing to declare sales and run into insolvency owing large sums to HMRC. Such a pattern cannot, in our judgment, be explained by poor or incompetent management or sheer bad luck but must have come about by design. We find support for our view in the undertaking given by Mr Cooper on 20 April 2016 when he was disqualified as a director for 13 years. In particular his admission that he caused or allowed BMC to participate in transactions connected to the fraudulent evasion of VAT. Although the undertaking postdates the period of CFB’s transactions with BMC the schedule of unfit conduct does refer to exponential growth in BMC’s turnover, one of several indicators of VAT fraud the others being lack of contractual documents, a failure to insure goods and poor or non-existing financial due diligence, all of which had occurred after it had taken over from Towmasters and at a time when 90% of its sales were to CFB.

298. The director of Intake had previously been the director of another company, Sole Merchants Limited, which had not declared VAT on the sale of metals and gone into liquidation with an outstanding debt to HMRC, something he omitted to mention either on the company's application for VAT registration or in subsequent meetings with HMRC officers. He had also been the director of Able, another company that had traded in scrap metal and which had failed to submit VAT returns. As with other defaulting companies, Intake, having been provided with Notice 726 and 'How to Spot MTIC Fraud' leaflet did not respond to the issue of an assessment for VAT and was subsequently dissolved without settlement of the debt to HMRC.

299. HWSNW is another missing trader that failed to respond to an assessment having failed to file VAT returns.

300. ACL not only, like Recycling, purchased metals, in this case copper cathode, from a Cypriot company that was deregistered as suspected of committing fraud, but had an empty cordoned off space in a residential street where a building once stood as its principal place of business. However, it was still able to supply copper and issue invoices to PML which were not declared to HMRC. Perhaps not surprisingly it has not paid the VAT assessment issued on it in respect of this trading activity.

301. SWAT also made sales of metals on which it did not account for VAT to HMRC. However, after initial contradictory explanations from each of the directors, all communications with HMRC ceased leaving an outstanding liability to VAT.

302. IBY, was described by Mr Watkinson, in our view not without justification, as:

“... a pantomime company in all senses of the word. It registers to provide pantomimes and gets involved in trading an enormous amount of metal, doesn't account for the VAT, and then disappears.”

303. Finally, Mr Rubbish was a missing trader that gave false contact details on its application for VAT registration and did not account for VAT on its sales.

304. We should also add that, despite Mr Lall's submission to the contrary for which we were not referred to any authority in support, it is not necessary for HMRC to establish that the defaulting traders made any profit, gains or benefitted as a result of the fraud to discharge their burden of showing dishonest evasion of VAT.

Connection

305. Having concluded that there was a loss of tax which arose as the result of fraud, it is necessary to consider whether CFB's transactions, which are the subject matter of the appeal, were connected to that fraudulent loss of tax.

306. Mr Lall had originally challenged HMRC's tracing exercise in relation to the metals, other than that supplied directly to CFB by BMC which is not disputed, on the basis of inconsistent descriptions and weights. However, the evidence of Jason and Mr Willers was that, although there are different descriptions for the same material, eg copper plate, plate, cathode, Grade A plate, it is "all the same". Variations in

weights arising as the result of the exclusion by CFB of the weight of any banding, strapping and pallets. As Jason explained, “We don’t pay for rubbish or plastic or wood; we only pay for metal.”

307. Although Mr Lall now contends that as traders use different descriptions for the same goods there is an inherent difficulty in establishing that the same metal was sold in the supply chains, we find, on a balance of probabilities, that this does not affect the tracing exercise undertaken by HMRC. It therefore follows that the transactions entered into by CFB were connected to the fraudulent evasion of VAT.

Knew or Should Have Known

308. There is no doubt that CFB was aware of the prevalence of VAT fraud within the scrap metal trade sector. James referred to the problem of VAT fraud in his evidence and exhibited a document from the BMRA, *British Metals Recycling Association position statement on recent communications with HM Revenue and Customs (HMRC)*, dated 2 March 2016 which reflects the Association’s concerns especially in relation to MTIC fraud to which it recognises the sector is “particularly susceptible” because the heterogeneous nature of the material processed by metal recyclers can make it difficult to trace and an easy target for fraudsters.

309. However, even if CFB had not adduced evidence of its awareness of fraud within the industry, we would have had no difficulty in finding that it was fully aware of the extent of VAT fraud within its trade sector given the correspondence it received from HMRC and the many visits by HMRC Officers to its premises which we have detailed above.

310. HMRC’s case, as advanced by Mr Watkinson, is that, other than the purchases it made from BMC, it is beyond coincidence that over so many supplies CFB should have been repeatedly involved in transaction chains that have been traced back to fraudulent tax losses. This, he submits, must indicate that CFB knew its transactions were connected to fraud. He contends that such transactions were part of an overall scheme to defraud the Revenue. In particular, he relies on the involvement of Jonathan France, the replacement of JKL, the previous sole supplier of copper cathode to CFB, by Arthur Brook and PML and submits that the chronology of the involvement of those individuals and companies is indicative of the transactions being contrived.

311. Mr Watkinson also relies on the deal chains which cannot be traced to a supplier of copper cathode, plate or processed scrap but instead trace to a defaulting trader which, he submits, suggest that the trades were established for the purposes of fraud on the Revenue.

312. Putting the BMC transactions to one side, given the frequent involvement of the same or almost the same participants in all the other transaction chains described above, where the sales took place over a short period of time with each party in the chain being able to source the quantity and specification of the metal required by its customer, apparently without difficulty, at a price which Jason accepted in evidence

was untenable for the market, it would seem highly improbable that these were commercial transactions between unconnected parties. Indeed, the evidence would suggest, and we find, that the transactions were part of an orchestrated scheme to defraud the revenue.

313. We find support for our conclusion in the evidence of third party payments in some of chains which did not appear to concern Ken, who confirmed he had made such payments himself, Ken's inability to suggest any commercial rationale for metal passing through the hands of up to five different traders in a short period of time despite his acceptance that he was a "shrewd and astute businessman" and "nobody's fool" and the cluster of copper cathode deals around certain dates in 2013, something James could not explain.

314. It is therefore necessary to consider whether CFB knew or should have known that this was the case.

315. Mr Lall, whose submissions concentrated mainly on the issue of the fraudulent loss of tax rather than knowledge or means of knowledge, contends that CFB did not know nor could it have known of any connection to fraud. He submits that HMRC has not identified the controlling mind at CFB to establish who knew or should have known of the fraud. However, this is not necessary, as Judge Mosedale observed in *Citibank NA v HMRC* [2014] UKFTT 1063 (TC):

"84. Mr Kinnear [counsel for HMRC] accepted in the hearing that to prove actual knowledge against Citibank would require them to prove actual knowledge against an individual whose knowledge could be vicariously attributed to the bank. Yet they do not (so far) seek to prove actual knowledge against any *named* individual. Would the individual whose (alleged) knowledge they seek to vicariously attribute to the bank have to be identified by them to make good the allegation of knowledge by the bank? Because if so, HMRC should not make that allegation against the appellant without identifying such an individual.

85. But I do not think identification would be required: otherwise a corporate entity could avoid allegations of actual knowledge by simply refusing to cooperate with HMRC's enquiry or call any witnesses, making it impossible to identify which particular person had actual knowledge. If the circumstantial evidence was sufficient to justify it, I think a Tribunal could draw the inference that at least one person, albeit unidentified, acting on behalf of the bank had actual knowledge."

She continued, at [86]:

"So I consider that HMRC can (if they have proper grounds in the evidence) make an allegation of knowledge against a corporate entity, such as the appellant, even if they are unable to identify any particular individual whose knowledge should be vicariously attributed to the bank."

316. Mr Lall also contends that this is a paradigm case of HMRC seeking to push the burden on to a trader when HMRC itself, could have taken alternative action, such as imposing a requirement for security (as they did in the case with BMC), on defaulting traders rather than seek to deny CFB its input tax.

317. However, there were very clear warnings from HMRC, eg the many ‘tax loss’ letters sent to CFB highlighting the fact that its transactions commenced with a defaulting trader resulting in losses to the public revenue. In any event, if CFB knew or should have known that its transactions were connected to the fraudulent loss of tax HMRC would be correct to deny it the right to recover input tax irrespective of what action (if any) was taken against other traders in the transaction chains. As Floyd J said at [87] in the High Court in *Mobilx* (reported at [2009] STC 1107):

“... the company has to exercise independent judgment, not delegate its judgment to HMRC.”

318. Turning to whether CFB knew or should have known its transactions, other than those with BMC, were connected to the fraudulent evasion of VAT, we find that the only inference that can be drawn, having come to the conclusion that there was an orchestrated or contrived scheme to defraud the revenue, is that CFB did know of the connection to fraud. In our judgment, it is not feasible that an established and experienced business such as CFB could be placed in such a pivotal position, at the top of the transaction chains, without such knowledge.

319. First, there is the real danger that, with its knowledge of the trade, CFB would have reported the fraud to the authorities resulting in the collapse of the scheme. Secondly, we were not provided with any account of how CFB became involved in the scheme, something that might have been expected had it been argued that CFB had been manipulated or manoeuvred by others into participating in the scheme. Thirdly, the connection with Jonathan France and companies with which he has been associated, which we have found to be fraudulent defaulting traders, to the transactions entered into by CFB.

320. Additionally, in the case of copper cathode which was purchased and almost immediately resold at a profit is an obvious indicator that CFB knew of the fraud or as Moses LJ observed in *Mobilx* at [84]:

“... a trader has chosen to ignore the obvious explanation as to why he was presented with the opportunity to reap a large and predictable reward over a short space of time.”

321. Knowledge of the connection to a fraud in these transactions would also explain the inadequate due diligence undertaken and the failure by CFB to record all but basic details of due diligence actually carried out before undertaking transaction. This includes the yes/no answers on the checklists and the failure to follow up any obvious issues arising as a result of the due diligence carried out, eg Mr Willers could not explain who “Tom” at Arthur Brook might have been or his involvement, if any with that company, why CFB traded with PML given it was rated “high risk” in the Experian report in which it was given a credit limit of £500 and why it traded with Yorkshire Metal which was described as a being concerned in “property investments”.

322. In relation to the BMC transactions, we also consider that CFB knew that these were, as we have found, connected to the fraudulent evasion of VAT.

323. From its due diligence, CFB knew that BMC had a credit limit of £7,700 and a credit rating of £3,700 but nevertheless advanced sums which on occasions totalled almost £600,000. CFB had also made advances to BMC only two days after first being supplied. There is also the failure to record the VAT number for BMC and the wholly inadequate explanation for it given by Ken who said that there was an oversight and the mark recorded could have been a tick “if you put another small line on the bottom”.

324. Also, having requested information from HMRC as to the validity of BMC’s VAT registration number on 29 August 2013, before receiving any response, CFB made purchases from BMC of £103,907.46 on 30 August 2013 and £202,071.24 on 2 September 2013. Notwithstanding HMRC’s response, dated 4 September 2013, which states that it is “not able to confirm that this is a valid registration” on 4 September 2013 CFB made a purchase of £101,601.72 from BMC followed by further purchases of £105,765.96, £103,059.72 and £100,030.96 on 6, 10 and 11 September 2013 which in our view clearly suggests that CFB intended to trade with BMC irrespective of the outcome of the verification of its VAT number and that the request to HMRC had no purpose other than window dressing or a box ticking exercise and is a further indication that CFB knew of the connection to fraud. This is confirmed by Ken’s comment recorded by Officer White in his Visit Report of 23 May 2014, that “business is business and there is material to buy” (see above).

325. Similarly, the failure by CFB to question how BMC was able to achieve the turnover of £4,819,514 for the VAT quarter from 1 March to 31 May 2013 or why BMC’s purchases exceeded its sales by some £215,587 in the same period while continuing to trade with it, would also, in our view, indicate that it is more likely than not that CFB knew of the connection to fraud.

326. In conclusion, we find that CFB, given its standing and history in the scrap metal business, its experience and financial strength (taking account of its £21 million overdraft facility) must have known of the connection to fraudulent evasion of VAT in its transaction for the following reasons:

- (1) the lack of any commercial rationale for its position at the end of the chains in which a number of other participants were frequently able to obtain metal at a better price than CFB;
- (2) its continued trading with companies controlled by individuals, such as Jonathan France and Mr Cooper, notwithstanding that companies with which they were previously associated had been wound up, irrespective of the risk in doing so;
- (3) its failure to act on repeated warnings by HMRC of tax losses in deal chains in which it participated;
- (4) its continued trade with businesses notwithstanding being warned of the dangers of doing so by HMRC;

- (5) the absence of any critical analysis of due diligence, by staff conducting checks or directors; and
- (6) third party payments made outside the UK when identified by HMRC as a risk.

327. Even if this were not the case we find, for the above reasons, that the only reasonable explanation for the transactions in which input tax had been denied is that they were connected to the fraudulent evasion of VAT. As such CFB should have known that they were connected to fraud and accordingly cannot succeed in the *Kittel* appeal.

Decision

328. Therefore, for the above reasons both the MGB appeal and *Kittel* appeal are dismissed.

Appeal Rights

329. 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: 8 NOVEMBER 2017

Appendix I
CFB “deals” with BMC during its 06/13 VAT Accounting Period

	Date	Description	Quantity (tonnes)	£ (including VAT)
Deal 1	03/06/13	New Cuts	0.8	4,147.20
		H H Cable	0.27	550.80
		Lead	0.27	388.20
		Copper 98%	0.59	3,058.56
		Brass	0.74	2,592.96
		Alloy Wheels	0.07	92.40
		Bright Wire	0.04	221.76
		Painted HE9	0.03	36.00
		Pyro	0.03	93.60
		A C Rads	0.03	75.60
		Alloy Wheels	0.36	475.20
		Brass	1.3	4,555.20
		Greasy Bright Wire	0.96	5,068.80
		New Tube	0.3	1,627.20
		Brass	0.09	315.36
		Bright Granules	0.49	2,716.56
		Copper 98%	0.21	1,088.64
		Bright Granules	3.12	16,922.88
		Bright Wire	0.19	1,051.08
		Brass	1.18	4,163.04
		Brass Cutts	0.69	2,608.20
		Leaded Brass	1.39	3,836.40
		Copper 98%	0.92	4,758.24
		Electro	0.27	1,461.24
		New Tube	0.59	3,186.00
		A C Rads	1.39	3,586.20
		No 1 Wire	0.2	1,058.40
		Cylinders	1.63	7,569.72
		Bright Wire	0.62	3,429.84
		Copper 98%	1.97	10,188.84
		Copper Tape	0.66	3,564.00
		Copper 98%	1.9	9,826.80
		New Tube	0.45	2,430.00
		Mixed Brass	4.14	14,605.92
		Electro	0.54	2,922.48
		Copper Tape	0.4	2,160.00
		Bright Wire	0.39	2,157.48
		Copper 98%	4.72	24,468.48
		All	2.69	2,646.96
		Brass	3.15	11,113.20
		Brazery	2.99	12,916.80
		98% Granules	8.39	44,500.56
		New Tube	3.18	17,172.00
		Ali Wheels	0.41	541.20
		Cylinders	0.32	1,486.08
		Brass Swarf	0.78	2,592.72
		Flared Off	0.73	3,898.20

		Bright Wire	1.82	10,068.24
		Cast Ali	0.09	102.60
		Ali	4.4	4,329.60
		Copper 98%	0.58	2,999.76
		Wheels	0.13	171.60
		Brass	2.77	9,772.56
		Brass Cutts	1.97	7,446.60
		Copper/Silver stamps	0.23	1,794.00
		Tinned Copper Cutts	3.06	16,156.80
Deal 2	05/06/13	Ali	3	2,952.00
		Copper 98%	2.88	14,895.36
		Brass Swarf	1.01	3,333.00
		Rod Brass	0.15	545.40
		Cylinders	0.7	3,234.00
		Copper 98%	0.42	2,172.24
		Brass	0.61	2,152.08
		Bright Wire	0.93	5,144.76
		Copper/Plastic	0.25	666.00
		Cylinders	0.38	1,755.60
		A C Rads	0.095	245.10
		New Tube	0.22	1,188.00
		Brazery	0.14	596.40
		Copper 98%	0.15	775.80
		B C Rads	0.22	739.20
		Copper Cutts	0.15	783.00
		All Wheels	0.65	858.00
		Tinned Electro	0.2	1,044.00
		Cylinders	0.41	1,894.20
		Cast Ali	0.07	79.80
		Electro	0.11	594.00
		Wheels	0.35	462.00
		Brass	0.38	1,340.64
		Braziery	0.15	630.00
		Elements	0.05	118.80
		Lead	0.2	297.60
		A B Turnings	0.03	97.20
		Brass Turnings	0.028	90.72
		Brass	0.4	1,411.20
		Braziery	0.26	1,123.20
		Painted HE9	0.39	491.40
		Copper 98%	0.35	1,814.40
		Lead	1.07	1,592.16
		A C Rads	0.18	464.40
		New Tube	0.22	1,188.00
		Bright Wire	0.14	776.16
		Ali Cable	0.38	228.00
		Copper 98%	0.39	2,017.08
		Cast Ali	0.18	205.20
		All Wheels	0.3	396.00
		Brass	0.51	1,799.28
		Cylinders	0.82	3,788.40
		Ali	3.6	3,499.20
		Ali	2.68	2,604.96

		New Tube	1.16	6,291.84
		Copper 98%	0.42	2,177.28
		Cable	0.13	187.20
		Bright Wire	0.13	720.72
		Electro	1	5,520.00
		H H Cable	0.39	795.60
		Ali Turnings	0.09	64.80
		Ali Wheels	0.32	422.40
		Electro	2.53	13,759.20
Deal 3	06/06/13	Mixed Copper	11.68	60,549.12
		Bright Wire	3.28	18,184.32
		Melting Copper	2	10,848.00
		Bright Wire	2.76	15,400.80
Deal 4	07/06/13	A C Rads	0.19	490.20
		Brass	0.26	920.40
		Lead	0.35	525.00
		Cylinders	0.68	3,345.60
		Braziery	0.12	511.20
		H30	0.06	72.00
		Wheels	2.45	3,234.00
		Copper 98%	0.35	1,785.00
		New Tube	0.33	1,762.20
		Bright Wire	0.28	1,528.80
		Singles	0.05	150.00
		L G Cable	0.15	174.60
		Brass	0.65	2,301.00
		A C Rads	0.13	327.60
		Cylinders	0.21	957.60
		Cast Aluminium	0.28	319.20
		Rolled Aluminium	4.48	4,354.56
		All Cans	0.25	165.00
		H30	0.81	933.12
		Brass	0.41	1,446.48
		Wheels	0.14	184.80
		Cast Aluminium	0.07	77.28
		Electro	0.95	5,130.00
		Greasy Bright Wire	1.06	5,469.60
		Brass	2.51	8,855.28
		Copper 98%	1.73	8,823.00
		New Tube	1.4	7,476.00
		A C Rads	1.2	3,096.00
		Bright Wire	1.52	8,299.20
		Brass Cutts	0.97	3,666.60
		Rolled Aluminium	2.1	2,066.40
		B C Rads	0.04	129.60
		G M Bor	0.095	376.20
		Copper 98%	0.97	4,947.00
		A C Rads	0.24	604.80
		New Tube	0.12	640.80
		Braziery	0.25	1,080.00
		Ali Turnings	0.24	158.40

		Brass	1.7	5,997.60
		P HE 9	0.15	192.60
		N Cutts	0.7	3,696.00
		Bright Wire	0.55	2,970.00
		Wheels	0.84	1,108.80
		Copper 98%	0.13	655.20
		Gun Metal	0.09	378.00
Deal 5	07/06/13	Copper 98%	10.06	50,702.40
		Braziery	12.48	53,913.60
Deal 6	10/06/13	Lead	0.13	190.32
		New Tube	0.06	316.80
		Brass Cutts	0.71	2,641.20
		Cont T Cu Cutts	1.18	5,989.68
		PVC Pyro	0.24	633.60
		Copper 98%	0.09	453.60
		Cu Cutts	0.18	950.40
		Braziery	0.37	1,531.80
		Rolled Aluminium	0.21	204.12
		HE 9	0.05	67.20
		Alloys	0.11	145.20
		New Tube	0.26	1,357.20
		H30	0.38	437.76
		Brass Turnings	0.03	97.20
		Copper 98%	0.17	846.60
		New Tube	3.23	16,860.60
		Cast Ali	0.19	216.60
		Ali Turnings	0.12	83.52
		Ali Cans	0.1	60.00
		Copper 98%	0.66	3,231.36
		Braziery	0.24	950.40
		Brass	0.88	3,062.40
		Greasy Bright Wire	0.04	197.76
		L G Cable	0.03	28.80
		P HE 9	0.13	166.92
		Wheels	0.06	79.20
		Lead	0.13	180.96
		Copper 98%	0.34	1,644.64
		Brass	0.25	870.00
		New Tube	0.28	1,444.80
		Braziery	0.24	950.40
		Ali Cutts	0.2	228.00
		Braziery	10.22	40,471.20
		New Tube	3.86	19,917.60
Deal 7	11/07/13	New Tube	1.3	6,708.00
		Bright Granules	0.27	1,409.40
		Cast Aluminium	0.52	561.60
		Electro	0.16	825.60
		Bright Wire	2.76	14,572.80
		L G Cable	0.07	75.60

		Copper 98%	1.5	7,380.00
		Rod Swf	0.58	1,886.16
		Cu Tape	0.23	1,145.40
		Brass	5.21	18,005.76
		Wheels	0.22	285.12
		Brass Borings	0.38	1,185.60
		Brass	0.1	180.00
		Ali Rads	0.25	150.00
		Elements	0.13	308.88
		Cylinders	2	9,000.00
		Copper 98%	0.61	2,964.60
		Bright Granules	3.27	16,873.20
		Wheels	0.3	388.80
		Bright Wire	1.11	5,834.16
		Electro	0.105	539.28
		B C Rads	0.13	421.20
		Cu Cutts	1.11	5,727.60
		Copper 98%	0.49	2,410.80
		New Tube	1.16	5,957.76
Deal 8	13/06/13	Bright Wire	1.14	5,991.84
		Ali Cutts	0.73	832.20
		Rolled Aluminium	1.45	1,426.80
		Bright Wire	1.71	8,987.36
		Brass	4.35	15,033.60
		Copper 98%	0.47	2,284.20
		Braziery	0.18	723.60
		Cylinders	0.42	1,864.80
		New Tube	0.24	1,215.36
		Copper 98%	0.39	1,881.36
		Bright Wire	0.22	1,140.48
		Rod Brass	0.5	1,770.00
		Cast Ali	0.12	129.60
		Copper 98%	10.86	52,388.64
		Ali Cutts	0.46	552.00
		Brass Cutts	0.53	1,933.44
		H30	0.23	248.40
		Zinc	0.22	158.40
		P B Solids	0.05	216.00
		G M Solids	0.03	126.00
		Aluminium	2.42	2,323.20
Deal 9	13/06/13	No 2 Wire	0.37	1,731.60
		New Tube	2.1	10,710.00
		Copper 98%	3.17	15,406.20
		Brass	2.16	7,361.28
		A C Rads	0.12	302.40
		Lithos	2.35	2,961.00
		Ali Cutts	0.34	408.00
		Lead	0.22	303.60
		New Tube	0.08	405.12
		Copper 98%	0.18	868.32
		Braziery	0.19	752.40

		Wheels	0.15	190.80
		Bright Wire	0.58	2,992.80
		Lead	0.3	406.80
		Copper 98%	0.17	816.00
		L G Cable	0.81	884.52
		New Tube	2.01	10,178.64
		Granules 98%	3.55	17,253.00
		Yorkshire Fittings	0.55	2,653.20
		Copper 98%	0.31	1,495.44
		New Tube	0.49	2,481.36
		Lead	0.56	772.80
		Brass	1.45	4,941.60
		C Aluminium	0.58	640.32
		Clean Painted Tube	1.2	5,832.00
		Cylinders	0.53	2,270.52
		B C Rads	1.24	4,017.60
		No 2 Wire	0.73	3,416.40
Deal 10	14/06/13	Braziery	0.22	871.20
		New Tube	0.07	354.48
		Greasy Bright Wire	0.87	4,217.76
		B C Rads	0.82	2,656.80
		Bright Wire	1.24	6,428.16
		Bright Granules	2.21	11,456.64
		Ali Cutts	0.53	604.20
		Brass	0.73	2,487.84
		Brass Swarf	0.1	324.00
		Ali Bronze Swarf	0.08	259.20
		Copper 98%	0.68	3,280.32
		Braziery	4.88	19,324.80
Deal 11	17/06/13	Ali Turnings	0.85	591.60
		Lithos	0.31	357.12
		Brass Swarf	0.1	324.00
		Copper 98%	0.16	771.84
		Braziery	0.18	712.80
		New Tube	0.37	1,873.68
		T Wire	0.65	3,198.00
		Lead	0.6	828.00
		Wheels	0.54	686.88
		Cast Aluminium	0.13	143.52
		L G Cable	0.54	615.60
		Rolled Aluminium	3.05	3,001.20
		Wheels	0.44	559.68
		Brass	0.89	3,033.12
		L G Cable	0.29	330.60
		Copper 98%	0.43	2,074.32
		Rolled Aluminium	0.4	393.60
		B C Rads	0.05	162.00
		Bright Granules	2.21	11,403.60
		Rolled Aluminium	3.15	3,099.60
		L G Cable	1.09	1,242.60
		Copper 98%	0.31	1,491.72

		L G Cable	0.67	763.80
		Lead	1.28	1,751.04
		Cu Tape	0.2	984.00
		Brass	0.48	1,635.84
		Braziery	0.18	725.76
		L G Cable	0.04	43.68
		Paper Cov Lead	0.27	210.60
		Ali Rads	0.07	42.00
		Wheels	0.07	89.04
		Copper 98%	0.31	1,491.72
		Lead	0.48	656.64
		H30	0.19	228.00
		New Tube	2.35	11,872.20
		Copper 98%	2.11	10,153.32
		Bright Wire	0.83	4,292.76
		Brass	3.39	11,553.12
		Mixed Copper	4.34	20,832.00
		Braziery	0.8	3,552.00
Deal 12	20/06/17	A C Rads	0.34	856.80
		P B Bors	0.08	316.80
		New Tube	0.16	808.32
		Bright Wire	0.1	317.20
		Copper 98%	0.1	481.20
		Brass	0.15	511.20
		Lead	0.15	205.20
		Brass Borings	0.02	64.80
		Lithos	0.53	667.80
		Hair Wire	0.04	132.00
		Copper 98%	0.42	2,016.00
		No 2 Wire	0.24	1,152.00
		New Tube	0.1	504.00
		Singles	0.04	120.00
		Lead	0.5	684.00
		Cast Ali	0.18	205.20
		Brass	0.41	1,397.28
		PVC Pyro	0.19	347.20
		Singles	0.26	748.80
		Bright Wire	0.84	4,334.00
		Greasy Bright Tube	0.35	1,713.60
		New Tube	0.44	2,217.60
		Copper 98%	0.32	1,539.84
		H30	0.61	732.00
		A C Rads	0.08	192.00
		New Tube	0.26	1,310.40
		Braziery	0.22	887.04
		Copper 98%	0.19	914.20
		Bright Wire	0.1	516.00
		No 2 Wire	0.02	94.80
		Electro	0.01	51.60
		Brass	0.32	1,090.56
		Bright Wire	4.04	20,846.40
		Electro	3.24	16,718.40
		Crown Wheels	3.52	18,163.20

		Bright Granules	3.33	17,382.60
Deal 13	21/06/13	Copper 98%	0.21	1,008.00
		B C Rads	0.26	842.40
		L G Cable	0.28	319.20
		Wheels	0.28	356.16
		Braziery	0.27	1,088.64
		Brass	0.97	3,305.76
		Rolled Aluminium	1.81	1,737.60
		Granules 98%	4.81	23,665.20
		New Tube	0.58	2,888.40
		Bright Wire	0.16	806.40
		Irony Crown Wheels	1	960.00
		Copper 98%	0.13	624.00
		Brass Swarf	0.24	763.20
		Brass	0.46	1,600.80
		Bright Wire	3.78	19,051.20
		Rolled Aluminium	2.92	2,908.32
		All Turnings	0.59	389.40
		Wheels	0.25	324.00
		B C Rads	0.94	3,102.00
		Bright Granules	1.15	5,658.00
		A B Bors	0.75	2,430.00
		Crown Wheels	0.22	1,108.80
		Ali Turnings	0.03	19.80
		Ali Turnings	0.18	118.80
		Copper 98%	0.24	1,152.00
		Copper 98%	0.17	816.00
		Wheels	0.23	298.08
		H30	0.15	162.00
		P B Borings	0.08	316.80
		Brass	0.17	591.60
		A B Borings	0.17	561.00
		Rolled Aluminium	0.48	547.20
		Elements	0.05	120.00
		Brass	0.16	556.80
		New Tube	0.09	448.20
		Cylinders	0.42	1,864.80
		Braziery	0.16	652.80
		Copper 98%	0.1	480.00
		Cast Ali	0.7	772.80
		Copper 98%	2.92	14,016.00
		L G Cable	0.16	182.40
		L G Cable	0.37	421.80
		Copper 98%	0.2	960.00
		HE 9	0.16	207.36
		HE 9	0.11	142.56
		Lead	0.34	456.96
		Copper 98%	0.24	1,152.00
		No 1 Wire	0.12	590.40
		GM/PB	0.21	907.20
		Wheels	0.6	777.60
Deal 14	24/06/13	Braziery	2.57	9,498.72

		Tinned Cutts	1.31	6,288.00
		PVC Pyro	0.26	655.20
		Brass Cutts	0.47	1,748.40
		Copper 98%	0.38	1,824.00
		Lead	0.31	416.64
		Braziery	0.18	734.40
		Brass	0.42	1,461.60
		Bright Wire	0.1	504.00
		Rolled Aluminium	3.16	3,147.36
		New Tube	2.29	11,404.20
		L G Cable	0.16	182.40
		Lead	0.54	738.72
		Brass	0.84	2,923.20
		Bright Wire	0.32	1,612.80
		New Tube	0.22	1,095.60
		Wheels	1.1	1,399.00
		Copper 98%	0.84	4,032.00
		Braziery	0.3	1,209.60
		Cast Ali	0.66	752.40
Deal 15	25/06/13	Rolled Aluminium	4.55	4,641.00
		Ali Turnings	0.25	174.00
		Copper 98%	7.36	34,003.20
		Brass	3.78	12,700.80
		New Tube	0.33	1,623.60
		Bright Wire	1.77	8,814.60
		Cylinders	0.93	3,850.20
		Copper 98%	0.25	1,155.00
		Wheels	0.39	491.40
		Copper 98%	0.48	2,217.60
		Brass	0.53	1,780.80
		L G Cable	0.27	291.50
		Wheels	0.15	198.00
		Greasy Bright Wire	0.13	608.40
		Lead	0.25	330.00
		HE 9	0.4	504.00
		Ali Turnings	0.26	180.96
		Bright Wire	3.09	15,388.20
		Brass Tubes	4.38	14,715.80
Deal 16	26/06/13	Tinned Copper	0.19	889.20
		Copper 98%	0.5	2,310.00
		No 2 Wire	0.79	3,602.00
		Cu Elements	0.19	547.20
		Brass/Plastic Meters	0.72	1,555.20
		Copper 98%	0.34	1,570.80
		New Tube	1.02	5,018.40
		A C Rads	0.28	672.00
		Cylinders	0.25	1,050.00
		Rolled Aluminium	2.88	2,833.92
		Bright Granules	3.47	17,488.80
		Cu Cutts	1.85	9,213.00
		Granules 98%	4.79	23,566.80

		Braziery	0.58	2,262.00
		Hair Wire	0.45	1,512.00
		Irony Crown Wheels	0.33	316.80
		New Tube	2.34	10,580.16
		Copper 98%	3.78	17,463.60
Deal 17	28/06/17	Brass Tubes	1.4	4,704.00
		No 1 Wire	0.16	758.40
		Bright Wire	0.19	946.20
		Copper 98%	1.81	8,363.20
		Cu Rads	0.78	3,603.60
		Cylinders	2.34	9,828.00
		No 2 Wire	0.18	820.80
		Brass	1.53	5,140.80
		Ali Cutts	0.17	214.20
		Cast Aluminium	0.22	250.80
		Braziery	0.42	1,612.80
		Bright Wire	0.66	3,286.80
		L G Cable	0.4	456.00
		Brass Borings	0.18	572.00
		B C Rads	0.08	259.20
		A C Rads	0.11	264.00
		Cu Cutts	0.35	1,638.00
		Brass	1.21	4,065.60
		H H Cable	0.4	768.00
		Wheels	0.31	409.20
		New Tube	0.2	984.00
		Gun Metal	0.07	302.40
		Lead	0.24	316.80
		Braziery	0.18	691.20
		Copper 98%	0.14	646.80
		P B Turnings	0.15	612.00
		Brass Turnings	0.42	1,360.80
		Bright Wire	3.38	16,932.40
		Ali Cable	0.19	79.80
		Arm Cable	0.13	148.20
		Bright Wire	0.17	846.60
		Copper 98%	0.19	889.20
		Lead	0.25	330.00
		Brass	0.28	940.80
		Rolled Aluminium	3.25	3,237.00
		Ni Silver	0.67	2,412.00
		90/10 Tubes	0.34	1,632.00
		90/10 Turnings	0.08	288.00
		Greasy Bright Wire	0.38	1,824.00
		Ali Turnings	0.51	336.60
		Copper 98%	2.01	9,455.04
		Bright Wire	1.25	6,330.00
		Irony Braziery	0.23	897.00
		Aluminium	1.7	1,693.20
Deal 18	29/06/13	Alloy Wheels	0.13	171.60
		Lead	0.39	538.20

	Granules 98%	1.64	8,265.60
	New Tube	1.26	6,274.80
	Copper 98%	0.82	3,837.60
	Cylinders	0.86	3,612.00
	Greasy Bright Wire	0.49	2,352.00
	Mixed Brass	0.5	1,710.00
	Brass Hair Wire	0.04	134.40
	Copper 98%	2.46	11,512.80
	L G Cable	1.37	1,644.00
	Ali Lithos	1.98	2,613.00
	Copper 98%	0.44	2,059.20
	Bright Wire	1.32	6,652.80
	Granules 98%	0.7	3,276.00
	Cast Ali	0.04	45.60
	Brass Cutts	0.15	558.00
	Lead Weights	0.04	24.00
	Brass Turnings	0.02	64.80
	Braziery	0.14	546.00
	70/30 Turnings	0.03	126.00
	New Tube	1.02	5,079.60
	HE 9	0.1	132.00
	B C Rads	0.44	1,452.00
	Lead	0.62	855.60
	Ali Lithos	0.68	897.60
	B C Rads	0.11	363.00
	New Tube	0.46	2,290.80
	L G Cable	0.35	420.00
	Singles	0.4	1,200.00
	Mixed Brass	0.43	1,470.60
	Brass Cutts	1.77	6,584.60
	Cu Electro	0.1	504.00
	Alloy Wheels	0.15	198.00
	Russian Bright Wire	2.3	11,592.00
	Mixed Brass	0.34	1,162.80
	New Tube	0.24	1,195.20
	Zinc	0.29	243.60
	Lead	0.77	1,062.60
	Tanks	0.1	414.00
	Brass Turnings	0.19	627.00
	Copper 98%	0.34	1,591.20
	Low Grade	0.548	657.60
	Painted HE 9	0.127	160.02
	H Hold	0.238	471.24
	Bright Wire	0.5	2,550.00
	Lead	0.721	994.98
	A C Rads	0.117	280.80
	H3D	0.215	245.10
	Zinc	0.884	689.52
	Cu Tape	0.582	2,863.44
	Cu Tape	0.214	1,052.88

Appendix II

Date and total amount of transactions between CFB and BMC VAT period 08/13

Deal	Date	£ (including VAT)
1	01/08/2013	100,500.72
2	02/08/2013	103,030.92
3	05/08/2013	102,277.68
4	06/08/2013	101,367.00
5	08/08/2013	102,465.24
6	09/08/2013	100,778.76
7	12/08/2013	104,963.28
8	13/08/2013	103,746.60
9	15/08/2013	103,819.92
10	15/08/2013	103,374.24
11	19/08/2013	102,227.16
12	20/08/2013	106,406.40
13	22/08/2013	100,078.20
14	22/08/2013	106,627.80
15	30/08/2013	103,907.46

Appendix III

Date and total amount of transactions between CFB and BMC VAT period 09/13

Deal	Date	£ (including VAT)
1	02/09/2013	202,071.24
2	04/09/2013	101,601.72
3	06/09/2013	105,765.96
4	10/09/2013	103,059.72
5	11/09/2013	100,030.92