



Neutral Citation: [2024] UKFTT 00127 (TC)

Case Number: TC09069

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Centre City Tower, Hill Street, Birmingham

Appeal reference: TC/2017/04623

VAT – missing trader fraud – whether Appellant should have known of connection to fraud – whether there was a reasonable explanation for the transactions other than such connection

Heard on: 8-10 February 2023

Judgment date: 6 February 2024

Before

**TRIBUNAL JUDGE POOLE
MOHAMMED FAROOQ**

Between

REVIVE CORPORATION LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Timothy Brown of counsel, instructed by UHY Hacker Young

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

DECISION

INTRODUCTION

1. By a decision issued on 7 August 2019 (“the FTT Decision”), the First-tier Tribunal (the “FTT”) dismissed an appeal by the Appellant (“RCL”) against an earlier decision of HMRC to deny input tax totalling £1,012,500.90 (and corresponding VAT repayment claims) in respect of 20 purchases of goods made by RCL during the period March 2015 to January 2016 from a company called Product Placement Sales and Marketing Consultants Limited (“PPSM”) and the related sales of such goods (“the Challenged Deals”). HMRC had contended that the purchases in question were connected to “missing trader” VAT fraud and RCL knew or should have known of that connection.

2. The FTT found that the connection to VAT fraud was established, and that whilst RCL did not have actual knowledge of that connection, they ought to have known of it.

3. RCL appealed to the Upper Tribunal (the “UT”) on grounds that the conclusion of the FTT that RCL should have known of the connection to fraud was vitiated by either (or both) of (a) a failure to give sufficiently full reasons, and/or (b) a failure to apply the law on “means of knowledge” to the facts that the FTT had found.

4. The UT, by a decision issued on 16 November 2020, decided that the first of these grounds was made out. It therefore remitted the matter to the FTT (to be heard by a differently constituted panel), but on the basis that “the remitted appeal should be limited to a determination of whether the Company ‘should have known’ that the Challenged Deals were connected with the fraudulent evasion of VAT”. The UT further directed as follows:

As part of its determination of that issue, the FTT must consider whether there was a reasonable explanation of the Challenged Deals other than those transactions being connected with the fraudulent evasion of VAT, consisting of that summarised at [18(7)] and [18(8)] of the Decision¹, when viewed against the background of the totality of the evidence.

5. This decision is issued following the hearing of the remitted appeal in accordance with the decision and directions of the UT.

EVIDENCE

6. We received the following documents in electronic form:

(1) A “supplementary bundle” of 3,414 pages containing most (but not all) of the witness statements (with associated exhibits) which were before the FTT at the hearing in March/April 2019. These were made by:

(a) HMRC officers Gavin Stock (two witness statements dated 26 February 2018 and 23 May 2018) and Susan Hiron (dated 26 February 2018) on behalf of HMRC, and by

(b) Adrian Inglis (two witness statements dated 20 April and 13 June 2018),

(c) Michael Pappalardo (dated 20 April 2018),

(d) Graham Munro (dated 20 April 2018), and

(e) Samantha Brown (dated 20 April 2018)

on behalf of RCL.

In addition, this bundle contained:

¹ Copies of these paragraphs from the FTT Decision are included at Appendix 1 to this decision.

- (f) a copy of VAT Notice 726 dated March 2008,
- (g) an HMRC leaflet entitled “How to spot VAT missing trader fraud” dated July 2006,
- (h) various additional documents produced by HMRC relating largely to their dealings with PPSM and the insolvency of it and various other companies involved in RCL’s deal chains, and
- (i) various additional documents produced by RCL providing accounting and other publicly available information about Centresoft Limited and Activision Blizzard Inc.

(2) A “core bundle” of 460 pages containing the Notice of Appeal, statement of case, transcripts of the previous FTT hearing, the FTT Decision, the UT’s decision and case management directions agreed between the parties. This document and the witness statements in the main bundle were less useful to us than they should have been because the page references in them to the hearing bundles used at the first FTT hearing could not easily be traced in the electronic bundle, meaning that a great deal of time was wasted after the hearing in attempting (and often failing) to track down in our electronic bundles the documents which were being referred to in the transcripts of the previous hearing and in the witness statements in our bundle.

(3) An “authorities bundle” of 393 pages which, in addition to legislation, UK and EU case law, contained the parties’ skeleton arguments for this hearing.

(4) A one-page screenshot of a historic webpage at www.gecxgroup.com/en, accessed through the “Wayback Machine” internet archive service, which the parties agreed was a representative copy of the webpage that RCL accessed in 2015 in carrying out their research into the GECX group.

(5) Summary documents produced by Ms Vicary which provided references to documents in the hearing bundle which she considered were relevant and useful for the purpose of establishing the chronology of events leading up to the first of the Challenged Deals referred to below and the overall state of knowledge about the risk of VAT fraud which she argued should be imputed to RCL for present purposes.

7. The parties agreed that no further live evidence was required from officers Stock and Hiron of HMRC or from Graham Munro or Samantha Brown on behalf of RCL. In each case, their earlier written witness statements, read in conjunction with the transcripts of their respective cross-examinations at the first hearing, would stand as their evidence.

8. We heard further live evidence from Adrian Inglis and Michael Pappalardo on behalf of RCL.

THE FACTS

9. We are only required to make findings of fact relevant to the issue which has been remitted back to the Tribunal by the Upper Tribunal (see [4] above).

10. We therefore set out briefly below a summary of the Challenged Deals which are under appeal, including the related sales of goods by RCL in each case. We then make detailed findings of fact, based on the transcripts of the evidence given at the first hearing before the FTT in 2019, the documentary evidence and the further oral testimony given before us.

11. In order to address the issue remitted by the UT, namely whether RCL should have known that the relevant transactions were connected to fraudulent evasion of VAT, and whether there was a reasonable explanation for them other than such connection, we consider

it necessary to consider the historical background to the commencement and development of RCL's business, including their historical contacts with HMRC and the individual behind PPSM, before examining in more detail the events leading up to the commencement and continuation of RCL's transactions with PPSM.

The Challenged Deals

12. The appeal is concerned with 20 purchases and onward supplies of SD cards, security and other software, hard drives and solid state drives, ink cartridges and headphones (which, as the FTT observed, were markedly different from the sorts of goods RCL generally dealt in during 2015 – mostly games consoles, controllers and GoPro cameras). These transactions took place in March 2015 (1 transaction), April 2015 (2 transactions), May 2015 (3 transactions), June 2015 (1 transaction), July 2015 (6 transactions), October 2015 (3 transactions), December 2015 (1 transaction) and January 2016 (3 transactions). It is important to note that these deals represented, in number, only a small proportion of RCL's total transactions over the period, albeit that their value was significantly larger than the deals which RCL typically carried out.

13. All of RCL's 20 purchases were from PPSM. 17 of the 20 sales were to GECX Group Greece Pcc (in Greece) and the other three were to GECX Group Cz s.r.o (in the Czech Republic).

Outline of RCL and its personnel

14. Mr Inglis ("AI") and Mr Munro ("GM") had been friends from about 1994. In 1995, AI joined Prism Leisure Corporation Limited ("Prism"), initially as a marketing manager in their software division, then as a sales executive in the same division. The software in question was gaming software. AI was then promoted to sales manager and ran a team of 6 sales executives. Prism had three divisions: software, audio and DVD, as well as another department which dealt exclusively with the Makro chain of stores. In their heyday, Prism had a turnover of £120 million.

15. In 2004, Prism suffered a series of major problems which resulted in a decision in November 2004 to carry out a major downsizing of the business, which would include the closure of the software division in which AI worked. AI decided to leave and set up a new business, along with GM (who by then was working at Prism in the same division as well) and another individual from Prism ("GB", who AI described as "one of my best sales-people at the time"). The intention was to carry on selling gaming software to the customers they had dealt with at Prism, but using a slightly different business model. Instead of buying large parcels of stock for sale over a period of time, the intention was to "trade" more actively, either sourcing goods requested by their customers or finding buyers for goods which their suppliers wanted to sell. The intention was also to trade in gaming consoles and accessories as well as the software.

16. The three individuals set up RCL as the vehicle for their plans. RCL was incorporated on 7 January 2005. On the same day, an application for RCL's VAT registration to take effect from 31 January 2005 was signed, giving an estimated annual taxable supplies figure of £1 million and giving the intended business activity as "trading in computer/audio software & equipment". The principal place of business was identified as AI's home address. The application was submitted to HMRC on 1 February 2005.

17. AI's customer base at Prism had been largely companies in Europe, as well as some in the Middle and Far East, and the new business of RCL developed along similar lines.

18. Mr Pappalardo ("MP"), who had worked at Prism until he was made redundant in 2005, knew AI and GM from his time there. He joined RCL for a year from 2007 until 2008, then

left and worked in a variety of other jobs until he rejoined RCL in August 2012, where he has since become a sales manager, working directly for AI.

19. The three directors AI, GM and GB each effectively operated as a separate mini-business under the corporate umbrella, with their own sales, purchases, logistics and invoicing. There were overall corporate functions in accountancy, banking and warehousing/shipping, which were overseen by AI, GM and GB respectively.

20. GB was removed from the business in August 2011 after it was discovered that he had set up a separate company of his own, through which he was selling the same goods as RCL to some of their customers. The two remaining directors continued to operate quite independently, as before.

21. Samantha Brown (“SB”) joined RCL as a management accountant in March 2012. Initially her main task was to “sort out” the creditor ledger which had been neglected by her predecessor due to ill health. She was in post for the latter part of the first period while RCL were under continuous monitoring by HMRC (see below). After that period, and following some enhancements she implemented to the process of taking on new customers and suppliers, in her role as head of finance, she would receive the “new customer/supplier” due diligence documents received from RCL’s salesmen before confirming (subject to any objection from the directors) that RCL could deal with them.

22. At the time of the transactions with which this appeal is concerned (commencing in early 2015), MP worked in AI’s team and GM’s team included Mr Steve Raune (his sales manager) and a number of sales executives, including a Mr Reece Brewer.

History of RCL’s contacts with HMRC

Initial contacts from 2005

23. In response to RCL’s VAT registration application, HMRC arranged a “pre-registration visit”, which took place on 3 March 2005 at RCL’s new trading premises on an industrial estate in Letchworth. HMRC established that the intended main activity was buying and selling computer and console games and peripherals, though some sales of DVDs, audio CDs and games for a particular Nokia mobile phone were also expected. There were “no plans to trade in specified goods, such as phones, accessories or computer chips.” RCL had taken a 6 year lease on their principal place of business, and it was intended that all goods would be received and despatched through those premises. The three directors (who were all present at the meeting, and who had between them invested approximately £100,000 in the business) were told of the need to contact HMRC if they were considering trading in “specified goods” (phones, accessories or computer chips). The visiting officers were satisfied that “this is not an MTIC trader” and asked for the VAT registration to be actioned as soon as possible, which was duly done.

24. On 22 March 2005, RCL wrote to HMRC requesting to be put onto monthly VAT returns, and pointing out that the “trade classification” on their VAT registration certificate was shown as “Photographic, Optical & Office Equipment”, whereas they were distributors of “games software, accessories and DVDs”.

25. Following submission of RCL’s first VAT return (which was a repayment return), HMRC visited RCL again on 9 June 2005. A small technical issue on how acquisitions were dealt with on the return was addressed, and it was noted that the business address had not been updated from AI’s home address. Some general education was given on dealing with imports, exports, acquisitions and despatches. Nothing of significance arose from the visit.

26. RCL's returns for periods 01/07, 05/07 and 06/07 were selected for verification, but no further information about that process was included in the material before us and we infer that nothing significant emerged from those exercises.

27. Over the three years from June 2005 to May 2008, RCL were from time to time put back onto quarterly VAT returns for failing to meet the conditions for monthly returns, and were subsequently put back onto monthly returns. They were finally put back onto monthly returns for May 2008 (see below), since when that remained the case up to the hearing before the FTT.

January/February 2008 visit

28. HMRC carried out a full visit to RCL over two days on 31 January and 6 February 2008. The visit appears to have been prompted by concerns that had arisen at HMRC in relation to some problems with RCL's VAT returns which, as it turned out, had arisen as a result of a "tidying up" exercise carried out by RCL and its accountants after a change of book keeper had brought to light numerous shortcomings in previous returns. HMRC reviewed a number of returns in detail, up to the return for October 2007, and were satisfied that "the only errors made are due to lack of knowledge and in the past have been due to the lack of understanding of SAGE."

29. Following this visit, on 28 March 2008, RCL wrote to HMRC to request a return to monthly VAT returns (having recently been put back on quarterly returns). This letter referred to there having been some late returns, but also the recent VAT inspection and the fact that they were now up to date. HMRC agreed by letter dated 1 April 2008.

January 2010 visit

30. The next reported direct contact between RCL and HMRC took place on 25 January 2010, when two HMRC officers visited the business premises following a referral from the UKBA at Dover, who had intercepted a van which was declared to be carrying 4 pallets of Wii consoles (255 units with a declared net value of £36,465) for delivery from RCL to a company called Tectrade in San Marino (which is outside the territory of the EU). On inspection, the van was found to be empty and the Bosnian driver indicated he had swapped vehicles with a colleague somewhere in the UK before refusing to answer any more questions. A check on HMRC systems had also shown a note that RCL had been "behind suspicious exports of games and DVD's to Russia when intercepted at Heathrow on 20/08/06"; no further details of that incident are available.

31. Clearly therefore RCL were under suspicion of involvement in MTIC trading, and the purpose of the visit was to ascertain the level of risk HMRC considered they represented. It appears that Sian Daniels, RCL's accounts manager at the time, took the meeting and provided the information requested. Whilst it was recorded in the notes that AI's wife (the company secretary) and "Glenn" (a director, and the third of the original founders) were also "seen", they do not appear to have been involved in the meeting. The following matters arose from the visit:

- (1) It was confirmed that RCL sold games consoles and the associated gaming software, and a lot of the products were bought in the UK and sold overseas (more outside the EU than within it).
- (2) Tectrade had been a customer since RCL was formed. Orders were received electronically then a proforma invoice was issued. Tectrade paid on receipt of the proforma and then the goods were shipped.
- (3) In relation to the particular transaction that had given rise to the visit, the contact at Tectrade was a Mr Corrado. The invoice had been issued on 11 December 2009 and it was paid on 15 December 2009, after the goods had left RCL's premises. Tectrade had

arranged for the collection of the goods from RCL, using a company called ALPI UK Limited, who had issued a “certificate of shipment” dated 14 January 2010, confirming that the goods had been “dispatched in accordance with your instructions”, but without stating the date of collection.

(4) It was stated that if the customer does not specify the shipper, RCL used Fedex, DHL, TNT or Geodis. RCL had never had any goods lost or stolen when dealing with Tectrade.

(5) The last deal RCL had done with Tectrade (i.e. after the 11 December 2010 deal) was collected by DHL, for which documentation was supplied. As Tectrade had continued to order from RCL, RCL had no reason to know that the consignment invoiced on 11 December had never arrived at Tectrade. Normally the larger deals with Tectrade were handled by ALPI UK Limited.

(6) RCL confirmed that they normally held around £400,000 in stock at their warehouses in Letchworth.

(7) RCL’s four main suppliers (out of a total of 461) were identified as CentreSoft Limited, Gem Distribution Limited, Koch and GLS Games Distribution Limited, and their 5 main customers (out of a total of 578) were identified as Amazon Limited, Play.com, Creative Ltd, GLS Games Distribution Ltd and Tectrade. Subsequent investigations showed that “most suppliers had MTIC or Wigan Verification Unit user interests”, and that someone had called HMRC from Prism in June 2008 to ask if San Marino was part of the EU for VAT purposes.

(8) In response to a question about the due diligence that RCL carried out for suppliers and customers, it was stated that they sent out a credit check questionnaire for completion and also obtained trade references, which they checked. Also, new customers did not get any credit.

(9) The note of the meeting contained a brief note that “MTIC in general was discussed and an inspection of the goods in the warehouse was noted as various games for Nintendo Wii’s, DS, Playstations, AC adaptors etc.”

32. The meeting note recorded a number of facts which were considered to give rise to a “strong suspicion that Revive Corporation are involved in MTIC fraud of these Nintendo Wii’s”. Further checks were suggested. There is no record of whether those checks were carried out. The note does not record that Notice 726 was given to RCL at this meeting.

Extended verification in 2010

33. Following that meeting and the receipt of RCL’s VAT return for January 2010, HMRC selected that return for extended verification, and wrote to RCL on 9 March 2010 to inform them of that fact. Details of what RCL could expect from the verification process were provided, in standard form. The letter also included an annex which summarised the legal basis for denial of input tax recovery, with the following text:

It is only those traders who can satisfy HMRC that they have taken every precaution which could reasonably be required of them to ensure that they are not involved in a MTIC fraud who can be regarded as wholly innocent traders. All taxpayers have a duty to be proactive in this respect and a failure to take all reasonable precautions amounts to a failure to identify all of the information which a trader "should know" before entering into a particular transaction.

34. No further information about the conduct or outcome of the extended verification exercise was included in the evidence before us.

35. During 2010, RCL suffered major losses due to customer and supplier insolvencies and through fraud.

September 2010 visit

36. The next visit of HMRC to RCL took place on 17 September 2010, when Sian Daniels (the accounts manager) and AI met the HMRC officers in turn. This visit was prompted by the fact that a trader called Dream Distribution had sold 386 X Box consoles to RCL (which they had sold on to Gateway Games in Dubai) and in carrying out an extended verification of Dream's VAT return for the period 04/10, HMRC had identified a tax loss in the transaction chain. HMRC had therefore asked RCL to provide a list of all the onward sales of goods they had made in respect of goods bought from Dream Distribution between 1 February and 30 April 2010. A pack had been prepared which included all the invoices and related documentation for RCL's sales of those goods – some 9 transactions, 6 to traders in Dubai and 1 each to traders in Sweden, Hungary and the UK. The HMRC officer examined the documents and warned that some of the export evidence was "borderline". RCL were warned to obtain proper evidence of export in line with VAT Notice 703 (which would, as the note records, be re-sent to RCL).

37. As to due diligence, it was confirmed that RCL carried it out on new suppliers and customers. They sent out a credit check questionnaire for completion and also obtained trade references. New customers did not get credit. When asked if they were using VAT Notice 726 in relation to due diligence, Sian Daniels said she "could not find the notice previously left", so the officers said they would send another copy.

38. A separate meeting was held on the same day with AI to explore the relationship between RCL and Dream Distribution. At the outset, some discussion of MTIC took place, with AI saying he was aware of it in the industry. There was a connection between Dream Distribution and RCL, through a Mr White, the main individual at Dream Distribution. AI had known him at Prism. When that company went under, Mr White had joined another company but had fallen out with them and decided to set up his own company in 2009. AI had lent him some money for this and taken a 20% stake in Dream Distribution. He also gave some business advice to Mr White, but neither company had introduced the other to any of their customers or suppliers.

39. This led on to a general discussion with AI about carousel fraud, and the HMRC officer mentioned that the market had now moved away from mobile phones and Nintendo Wii's were now starting to be used. It was possible therefore that in future RCL might be directed to record individual serial numbers of the goods they traded in. AI had said he was aware of carousel fraud and would be happy to scan individual products if it was not too labour intensive.

40. Following the visit, HMRC wrote to RCL on 24 September 2010. This letter confirmed the tax loss of £9,727.20 identified in the deal chain under consideration. It also recorded that due diligence had been discussed at the meeting, and emphasised the need for RCL to be familiar with section 6 of VAT Notice 726 in relation to the question of due diligence. RCL were also requested to start faxing their requests to "clear" any VAT numbers through HMRC's Wigan office. They were also reminded of the need to comply fully with the export evidence requirements as set out in sections 6 and 7 of VAT Notice 703. Copies of Notices 703 and 726 and of HMRC's leaflet "How to spot VAT missing trader fraud" were enclosed with this letter.

April 2011 visit

41. On 20 April 2011, HMRC made another very short visit to RCL, this time to pick up a pack of documents relating to their supplies to a company called Creative Distribution (for which RCL had been identified as one of the major suppliers in the relevant VAT accounting period, 12/10). The documents were provided. The officers noted that since the previous visit

had been only in September 2010, at which time MTIC fraud, due diligence, compliance with current VAT Notices, etc had all been covered, they did not propose to go through it all again unless required. They considered no further action was necessary at that time in relation to MTIC issues.

Events from April 2011 to January 2012

42. Shortly after the April 2011 meeting, RCL became aware that one of the three directors had opened his own competing business, trading in the same goods as RCL and selling to some of RCL's customers. Over the period June to August 2011, this resulted in injunction proceedings and the dismissal of the director in question.

43. During this time, on 6 July 2011, HMRC sent a "tax loss" letter to RCL, advising that 2 purchases on 3 and 24 March 2010 (total input VAT £31,993.85) from Dream Distribution traced back to tax losses from a defaulting trader totalling £1,874,764. RCL was warned that they might be denied input tax recovery in relation to those transactions, and reminded that they had responsibility to decide what checks to carry out and whether to undertake transactions in the light of those checks. They were referred again to section 6 of VAT Notice 726, a copy of which was enclosed.

44. On 15 July 2011, a letter in similar form (and with the same enclosure) was sent to RCL, referring to six purchases from Link Distribution (five in May 2010 and one in August 2010, total input VAT £28,082.60) which had been traced back to tax losses from a defaulting trader totalling £2,154,062.

45. On 1 September 2011, HMRC wrote to RCL to inform them that their 07/11 return had been selected for verification. Subsequently, all further returns from 08/11 up to 07/12 were similarly selected, shortly after submission in each case.

46. On 23 Sep 2011 HMRC emailed to RCL what was described as a "draft letter regarding VAT number verification", along with a letter about MTIC fraud generally and a further copy of VAT Notice 726. Appendix 2 reproduces the section on Due Diligence included in that letter, including numerous recommendations as to checks to be carried out by traders.

47. On 21 Oct 2011 HMRC sent to RCL a further "tax loss" letter in similar form to before, advising that 8 purchases of Nintendo Wii's in May, August and October 2011 from Link Distribution (£41,030 of input tax for RCL) had traced back to a defaulting trader, the amount of the tax loss not being specified.

48. On 24 Nov 2011 HMRC sent to RCL a further "tax loss" letter in similar form to before, saying that 2 purchases of Sony PS3's from Dream Distribution Ltd on 27 July 2011 (£10,488 input tax for RCL) had traced back to a defaulting trader, the amount of the tax loss not being specified.

49. HMRC notified RCL by letter dated 8 December 2011 that its returns for the periods 09/11 and 10/11 had been selected for verification. Similar letters were sent on 3 and 25 January 2012 in relation to RCL's 11/11 and 12/11 returns.

January 2012 visit

50. The next HMRC visit took place on 30 January 2012 as part of HMRC's "buffer monitoring project". The stated purpose was to review the purchase invoices for period 12/11, and most of the time was taken up in doing so. However, AI and GM also asked for a conversation about the ongoing verifications. They were concerned about the amount of money that HMRC was withholding and the effect that was having on RCL's business. At the time, AI thought HMRC were withholding about £1.3 million, but in fact RCL's auditors later told him it was £1.9 million.

51. AI and GM asked how they could change RCL's business to reduce the risks and avoid being subject to verifications in the future. The HMRC officer explained that because of the goods they dealt in, HMRC interest was unlikely to reduce, however they should ensure they kept all their paperwork in order, especially in relation to evidence of export and due diligence, as this would help HMRC make partial repayments and ultimately finalise their enquiries more quickly. As a result of this meeting, AI believed HMRC would be releasing a partial payment of some £294,000 shortly, and indeed in February 2012 RCL started to receive some of the withheld payments from HMRC.

Events from January to September 2012

52. On 28 February and 2 April 2012, HMRC sent letters confirming that RCL's returns for periods 01/12 and 02/12 respectively had been selected for verification.

53. As mentioned above, SB joined RCL in March 2012 as their new management accountant, with an initial task of sorting out the creditor ledger, which the previous bookkeeper had neglected somewhat due to her ill health.

54. On 2 April 2012, HMRC visited RCL to review their purchase invoices for periods 01/12 and 02/12 and take copies of any involving console purchases or MTIC traits.

55. On 23 April 2012, HMRC wrote to RCL confirming that their return for period 03/12 had been selected for verification.

56. On 16 May 2012, HMRC visited RCL to review their purchase invoices for periods 03/12 and 04/12 and take copies of any involving console purchases or MTIC traits.

57. On 7 June 2012, HMRC wrote to RCL confirming that their return for period 04/12 had been selected for verification (even though the records in relation to that period had been reviewed on the visit some three weeks earlier).

58. On 28 June 2012, HMRC visited RCL to review their purchase invoices for period 05/12 and take copies of any involving console purchases or MTIC traits (though it was not until 31 August 2012 that they wrote to confirm that the return for this period would be verified). At that meeting, SB particularly asked about the prospects for payment of the various withheld VAT repayments, as RCL was suffering cash flow problems as a result and was looking at making 3 redundancies. She asked about the possibility of repayment supplements being payable as a result of the delays, and the HMRC officer confirmed that if no changes were required to the returns, there was a possibility of repayment supplement being due in respect of the payments withheld for periods 07/11 to 11/11.

59. On 17 July 2012, HMRC wrote to RCL confirming that their return for period 06/12 had been selected for verification.

60. On 25 July 2012, HMRC visited RCL to review their purchase invoices for period 06/12 and take copies of any involving console purchases or MTIC traits.

61. On 31 August 2012, HMRC wrote to RCL confirming that their returns for periods 05/12 and 07/12 had been selected for verification.

62. On 12 September 2012, HMRC visited RCL to review their purchase invoices for period 07/12 and take copies of any involving console purchases or MTIC traits. In HMRC's notes of that meeting, it is recorded that SB had gathered some of the information (about sales made to Curveball Leisure and Creative Distribution) which had been requested by HMRC in a letter dated 25 July 2012 (which was not before us). There was apparently some outstanding documentation she was still assembling in relation to a purchase from Vogue Distribution Ltd, which would be sent on later.

63. On 13 September 2012 HMRC wrote three letters to update RCL on –
- (1) the verification of their return for period 08/11. They said that one purchase from Dream Distribution Ltd (with input VAT of £10,800 on 4 August 2011) and one purchase from Digicom Solutions Ltd (input VAT £15,600 on 12 August 2011) had been traced back to a defaulting trader, with VAT losses of over £26,000. As with all previous similar letters (and those referred to below), this letter repeated that RCL had to satisfy themselves that they had undertaken sufficient due diligence, commensurate with the perceived risk, to satisfy themselves as to the integrity of their suppliers and customers, and of the underlying supply chains. Examples of those checks were given in section 6 of VAT Notice 726, a copy of which was enclosed;
 - (2) the verification of their return for the period 09/11, in which one purchase from Dream Distribution Ltd on 8 Sep 2011 (with input VAT of £6,552) had been traced back to a defaulting trader, with a tax loss of more than £7,300; and
 - (3) the verification of their return for the period 11/11, in which one purchase from RLR Distribution on 23 November 2011 (with input VAT of £1,110) had been traced back to a defaulting trader, with a tax loss of over £1,000.
64. All the 2012 correspondence up to this point had been routine and the meetings short, focused on obtaining material for constructing deal chains rather than assessing the acceptability of the records being kept by RCL and the processes they were following.

26 September 2012 meeting and associated letters

65. On 26 September 2012, HMRC visited RCL to discuss progress on the 13 periods that were subject to extended verification – periods 07/11 to 07/12. The meeting was attended by AI, GM, SB (still the management accountant for RCL) and Helen Harris (shipping clerk for RCL), as well as officers Daren Cooley and Sue Roberts of HMRC.
66. Officer Cooley “opened the visit by explaining that he wanted to discuss some of the areas that Revive could improve on with their record keeping.” He explained that the verification process had been delayed by obtaining evidence of export – there had been problems both with the material available and the time taken to produce it. AI asked what action should be taken when the shipper did not supply airway bills, and it was decided that a member of staff should be tasked with chasing them up as a priority, ensuring the necessary evidence of export was held. Notice 703 was handed out, along with Notice 725 (“the Single Market”) and Notice 726 (“Joint and Several Liability for Unpaid VAT”). There followed a general discussion of various issues around shipping and documentation, following which “the Directors agreed to take the notices away and devise a system to ensure adequate export evidence is held”.
67. The meeting then turned to due diligence. HMRC’s meeting notes (which we accept as accurate) said this:

DC [*officer Daren Cooley*] Requested details of the due diligence checks carried out. Sam Brown provided some detail including Europa checks. Andrian Inglis (AI) stated that he never does a deal with a new customer without meeting them and seeing the stock, and gave an example that he had recently travelled to Italy for this purpose for a deal worth over £100K deal. No money is paid out until the goods are seen.

Notice 726 issued to all present. DC gave a general explanation in relation to J&S, MTIC and due diligence. Referred Directors to S6.2² list of examples

² Section 6.2 of Notice 726 – see Appendix 3.

and explained that evidence should be retained to show which checks have been done.

There followed a discussion about the tax loss deals where the Directors indicated that they were aware all the tax losses had been in chains where they had purchased from Link Distribution. AI indicated that he would prefer for HMRC to specify that he should not trade with Link because he found it a difficult decision to make for himself based on the fact that they were very competitive on price but that there was a small risk the goods had not come from a main distributor. DC made it clear that this decision was for the company to make and that they needed to satisfy themselves that they had carried out sufficient checks on a deal by deal basis. AI responded that sometimes deals that looked too good to be true could be verified. AI gave an example of some games that had been sold within weeks of release at £17 when the RRP was £23 because the supplier was Dubai based and unable to import the games because of the cover design being perceived as offensive in that country so had to sell stock off cheaply.

68. Various other matters were discussed before the meeting closed after 1 hour 10 minutes. The HMRC officers then spent 30 minutes reviewing the purchase invoices for period 08/12 and taking copies of certain relevant ones.

69. On 9 October 2012, HMRC wrote to RCL. In addition to confirming some of the content of the 26 September meeting, and addressing some outstanding points of detail, this letter confirmed that the outstanding repayments claimed in periods 07/11 to 07/12 would now be released in full (some £300,000) and that RCL had now been removed from the monitoring project, which should mean that their future returns would not be subject to extended verification. An accompanying letter of the same date confirmed that RCL was no longer required to provide details of their trading on a monthly basis, but also sounded warnings as to the continuing requirement to verify the VAT status of new or potential customers and suppliers via the Validation Unit at Wigan, and also as to the general obligation to “make your own enquiries before undertaking any transactions”. Reference was made to the notice “How to spot VAT missing trader fraud”, available on HMRC’s website.

Subsequent events from October 2012 to February 2015

70. As RCL was no longer part of HMRC’s monitoring project, contacts between them died down after October 2012.

71. The next communication from HMRC to RCL was a letter dated 4 April 2013, in which HMRC notified RCL that supplies made by them to an Italian trader Genial Srl in August 2008 and June 2009 to a value of over £12,000 had been traced forward through transaction chains to a missing trader in the EU. RCL was reminded of the need to retain evidence to support their claim for zero rating of supplies to overseas customers, and to take all reasonable measures to ensure that their transactions did not involve them in VAT fraud. They were specifically referred to section 6 of VAT Notice 726 for “examples of checks that you may wish to consider”.

72. Because of delays in the verification of RCL’s earlier VAT returns, HMRC ultimately agreed to pay repayment supplement totalling some £36,000, which was received on 21 August 2013.

73. On 4 February 2015, HMRC wrote to RCL informing them that they had cancelled the VAT registration of a company called The S.M.E. Team Ltd with effect from 1 December 2014; they understood that RCL had been involved in “arrangements... that purport to be business transactions” with S.M.E., and that input transactions involving them which had purportedly taken place after that date might fall to be verified.

RCL's due diligence processes

74. Details of RCL's historical processes for taking on new customers and suppliers were somewhat sparse. They certainly had a "trading application form" which sought a fair amount of detail about the prospective customer/supplier, however in May 2013, we infer as a result of its experiences with HMRC over the previous few years, SB overhauled RCL's due diligence procedures by updating its account application form and requiring new customers and suppliers to provide copies of their certificate of incorporation, their latest VAT registration certificate, their current utility bill, a director's passport and a letter of introduction on company headed notepaper. The form continued to require details of two trade referees, although RCL experienced practical difficulties in actually obtaining references from the referees named – see below.

75. At some point during 2014, RCL also introduced a process of seeking reports on prospective customers and suppliers using a credit insurance company called Euler Hermes and Experian (formerly known as Risk Disc), a credit reference agency for UK companies. The Euler Hermes service cost RCL approximately £30,000 per year and the Experian service cost approximately £300 per year.

76. RCL's approach to taking up trade references appears to have been somewhat patchy. Essentially, they either perceived or actually experienced difficulties in obtaining trade references from many of the referees whose details were supplied to them. Two in particular were known either to be very difficult about giving references, or to refuse to give them altogether – these were CentreSoft (a very large computer games distributor and one of RCL's large suppliers) and Creative Distribution (described as "another of the big distributors"). The general concept of seeking trade references from competitors, potentially in relation to prospective trading directly with the customers or suppliers of those competitors, was a difficult one.

77. Whilst RCL had used HMRC's facility to check the validity of VAT numbers on two occasions on 13 October and 17 November 2011, they did not subsequently use that facility again until 15 September 2015, after a meeting with HMRC on 11 August 2015, at which the point was raised. There was evidence that RCL had instead carried out checks using the EU based "Europa/VIIES" facility, but it is not clear how frequently this was done.

RCL's prior experience of fraud

78. RCL was unwittingly involved in fraud on three occasions mentioned by AI in his first witness statement. He was not asked about these events in cross examination, so the only information available to us about them was that contained in his witness statement, which we accept.

79. The first event was described as follows:

We had though been subjected over these years to other types of fraud, which we learned from. One such fraud was a person pretending to be from D&B Informatique, a large French company. We carried out credit checks on that French company and found it to be large & worthy of (Euler) credit. It filled in the application form and sent in the necessary documents. The first order for £8,000 was supplied on credit and it sent its shippers in to collect the goods. It transpired that the person did not work for the company in France and all the documentation we had received was fake. We realised this when we were suspicious and phoned the organisation via its website. It of course knew nothing about the order. I telephoned the person on the account application and offered him £30,000 credit if he paid the £8,000 off. He didn't pay and we lost the £8,000.

80. As this paragraph appears under the heading “Revive Corporation 2013-2014” in AI’s witness statement and refers to RCL having carried out a “Euler” check on the company in question (a process it only implemented in 2014), these events must have occurred sometime in 2014, so only a matter of months before it started to deal with PPSM.

81. A second event of fraud was described as having taken place “a few years later”, and therefore cannot have been relevant to events in 2015.

82. The third event concerned a close encounter with carousel fraud in January 2015, very shortly before dealings with PPSM started. AI described the circumstances as follows:

Revive had also turned away a console delivery. We had sold to Progres, a customer in Poland 1500 XBONE consoles. The consoles were shipped & invoiced to the customer on 16th January [AHI24]. Another salesperson at Revive bought 600 XBONE Consoles from another UK company the following week. When the stock was delivered to us on Tuesday 20th, my warehouse noticed that it was the same stock as we had shipped out the previous Friday, as it had the same tape that we use. We not only turned this stock away but also ceased purchasing immediately from that supplier as is our procedure. I have that the goods were delivered by Unicorn Shipping Ltd [AHI25], but I don't have a record of the supplier in question as the goods were not booked onto our system & I have no paperwork. To my memory they were from the company Emailedxboxlive and we stopped buying consoles from them since this delivery.

83. These events meant that the possibility of fraud, including impersonation fraud and carousel fraud arising from goods sold overseas by RCL, would have been very much at the forefront of thinking at RCL at the time they started dealing with PPSM.

RCL’s contact with PPSM and their first transaction

84. PPSM (RCL’s supplier in the Challenged Deals) was effectively a “one man company”, owned and run by a Peter Wildman (“PW”). PW was known to AI and MP, his employment at Prism having overlapped with theirs. He joined Prism in April 2004, so AI knew him there from that time (or shortly after) until AI left at the end of 2004, and MP knew him until he was made redundant from Prism in 2005.

85. AI referred to PW as “someone he would say hello to in the corridor” at Prism, and MP said he “would have the odd chat over lunch” with him, so they did not have a “close relationship”. AI knew PW as having previously worked at CentreSoft, and having joined Prism in 2004 (a company at which AI had by then worked at for ten years, having had three promotions in that time) at a level senior to him. From his conversations in the canteen, AI learned that PW had carried out some successful DVD sales whilst at Prism.

86. RCL’s first contact with PPSM as a potential customer or supplier was during 2012, through Mr Munro’s “team” at RCL. There was no evidence before us as to how contact was first established. There followed some desultory contact until PW responded to an email from Mr Munro’s team at RCL in October 2014. This led to rather more frequent contacts, ultimately resulting in an email from PW to AI on Friday 13 February 2015. It was not explained why, if PW had been in contact with Mr Munro’s team up to that point, he then chose to make an apparently unsolicited approach direct to AI.

87. In any event, the email in question from PW to AI (timed at 10.39 on Friday 13 February 2015) read as follows:

Hi Adrian,
Long-time no speak, in fact a very long time...

I believe you might be in the market for some EU PS4 consoles which I will have early next week.

Are you interested? Let's have a chat.

Cheers,

Pete

88. This email was followed up by further electronic exchanges which started within 5 minutes and ended five minutes later, as follows:

Untimed [AI to PW] hi Peter how is everything?

10:43:57 [PW to AI] ok thanks Adrian... busy but could be busier... Any interest in the consoles?

10:44:16 [AI to PW] yes it could be

10:44:27 [AI to PW] hasn't helped with the euro getting so weak

10:44:43 [AI to PW] if you can let me know the price and quantity I can offer no problem

10:47:07 [PW to AI] oh no problem mate I will always find a home for the stock I have as its non-traded stock and I am never keen on stock being offered out. I thought you were definitely after some... I can supply £233 if you are interested but need to know this morning... cheers

10:48:03 [AI to PW] I'll let the other guys know – I think it will be too expensive for my customers - how many do you have?

10:48:43 [PW to AI] 501 on Tuesday and 471 on Friday of next week

10:48:57 [AI to PW] ok – I will let everyone know

89. This exchange of messages was immediately forwarded by AI to the sales staff in both "teams" at RCL. In accordance with their usual methods, they approached their various contacts in an effort to find buyers for the consoles. A buyer was apparently found, though it is not clear by whom, and it appears the original buyer dropped out at the last minute and an alternative buyer was found.

90. On Wednesday 18 February 2015 at 14.56, PW emailed MP (who, it will be recalled, was in AI's "team" and not GM's), attaching photos of some boxes on pallets in a warehouse (timestamped as having been taken less than two hours previously), as follows:

Hi Mike,

Please see attached info. The stock is sat at DL Freight in Rotterdam now awaiting pick-up/payment. You need to arrange your transport.

This is yours at £230 with you paying first thing tomorrow.

Thanks,

Peter

91. On the same day (Wednesday 18 February 2015), at 16.11, MP emailed SB to ask her to carry out credit checks on DL Freight Management. At 16.25, having established from MP that the company was in Holland, SB emailed Euler Hermes to request a "limit on this company", and received a response from them at 9.30 the following morning (Thursday 19 February 2015), saying "you could get up to £18k before underwriter involvement".

92. By Monday 23 February 2015, agreement in principle was reached with PW for the purchase by RCL of 495 consoles, at a price of £230 each (total £113,850, plus VAT of

£22,770). The process by which agreement was reached is not clear. At 10.41am on that day, PW sent a proforma invoice for the consoles to Steve Raune, and asked for payment “so that I can organise release of the product”. Steve Raune contacted DL by email at 11.12am to check that the stock was available for release to RCL upon instruction from PW, and asking for an inspection report with photographs. There followed a brief flurry of emails between RCL and DL, in which it came to light that PW/PPSM did not own the stock at that stage. When this was queried with PW by email from Steve Raune at 11.03, PW replied as follows at 11.37:

To try to simplify the procedure and confirm what was said last week, I have a supplier who owns the stock which is sat in DL Freight, I have paid him a deposit on this stock so that I don't lose it although due to the length this deal has taken it has come close. However at this time as Rody at DL freight suggests my supplier owns the stock. On receipt of funds from Revive I pay my supplier the balance and he releases the stock which Rody will be happy to do.

I also confirm that the VAT part of this deal can be paid no later than Thursday by Revive to PPSM.

93. This caused Steve Raune to ask further questions to obtain some comfort from PW as to the reliability of PPSM's supplier; also, a credit reference report was obtained from Experian on PPSM, using AI's login. This was forwarded from AI's email account to Steve Raune at 12.48pm. It described PPSM as “high risk”, with a recommended credit limit of £500.

94. Nonetheless, it appears a decision in principle was made to continue with the deal, but on the basis that Reece Brewer would attend at PPSM's premises to oversee the transfers of funds the following day.

95. On Tuesday 24 February 2015, Reece Brewer went to the premises of PPSM to complete the transaction. At 9.55am on that day, RCL's bank was instructed to make payment of £113,850 to the account of PPSM, an instruction which was accepted by RCL's bank at 10.00am.

96. On the same day (Tuesday 24 February 2015), at 12.56pm (and therefore after RCL had instructed their bank to make payment), PW emailed to Steve Raune a signed trading application form along with copies of PPSM's certificate of incorporation and VAT registration certificate. The form indicated that no copy of a utility bill was attached, with a note “shared” against the appropriate tick box – apparently meaning that PPSM had no utility bill in its own name because it shared premises with another business. Similarly, the form indicated that no copy of the Director's passport was attached. A final document which the form required to be attached (with an associated tick box for confirmation) was “Company Headed Paper”, and this was not attached, nor was there either a tick or a cross in the relevant box (it appears that a tick was inserted some time later, but the details of when and how this happened are obscure and not material to our decision). The form gave PPSM's turnover as “£1 million plus”. It gave two trade references, “Centresoft” and “Creative Dist”. SB was aware that CentreSoft did not give references, and in giving evidence she was not sure whether she had tried to take up the reference from Creative Distribution, as it was around that time that they had changed their policy and started to refuse to give references. In any event, RCL did not obtain a reference from either of the named referees or ask for alternative referees.

97. Since the goods were held by DL Freight on behalf of another customer, PPSM had to transfer payment to DL Freight in order to get the goods released to RCL. There appears to have been some technical problem which prevented the payment from RCL to PPSM from being passed on to DL Freight on 24 February 2015, as a result of which Reece Brewer left PPSM's premises at the end of the day without the matter having been completed. It was only

on the following day, 25 February, that DL Freight received the payment and the goods were released.

98. On 25 February 2015 at 13.48, Steve Raune emailed to SB a request to set up DL as a supplier, explaining they were a freight company. The “trading application form” attached to this request contained no trade referee details, was signed and dated 25 February 2015 and had attached to it (in addition to DL’s bank account details) insurance documents showing EUR 2 million of cover for third party goods.

99. Details of how the purchase was eventually completed, and who RCL sold the consoles on to were sparse. Reece Brewer’s original sale apparently fell through at some point, but a replacement buyer was found by MP in Israel. The only important fact is that it was RCL that found the buyer, not PPSM.

PPSM approaches RCL with a different opportunity

100. On 10 March 2015, approximately two weeks after the completion of the transaction referred to above, PW telephoned AI. He said he had a business opportunity for RCL, which he would like to meet with AI to discuss further. A meeting was arranged for 13 March 2015 at RCL’s office.

101. As MP had been discussing possible opportunities in the gaming sector with PW, AI involved MP in the meeting, with a view to passing the project over to him if it turned out to be a sales opportunity.

102. At the meeting, PW told AI and MP that he received requests for stock from an extremely large international distributor with its purchasing headquarters in Greece and parent company in the middle east. He said he had met them at a trade show in Europe. He said they had agreed to a relationship with him for the supply to them of electronic goods and software. However, the transactions they were talking about were too big for him to fund the VAT element as he would need to purchase most of the goods from UK suppliers, upon which he would have to pay the VAT, and which he would not be able to recover from his customer as the goods would be supplied abroad, free of UK VAT. He would only recover the VAT outlay when his later VAT reclaim from HMRC was paid.

103. PW said he was looking for a company to help finance the VAT element of the supplies to this large customer. He proposed to put RCL into direct contact with the customer; assuming RCL passed their credit checks, the customer would send their purchase orders to RCL; these would then be forwarded to PPSM, who would source the goods and offer them to RCL, who would in turn offer them to the customer. PPSM would aim to make an overall profit of 4% on the deals, which PW proposed to split 50:50 with RCL, so that RCL would simply add their 2% profit margin before issuing their quotation to the overseas customer. As RCL’s role would be to finance the VAT cash flow cost, PW said it would be his plan to “take back” the business once he could fund that cost himself.

104. AI expressed interest in the proposal and asked for further information. In particular, he asked about the identity of PPSM’s suppliers. PW said AI did not need to worry, as all his suppliers were large organisations, some of them being official distributors of the products in question. According to AI, these answers satisfied him and MP, “mainly because of his [*i.e. PW’s*] business background and his reputation”. AI passed the opportunity to MP to run with.

The first Challenged Deal

105. On 16 March 2015, PW sent an email to MP (copied to AI) as follows:

Hi Michael,

If you and Revive are happy in concept to do this trading then I will share with you my customer who to clarify will pre-pay for any ordered stock. This whole deal is at no risk what-so-ever to Revive. The only reason I cannot do this directly is that PPSM Ltd do not have the funds to fund the VAT element of the deal. This kind of order could be on a weekly/fortnightly basis depending upon the stock I have allocated from my supplier. This product initially won't be available to anyone else as the stock is all required by my customer.

I am able to offer you 2% on the price of my invoice to you for your trouble which could equate to £5-£6k per transaction.

All transportation costs will be covered and the stock can go from either the warehouse of PPSM Ltd or Revive depending upon which you would prefer.

The name of my customer is GECX in Greece and I will give you all the relevant paperwork and contact details as soon as you confirm your interest in this trading opportunity. They are a very big trading group and my relationship with them is key to this working.

Please see the below details for the offer below. This would be the first transaction and is ready to go asap.

Mr Site Seller
Quantity: 1000
Price: £104.70 + VAT .

Mr Site website in a box Pro
Quantity: 2000
Price: £68 + VAT

Mr Site website in a box Classic
Quantity: 1450
Price: £28 + VAT

Mr Site website in a box Starter
Quantity; 1550
Price: £20 + VAT

Kind regards,

Peter

106. As he was responsible for this particular customer relationship, it was MP's responsibility to deal with the due diligence and formalities for opening a trading account for GECX. On 18 March 2015, PW sent an email to MP as follows:

Hi Michael,

Please find attached the invoice for the Mr Site order along with company information of GECX Group. Before you send this to my customer you will need to put your 2% onto each of the order lines.... Ie On line 1 of the invoice you will need to change the unit cost price to £108.94.

I still need to understand the delivery schedule from my supplier. Have you decided as to whether you want the stock at Revive or can I ship it? Cost wise to me I suggest it does go from me to help keep these costs to a minimum but I will leave that with you.

I will also let you have the contact details of the buyer whose name is Vassilis.

Thanks,

Peter

107. Attached to this email were the following documents:

(1) An invoice, dated 17 March 2015 (i.e. the previous day) from PPSM to RCL in respect of the “Mr Site” products listed above. This stated the terms as “Pre-pay”, and listed all the same items as in PPSM’s email dated 16 March, but with each unit price increased by 2% compared with that email. The invoice total was £318,552 plus VAT³ of £63,710.40, total £382,262.40.

(2) A print off of an entry (in Greek script) dated 5 July 2013, apparently from a Greek business registry website bearing some official looking stamps, including a stamp signed by a Greek lawyer and dated 20 September 2013, certifying the document as being that to which the attached English translation related.

(3) An English translation, apparently of (2) above, certified by the same Greek lawyer. This document, headed “Certificate”, stated that a company with the name “GECX (Global Energy & Commodities Exchange) Group Greece Single Member Private Company”, and the “distinctive title” of “GEXC Group Greece” was established on 28 May 2013 as a private company in Thessaloniki, Greece. No details of its directors were included. Its objects were identified as:

Carrying on the broker’s business in purchases and sales of petroleum products and metals and any kind of cargoes. Mediations in sale and purchase transactions on raw/direct materials. Commercial operations and Agent’s activities.

(4) A one-page document, with a GECX logo at the top and some address, email address, telephone number and the web address “www.gecxgroup.com” at the foot. The full text of this document (which was not signed) is as follows:

Who we are? [sic]

GECX Group is part of the Al Rajhi Group, a leading industrial conglomerate based in Saudi Arabia. Head quartered in Switzerland since 2008, GECX has built a strong reputation as an integrated commodities trading company, offering services in the areas of commodities trading, brokerage, logistics, and finance. The core focus is on metals (base metals, bulk ore and steel/ Ferro-alloys) and soft commodities (fertilizer, palm oil, sugar and wheat), as well as coal and LPG.

What we aim to do? [sic]

Today, as one of our growth strategies we are entering the telecommunication market with the aim of becoming a leading name in the mobile phone trading business.

By leveraging the company’s global market presence, the expertise of our trading teams and the benefits in terms of excellent supply contacts in the Middle East and wider global market that GECX enjoys as a member of the Al Rajhi Group, GECX aims to create the reputation of the most reliable worldwide mobile phone distributor.

Finally, underpinning all of our strengths is our experienced and motivated management team and committed owners who’s [sic] goal does not only

³ The layout of the invoice actually referred to this amount as “Shipping” rather than VAT, but this appears to have been a typing error which was not picked up at any point. The error was present in a number of PPSM’s early invoices.

include the growth of their own company, but delivering value to their partners and future clients which will result in their progress and success.

(5) A VIES VAT number validation check print-out off the European Commission website dated 4 February 2015, confirming a valid Greek VAT registration number for GECX Group Greece.

108. MP forwarded this email to SB a few minutes after he received it, with a covering message as follows:

Samantha,

Please see attached the Stock I am planning to Buy from PPSM and selling to new Customer GECX I am currently getting the account set up form sorted out customer is paying up front for the goods so all we have to find is the VAT which we have already spoken about.

Payment for the goods won't need to be made until the customer pays us so all good I think!

Can we do checks on GECX with the available information I have attached?

109. Within the following few days, RCL also received back a completed trade account application form from GECX. It was dated 20 March 2015 and was signed by Vassilis Totolis as Director. It gave the company's turnover as "+100.000.000 USD" and the number of employees as 18. It gave a single trade referee, PW at PPSM. It gave the company's bank name as Barclays, at an address "1 Churchill Place, Leicester LE87 4BB", with full sort code and account number details. On a separate sheet accompanying the form, account numbers and sort codes (in the form of IBANs) of three Barclays bank accounts were given, held at a Barclays branch at "Level 27, 1 Churchill Place, Canary Wharf, London E14 5HP" (the £sterling account details being the same as those given on the main form). The boxes on the form denoting the provision of a current utility bill of the company and of a copy of a director's passport were ticked, but no such documents appeared with the form in our bundle and there is no evidence that either was provided at or around that time.

110. No query appears to have been raised by anyone at RCL at any stage as to why a company which was supposed to be a significant Greek subsidiary of a large multi-national group headquartered in the middle east should have given an address in Leicester for its bank. Additionally, at this stage of proceedings no attempt appears to have been made to carry out any kind of independent checks, whether through Euler Hermes or otherwise, on the bona fides of GECX or its supposed connection to the Al Rajhi group. AI gave evidence that he had checked a website of a wider GECX group, which claimed such a connection, but no steps had been taken to verify the matter independently. The claimed connection could be seen on the historic webpage that was produced to us, which was entitled "GECX Group an Al Rajhi Group Company". The text on the page read as follows:

Global Energy & Commodities Exchange Group (GECX)

GECX Group is an Al Rajhi Group owned company and aims to become a leading Commodities and Financial Markets Broker. The Company specialises in energy (gas and power), soft commodities (sugar), metals (precious metals, steel billets and base metals) and Sharia compliant trading.

Our aim is to meet the diverse regional requirements of our customers from Europe to the Middle East providing a professional brokerage service. We act strictly as an unbiased intermediary and offer a full execution service to traders, distributors, suppliers and institutional investors. All partnerships are bespoke and designed to meet the partner's needs and create win/win scenarios.

Our global market presence and the expertise of our trading teams will help to establish us as a leading name in the energy and commodities markets. We are working towards gaining access to several global market exchanges, which will provide us with the flexibility and capability to meet the needs of all our clients worldwide.

111. Nor does any doubt appear to have been raised in the mind of anyone at RCL on the basis that the GECX website and introductory documents supplied referred heavily to business activities entirely unrelated to the purchase and sale of computer software (specifically trading in commodities such as metals, agricultural products and fossil fuels) but also, somewhat oddly, referred to an intention to develop a major trade in mobile phones. This lack of concern was explained by both AI and MP as being based on their trust in PW as a result of their past acquaintance with him and their belief in his “big reputation”. However, as they ultimately acknowledged, their knowledge of his reputation was based entirely on the fact that he had arrived at Prism from CentreSoft, a few months before AI’s departure, into a more senior position than AI held after serving ten years at Prism.

112. By 24 March 2015, it appears that RCL had satisfied themselves that they had carried out sufficient checks on GECX to enable them to trade with them. At 15.36 on that day, MP sent a proforma invoice to GECX in respect of the goods, which was acknowledged the same afternoon by Mr Totolis, who said that he would “revert back to you during the following days”.

113. On Friday 27 March 2015, PW notified MP and AI by email that the deal had changed, sending the following email:

Hi Michael/Adrian,

Please find an updated invoice for the deal with GECX. The cost prices have had a slight adjustment which have been ok'd by GECX as well as a little extra stock. I hope this is ok with you as it increases the value of the invoice. Can you please send GECX the updated invoice with your 2% added. They are expecting a revised invoice ready for payment.

Payment will be made today although it may come in two payments (tbc). Today I have the supplier of the stock with me in the office to see this first transaction go through smoothly, along with me shipping the pallets of stock. I will provide you proof of shipping with each shipment.

GECX are happy to send/confirm with you that all ownership of any stock issues, losses or faulty goods will remain the responsibility of PPSM Ltd and in no-way will Revive be responsible and you will receive this confirmation in due course.

As mentioned to you this could be the first of a weekly opportunity. I believe the next order will be next week and at Michael's suggestion on or after Wednesday 1st April to suit your VAT situation.

114. The attached invoice showed increases in the quantities of software being sold – from 1,000 units to 1,100 units (Mr Site Seller), from 2,000 units to 2,200 units (Mr Site website in a box Pro), and from 1,550 units to 2,880 units (Mr Site website in a box Starter); the number of Mr Site Seller Classic units remained the same (at 1,450 units); the prices per unit of all the software had also increased by approximately 1.5%. Overall, the invoice amount had increased by about £75,000 (from £318,552 plus VAT of £63,710.40, total £382,262.40 to £375,789.30 plus VAT of £75,157.86, total £450,947.16).

115. The following Monday (30 March), GECX sent a purchase order dated 24 March 2015 to RCL, which reflected the revised quantities referred to by PW in his 27 March email, and

included prices which represented the uplifted purchase prices being charged to RCL by PPSM plus a 2% mark-up (though the roundings on some of the items were down to the nearest penny rather than up or down to the nearest penny, as a result of which the overall mark-up was slightly less than 2%). This document also included delivery instructions, requesting shipment to Hellmann Worldwide Logistics s.r.o. at an address in Prague, Czech Republic.

116. The total amount of the GECX purchase order was £383,252.60, which amount was ultimately included in RCL's sales invoice to GECX without the addition of any VAT (see below).

117. Matters then appear to have gone quiet for two days, until on Wednesday 1 April 2015 RCL received a part payment of £95,500 from GECX and immediately paid that amount on to PPSM. Following the Easter weekend, a week later on Wednesday 8 April, RCL received a further part payment of £166,000 from GECX and paid that amount straight on to PPSM. The following day, 9 April, RCL received a final payment of £121,752.60 and on the same day paid on that amount to PPSM along with an additional £67,694.56, in final settlement of PPSM's invoice of 27 March. The £67,694.56 represented the VAT element of PPSM's invoice (£75,157.86) less RCL's profit on the transaction (£7,463.30). This pattern of "pay PPSM once payment is received from GECX" was repeated in all subsequent transactions (we are satisfied that the actual sequence of receipts and payments shown on each date within RCL's bank statements, which occasionally suggested that RCL were making payment before receiving funds from GECX, cannot be relied upon as showing the true sequence of payments within the day).

118. On 9 April 2015, the same day RCL received GECX's final payment, MP issued RCL's formal invoice to GECX by email, in which he also stated that "Proof of shipping will be forwarded to you soon". It is not clear precisely what instructions were given by RCL, since the goods were effectively being shipped direct by PPSM from the premises of its own freight forwarders ON Logistics, near Tamworth; however clearly nothing happened in terms of the shipping for at least five days, because on 14 April 2015 MP received an email from Mr Totolis at GECX, advising that there was "a change on the shipment destination" of the software, and asking for it to be shipped to some freight forwarders at an address in Bydgoszcz, Poland. MP forwarded this email to PW on the same day, without additional comment. It appears that PW then arranged for the shipping to the Poland address.

119. On Friday 17 April 2015 an individual called Tijana Djurdjevic at GECX emailed MP as follows:

Dear Michael,

I am writing in regards to the Mr. Site Software stock we bought from you.

Since we have made the payment over a week ago, can you please tell when will the stock be shipped to us and when can we expect the delivery?

Also, if it has been shipped already, could you provide me with any proof of shipment?

I need this information as soon as possible given that I need to inform my buyer in the next hour.

Thank you,

120. MP forwarded this email to PW a few minutes after receiving it, and within a few minutes PW responded, saying "I will get the relevant info for certain today as it ships today. I will let GECX know".

121. On the following Monday, 20 April, PW emailed to MP a “delivery note for the shipment sent to GECX in Poland”. The note in question purported to show a collection from ON Logistics near Tamworth by a courier “Hellman’s”, for delivery to GECX at the above address in Bydgoszcz, Poland. The typed date on the original note of 20 April 2015 had been amended in manuscript to 17 April 2015, and there was a signature endorsement which appeared to show the consignment (5 pallets) being accepted onto a vehicle on that date. “PPSM LTD” had been added in manuscript after the name “ON Logistics” in the “Collect from” box, as had PPSM’s invoice number “Rev02” in the “ref” box; and there was a typed “special note” which read “Collect/ship Mon 20/04 – Del due 23rd/24th”. In his covering email, PW had explained that “I have had to use a friend’s account on this occasion hence the manual input of my company name and reference. My account is fully functional this week and will be ready for the next transactions.”

122. On 22 April 2015 at 10.46, Tijana Djurdjevic at GECX emailed MP, forwarding to him an email which she had received from the Polish warehouse on the previous day. They were reporting some significant mismatches between the stock figures shown on the invoice and the stock they had received. They reported 1,962 units of the “Classic” version (invoice quantity 1,450), 2,293 of the “Pro” version (invoice quantity 2,200), 926 units of “Mr Site Seller” (invoice quantity 1,100) and 2,344 units of the “Starter” version (invoice quantity 2,880 units). Thus the total quantity reported as received was 7,525 units (compared to the invoice quantity of 7,630 units), and at the unit prices in RCL’s invoice, this represented a shortfall of over £8,700 in value. GECX asked MP to “check whatever you can from your side regarding this”. MP simply forwarded this email to PW a few minutes later with a covering email simply asking “Can we get this checked please?” PW replied almost immediately, saying he was “checking this now and will let you know asap...” At 14.33 on the same day, MP received a further email from Tijana Djurdjevic, in which she said “I have checked everything with the warehouse. It was their mistake regarding the stock count. My apologies for that. The stock is perfect.”

123. On Monday 27 April 2015, GEXC emailed MP as follows, at 15.21:

Dear Michael,

Since we have concluded successfully the deal with the Mr Site software, I would like to ask you if there is any more stock of the same software available.

If yes, kindly let me know quantity, availability (delivery time) and specs of the software (if any changes).

Thank you in advance

124. Three minutes later, MP replied by email, as follows:

Hi Vassilis

I can get you the same numbers as before on a regular basis going forward pricing and product remain the same please let me know what you need.

Delivery times should be about the same as well but I will try to speed things up going forward

125. It is not clear how MP felt able to provide this immediate and very specific and positive response. We infer that he must have been provided with this information by PW, but he does not appear either to have questioned why PW would have been able to say this or why GECX addressed their question to MP rather than to PW, if they were aware of RCL’s true role in the relationship. In any event, there was just one further deal in this particular software between RCL and GECX following this exchange of emails, which took place on 19 June 2015 (see [140] below).

126. Apart from minor administrative matters, this completed the first of the Challenged Deals.

Second and third Challenged Deals

127. We were informed that there were a number of other transactions between PPSM and RCL which followed RCL's more usual trading pattern (and did not involve GECX), and whilst fraud was detected in those transaction chains, HMRC did not disallow the input VAT on them to RCL, as they fell within RCL's normal pattern of trading. Beyond observing that there was overlap in time between those transactions and the GECX transactions the subject of this appeal, we do not mention them further.

128. On 14 April 2015, five days after the last payment had been made in relation to the "Mr Site" software transactions and three days before those goods had been shipped, PW approached MP in relation to a second GECX transaction. This was for 20,000 "Mark Branded SD cards". The approach took the form of an email as follows:

Hi Michael,

Please see attached the latest deal for GECX. These are SD cards which are branded especially for them. I have attached my invoice which you need to add your margin before sending to GECX. I have spoken to Vassilis about these and agreed the price. I am awaiting the address of delivery to be confirmed since his Mr Site stock address changed at the last minute.

Are you ok to do this full amount of stock? Please confirm...

Regards,

Peter

129. Attached to this email was an invoice (not a proforma) from PPSM to RCL dated 14 April 2015 for 20,000 Mark Branded SD Cards, at a unit price of €35.51, totalling €710,200, plus VAT (erroneously labelled as "Shipping") of €142,040, totalling €852,240.

130. The size of this invoice clearly caused some concern at RCL, and after talking to AI, MP contacted PW and on 15 April PW emailed MP to say that he had spoken to GECX "as discussed", as a result of which the order was to be split into two parts, of 10,000 units each. He therefore attached two new invoices, said to be dated 20 and 27 April 2015, each for 10,000 units. In fact, the two invoices appear to have been dated 14 and 15 April 2015, though they were annotated to refer to intended deliveries of 20 and 27 April 2015 respectively. Accompanying these two invoices was a photo of a blister packed product which appeared to be a "Mark" branded 64 GB micro SDHC card with a card adapter. The branding made no reference to GECX.

131. On Friday 17 April 2015, MP emailed to GECX two separate pro-forma invoices, each for 10,000 units, at a unit price of €36.22 (having added RCL's 2% mark-up to prices quoted on the PPSM invoices already received). Each was marked with a "Stock Delivery Date", 20 and 27 April respectively. GECX emailed back the same day to "confirm both stocks of SD Cards, total of 20,000 pcs", and that a purchase order would be sent "first thing Monday morning".

132. On Monday 20 April 2015, after a chasing email from MP, GECX emailed two purchase orders, as promised. The request was for them to be shipped to the same Polish delivery address. Again, actual shipment was arranged by PPSM using ON Logistics. So far as RCL was concerned, there appeared to be nothing to do apart from awaiting payment from GECX. Payment in respect of the first invoice duly arrived on 29 April (minus €10.01, presumably

attributable to bank charges) and on the same day RCL paid PPSM's invoice and issued a formal invoice to GECX in Greece.

133. Also on 29 April, because of the value of the orders RCL was receiving, AI instructed SB and MP to carry out a little more research into RCL's new customer. He was aware that Euler Hermes would not supply credit insurance in respect of any customers in Greece due to the overall economic situation in that country, however by reference to the GECX website which it found, RCL established that GECX also appeared to have subsidiaries in the Czech Republic, Switzerland and the UK. They therefore sought Euler Hermes credit insurance quotations in respect of those companies. On 29 April 2015 they applied for reports in respect of GECX (Global Exchange and Commodities Exchange) Group Holdings SA of Switzerland, GECX Group Limited in the UK and GECX Group CZ s.r.o. They received confirmation on the same day that credit insurance up to £50,000 would be available in respect of the UK company, and on the following day they received confirmation that insurance up to £100,000 would be available in respect of the Swiss company but that no insurance would be available in respect of the Czech company, because "financial statements for the buyer are too old for Underwriting purposes." Through the internet, MP tracked down a telephone number for the UK company and telephoned them on the pretext of checking if they had any sales vacancies available. They confirmed their location, said they did have sales vacancies and suggested he email his CV to them.

134. Payment in respect of the second invoice arrived on 5 May and on the same day RCL paid PPSM's invoice and issued a formal invoice to GECX in Greece. On 7 May, MP provided a copy of the invoices to PW at his request, to assist him in arranging insurance for the shipment of the goods. RCL did nothing further in relation to these transactions, all the shipping being arranged by PPSM, without reference to RCL. No inspection reports were requested by RCL or provided to them in relation to the goods.

Subsequent Challenged Deals up to 11 August 2015

135. Matters now dropped into something of a routine. MP would be approached by PW with details of a new sale he had agreed to GECX and MP would receive confirmation from GECX, issue a proforma invoice to them and then await receipt of payment from them before issuing a formal invoice to them and paying PPSM on their invoice. All shipping would be dealt with by PW and, as before, RCL would not ask for or receive any inspection reports.

Deals 4 & 5

136. The fourth and fifth deals involved Kaspersky internet security software. As with the previous two deals, these were two equal instalments of a single overall transaction – each involving 2,250 units of each of three different versions of the Kaspersky software. The total value invoiced by PPSM to RCL in respect of these two deals was €624,980 plus VAT and the total invoiced by RCL to GECX was €637,442.50 (with no VAT charged).

Deal 6

137. One material change, however, was that prior to the sixth Challenged Deal (a purchase by RCL of some Seagate disk drives to a value of €591,397.50 plus VAT invoiced to them by PPSM on 29 May 2015 and sold to GECX pursuant to an invoice dated 10 June 2015 for €603,225), GECX informed MP by email on 29 May that they wished to pass the deal through their Czech subsidiary. He was referred to PW to obtain any necessary documentation, and PW supplied a copy of a VIES VAT number validation check on GECX Group CZ s.r.o. dated 16 February 2015, a sheet giving its banking details at its accounts with two banks in Prague, a one-page document partly in Czech which appeared to confirm the existence of the company and a one page letter of introduction which was simply a reprint of the document set out at [107(4)] above, with the name and contact details of the Czech company at the foot instead of

the Greek company. No trading application form appears to have been requested by RCL or supplied by GECX in the Czech Republic, and no references were therefore provided or taken up.

138. RCL took the view that since this was simply another subsidiary of what they considered to be a large multi-national group, no further investigation was required into its substance or standing. This, it will be recalled, was the company in respect of which Euler Hermes had refused RCL's application for credit only a month earlier, on the basis their filed accounts were out of date.

Deals 7 & 8

139. The seventh and eighth Challenged Deals (the seventh involving the four same versions of "Mr Site" software as the first Challenged Deal referred to at [105] above and to a similar value and the eighth involving 2,700 units of "German Microsoft Office 2013 Home Business") were also invoiced by RCL to GECX in the Czech Republic.

140. In relation to the seventh transaction, this appears to have been under discussion since the completion of the original deal in "Mr Site" software in late April 2015 (see [123] to [125] above). On 1 June 2015 RCL issued a proforma invoice to GECX Greece for it, presumably based on information provided to them by PPSM, though we were not referred to any material in the bundle in relation to that. However, in response to an enquiry by email from MP to GECX on 17 June, asking for an update on "the Mr Site order I have pending for you", on 18 June 2015 matters appeared to accelerate rapidly. On that day at 7.23am, GECX emailed MP, asking him to "remind" them of the "quantity per code and relevant pricing", which seems a rather odd query to be raised in an arm's length commercial transaction. At 9.55am on the same day, MP forwarded RCL's original proforma invoice to GECX and asked them to "let me know when we can proceed". MP forwarded to SB an invoice from PPSM (which was dated 8 June 2015 and marked "Rev 1", which clearly indicates there had been an earlier version which did not appear in our papers). This invoice was the for the same number of units of the same types of "Mr Site" software that were reflected in RCL's proforma invoice of 1 June 2015. After subtracting RCL's 2% margin from the prices it had quoted in its proforma invoice, the prices in PPSM's revised invoice exactly tallied with that proforma. In response to MP's email, SB asked him "is this the one GECX are paying today?", to which he replied "Yes".

141. In fact, payment was not received until 22 June, at which point RCL received €406,105.48 into their account, compared to the proforma invoice total of €406,115.50. RCL were informed by their bank that GECX had attempted to pay the amount into their £sterling account, which the bank queried with RCL, causing a delay while things were sorted out. On the following day (23 June), RCL paid out the full amount of PPSM's invoice (€477,776.40) to PPSM's bank account. On the same day, PPSM issued a further revised invoice. Although MP referred to this invoice in his witness statement as "increasing prices", in fact the only changes were limited to adding a "Shipped to" note saying "via PPSM direct", removing a note "You must have your own insurance to cover transport" and adding a note of the £sterling figures for the net, VAT and total Euro figures on the invoice, at a notional conversion rate of €1.40 per £.

142. As a curious follow up to this transaction, MP included in his evidence a stock offer that had been made to him on 8 July 2015 for some Mr Site software, which he forwarded to PW. This did not go any further, but the offer itself deserves closer examination. The details are unclear, but two products were involved, "Mr Site Classic" (1000 PCS) and "Mr Site Starter". They were described as "First come first served, last stock", but priced at "£4.99 take all/Euro 6.99/USD 7.99". It is surprising that these prices did not give rise to some comment or

question, given that the unit prices for apparently the same Mr Site products charged by PPSM to RCL just two weeks earlier had been €22.99 and €41.38.

Deal 9

143. The ninth Challenged Deal was a further order for German Microsoft Office, this time 3,000 units. The number required was reduced by GECX to 2,900 by email to MP, and at the same time they asked him to address RCL's invoice to the Greek company again (he had continued issuing RCL's proforma invoices addressed to the Czech company). He did so, and issued all future invoices to the Greek company.

Deals 10 & 11

144. The tenth and eleventh Challenged Deals were again effectively a pair. They involved similar "Mark" branded SD cards to those involved in the second and third Challenged Deals (see [128] to [134] above), though this time there were 7,500 units involved in each transaction rather than 10,000, and the unit price to RCL was €26.34 plus VAT rather than €35.51. These transactions were notified to RCL on 15 July 2015 by email after a prior telephone discussion, thus happening a little less than three months after the previous supply of the same line of products. The apparently rapid and significant change of price on a product which MP understood to have been produced specifically for GECX did not give rise to any comment or question.

Deals 12 & 13

145. The twelfth and thirteenth Challenged Deals were again effectively a pair, each for 1,250 Sandisk Extreme branded 256GB SDXC memory cards. The unit price to RCL was €205.60 and its sale price per unit was €209.79. MP invoiced GEXC Greece upon receipt of payment, in the usual way. The payment for the last transaction was received on 5 August 2015.

146. MP knew that RCL had an account with the official UK distributor for SanDisk and when PW first talked to him about a pending order in relation to these cards, he had contacted that distributor to discuss availability and pricing. In conversation, RCL's account manager at the distributor had told MP that he had received an order from another customer for the same quantity of the same product. MP inferred that this order had been placed by PW, which gave him and AI some comfort as to the reliability of PW's assurances about the bona fides of his suppliers.

Meeting with HMRC on 11 August 2015

147. Due to issues which had come up on deal chains involving other suppliers to RCL, HMRC contacted RCL at the end of July to arrange a meeting. This was organised for 11 August 2015. HMRC were focusing particularly on purchases that RCL had apparently made from a supplier called Global SFX.

148. At that meeting, the focus was on how RCL conducted their "normal" business, and its deals with GECX were not mentioned. AI told the HMRC officers that the goods RCL traded in were normally delivered to their premises in Letchworth, but where they were handled by a freight forwarder RCL would receive inspection reports. They were informed of the Bootle office facility to check the validity of VAT registration numbers, which was more up to date than the Europa VIES system they had been using (they had used the domestic system in 2011, but that was done by SB's predecessor, and it appears knowledge of the domestic system had not been passed on to SB). A brief explanation was given of the *Mecsek* jurisprudence, specifically the fact that RCL could potentially be liable as a result of VAT losses in a different EU member state and not just the UK, should the goods it sold to an EU trader end up giving rise to a VAT loss there.

149. AI had been “visibly shaken” at being told the level of tax losses that HMRC considered likely to have arisen on chains which ended in RCL’s purchases from Global SFX. It was suggested that RCL should implement a serial number database for consoles they dealt in, so as to be able to detect any carousel activity; this database was subsequently implemented. Copies of VAT notices 703 and 726 were handed to AI and specific reference was made to section 6 of the latter notice, referring to due diligence. They were advised to “step up” their due diligence, especially on EU companies. HMRC also required a list of all products sold in the previous year and various other information.

RCL’s response to the August 11 meeting with HMRC

150. In consequence of this meeting, RCL started to carry out an extensive exercise of overhauling their procedures in an attempt to address more comprehensively the concern which HMRC had raised about RCL’s involvement in fraudulent chains of transactions. They suspended temporarily all UK purchases of consoles and set up a supplier database to make sure all relevant due diligence material had been obtained. They also established a process for recording in a database all the serial numbers of consoles they purchased. HMRC’s leaflet “How to spot missing trader fraud” was circulated to all sales staff. AI decided to suspend all deals with GECX, not because of specific concerns about fraud but because (a) he wanted to be sure that PPSM was sourcing all their stock from large reputable suppliers as they said they were, (b) he was concerned about RCL’s potential liability to GECX if any of PPSM’s suppliers disappeared with RCL’s payment and failed to supply the goods, and (c) RCL never had sight of the stock being sold. This suspension took place immediately. There was one current deal at the time on which RCL had just received payment from GECX, which was returned as part of cancelling the deal. AI also had concerns as to whether they had sufficient proof of export, especially bearing in mind the high value of the deals.

151. A meeting with PW was arranged for 12 August 2015 to discuss the situation. AI, MP and SB attended that meeting, which took place at Watford Gap Services (being a convenient mid-point for all parties involved). It focused very much on the supply chain leading up to PPSM, and AI’s concerns arising from the previous day’s meeting with HMRC. AI was not concerned about GECX, which he considered to be part of a massive multinational group. Clearly the goods were arriving with them, otherwise there would have been disputed deliveries or shortfalls and GECX would have been claiming for refunds. It was agreed that all future deals would be delivered through RCL’s warehouse, checked there, and then forwarded on to GECX. Risk and insurance was discussed. PW expressed concern about the risk of him being “cut out” from future deals with GECX as the relationship between them and MP strengthened, and repeated his assurances about the legitimacy and substance of his suppliers, many of whom he expected RCL already dealt with.

152. It was agreed in principle that a formal contract would be drawn up to regulate relations between PPSM and RCL and to address some of the concerns that had been aired at the meeting. No further deals would take place until that contract had been put in place.

153. On 14 August 2015, HMRC wrote to RCL with a standard form letter of “advice on risks associated with Missing Trader Intra Community Fraud and procedures for validating VAT registration details of trading partners with HMRC.” This letter referred to MTIC fraud as typically involving “high-value low volume commodities imported VAT-free from EU member states. These are then sold in the UK, including a VAT charge, after which the importer goes missing without paying the tax due.” The letter included, as an annexe, examples of “some factors HMRC has found to be indicative of MTIC fraud” which “should be taken into account when conducting your “Know Your Customer” checks.” The attached “list of indicators” appeared to be specifically addressed to fraud involving “trading in the metals sector”.

154. RCL instructed their solicitors to produce a draft contract, which was provided to them on 18 August 2015. As part of their housekeeping exercise on due diligence, RCL obtained from PW a copy of his driving licence and other documents (certificate of incorporation, VAT registration certificate, headed notepaper, rental invoice for trading premises and further completed trade application form) on or before 2 September 2015, and also obtained verification of PPSM's VAT number from HMRC's Bootle office on 21 September 2015. They also carried out further Euler Hermes and Experian checks on PPSM on 21 August 2015. Euler Hermes confirmed continuation of its credit insurance cover of £10,000 but Experian now categorised PPSM as "Maximum Risk" (having previously been "High Risk").

155. AI, MP and SB had a further face to face meeting with PW on 22 September 2015, at which amendments to the proposed contract were discussed and finalised (PW having already referred the draft to PPSM's solicitors for advice). AI once again asked PW about the "legitimacy" of his supply chain and was given similar assurances as previously. AI asked if PW would disclose the identity of his suppliers, and PW said he would, as long as RCL signed an agreement which precluded them from contacting (other than for "due diligence" purposes) any of PPSM's suppliers who were not already on RCL's records for the duration of RCL's relationship with GECX and for three months after RCL's last business with GECX.

156. AI discussed this proposal with GM, his fellow director. They decided that since PW was prepared in principle to disclose the identity of his suppliers (subject to the "non-compete" provision), that gave them sufficient assurance as to the substance and bona fides of those suppliers without it being necessary for RCL to potentially restrict their own future business with such suppliers if their sales people came across them during the normal course of developing RCL's business. They therefore agreed to go ahead without requiring disclosure of PPSM's suppliers.

157. HMRC also carried out a monitoring visit on 29 September 2015. The question of due diligence on new customers came up, and AI explained how RCL used Euler Hermes to satisfy themselves that they were dealing with reputable companies.

158. MP received back the signed contract from PW on 30 September 2015, and on the same day he emailed GECX to say that RCL was now in a position to proceed with GECX's next order. Whilst the contract included provision for PPSM to notify GECX within 2 business days of signature of the contract that RCL was acting as PPSM's agent and that all claims in relation to the supply of the goods should be brought solely against PPSM and not RCL, we were not taken to any evidence that this notification was ever given, or that RCL chased up for confirmation that it had been given. The nearest thing to such notification was some wording which RCL endorsed on some of its later proforma invoices and final invoices issued by them to GECX (see below).

Restarting of trading by RCL with PPSM and GECX

Deal 14

159. On 2 October 2015, PPSM notified RCL of the next order by issuing an invoice to RCL for the goods in question, 7,500 "Mark" brand 250GB SD cards (at a unit cost of €28.22 plus VAT, so apparently roughly the same unit price as the cards sold in deals 10 and 11, which had one quarter of the memory capacity) and 2,880 units each of 3 different Canon ink cartridges. The invoice total was €325,698 plus €65,139.60 VAT, total €390,837.80. This was the first occasion on which ink cartridges had been supplied to GECX by RCL. On 5 October 2015, MP sent a proforma invoice to GECX, totalling €332,369.40. On 7 October, GECX sent a copy of their payment instruction to their bank, requesting a payment of that amount to RCL. On the same day, RCL received that payment (subject to a bank charge deduction) and paid PPSM's invoice in full. The stock itself was delivered to RCL's warehouse on 14 October and

checked there before being despatched to GECX's freight forwarder in Poland by RCL using its own freight company on 15 October. On the same day, GECX emailed MP to ask for an "invoice for the payment we have done in 07/10/2015". RCL had issued the invoice on 12 October, and on 15 October MP emailed it to GECX in response to this request. The goods arrived in Poland on 21 October, two weeks after GECX had paid for them.

160. In the course of communications about this deal, GECX stated, in response to an email enquiry from PW asking for a forecast of the level of trading that they expected to do with PPSM/RCL, that "for the next 6-9 weeks we are able to spend about 400,000 – 500,000 euro per week".

Deal 15

161. At 16.23 on 14 October 2015, the same day as the goods on deal 14 arrived at RCL's warehouse, PW emailed a new invoice, dated 14 October, to MP in respect of "the products requested" by GECX. The invoice was for a further 1,000 "Mark" branded SD 250GB memory cards (at a unit cost of €28.22) and 5,000 Samsung SSD Echo 250GB hard drives (at a unit cost of €74.75). The value of the invoice was €401,970.00 plus VAT of €80,394, total €482,364. At 16.49 on the same day, MP emailed a proforma invoice to GECX, after adding RCL's 2% markup (in fact, the markup added to the SSD hard drives was slightly higher, increasing the proforma by €200). The total value of the proforma was €410,180. The following morning (15 October), GECX sent a "same day" bank transfer to RCL for the amount of the proforma and on the same day RCL sent payment to PPSM in respect of its invoice. On 16 October, in response to a query from GECX, MP confirmed to them that the money had been received and said that he was expecting the stock to arrive at RCL "early next week", at which point it would be forwarded on and invoiced.

162. In fact, it was not until 9 November that PW notified MP that he hoped to be in a position to ship the goods to RCL that day, and it was only on 11 November that MP emailed GECX to say that the goods were ready for collection from RCL (on this occasion, shipping was arranged by GECX, not RCL). RCL's stock count established that the consignment was 6 units of memory cards short (value approximately €170) and this was notified to GECX on 12 November; they confirmed the shortage in response on 13 November and agreed that RCL could replace them "on the next trade".

Deal 16

163. One of the issues that had come up when considering the contract between PPSM and RCL in September 2015 was the question of placing some sort of endorsement on the contractual documents between RCL and GECX to confirm RCL's status as agent of PPSM, and this was the first transaction in which that was done.

164. On 29 October 2015 (after payments had been made on deal 15, but before the goods had even arrived at RCL), PPSM issued an invoice to RCL for further Samsung SSD drives and Canon ink cartridges. On 2 November 2015 MP sent a purchase order to GECX in respect of the same goods. On 18 November payment of that proforma was received by RCL, which paid PPSM's invoice the same day. RCL issued their formal invoice to GECX on 19 November. No attempt was made by GECX to collect the goods until 7 December, at which point the vehicle which arrived to collect them was found to be too small. It is not clear precisely when the goods were finally collected.

Deal 17

165. On 17 December 2015 at 18.21, GECX emailed both RCL and PPSM, saying they were seeking to purchase 750 Bose QC20 Acoustic Noise Cancelling headphones (a product entirely new and different in nature from what had been previously supplied), and asking "what you

can source for us". On 18 December, following a chasing email from GECX at 11.50, PW emailed back at 12.19, saying "I have the required stock for you and will send the relevant paperwork to Revive in the next couple of hours". That same afternoon, he sent an invoice dated 17 December 2015 (i.e. the previous day, when the initial enquiry had been received) to RCL for the headphones, at a unit price of €250.80, net total €188,100 plus €37,620 VAT, totalling €225,720. The same afternoon, and before PW had sent PPSM's invoice to MP, MP issued a proforma invoice by email to GECX with a unit price of €255.91 (representing slightly more than a 2% uplift), total €191,932.50. On 21 December 2015, GECX made payment to RCL of its invoice, and RCL paid PPSM €225,588 and issued an invoice to GECX in line with its previous proforma. The apparent shortfall of €132 in RCL's payment was not explored at the hearing. Details are sketchy, but it seems the goods were received at RCL on 6 January 2016 and collected on behalf of GECX on 7 January, along with the shortfall of ink cartridges from the previous order.

Balance of probabilities warning letter re PPSM dated 21 December 2015

166. On 23 December 2015, RCL received a letter dated 21 December from HMRC. This letter was headed "Balance of Probabilities Tax Loss Warning". It warned that a significant number of RCL's purchases appeared to be connected to fraud within the supply chains commencing with a defaulting trader in the UK. The suppliers in question to RCL included PPSM, as well as two others. The letter warned that "You should satisfy yourself that you have undertaken sufficient due diligence proportionate with the perceived risk to satisfy yourselves as to the integrity of your suppliers and customers, and of the underlying supply chains."

167. In response, RCL immediately suspended dealing with PPSM.

168. HMRC asked to meet RCL, and that meeting took place on 13 January 2016 at RCL's premises. The meeting was focused on RCL's suppliers, and RCL were asked to provide various information in relation to both their suppliers and their customers, which they did.

169. Following this meeting, RCL pressed HMRC on 18 January 2016 whether there was yet any feedback from HMRC on the recent visits they had made, including to PPSM. RCL wished to know whether they could recommence trading with those suppliers.

170. On 19 January 2016, AI had a further telephone conversation with officer Stock at HMRC, as a result of which he believed RCL was being given the "all clear" to recommence trading with PPSM. Officer Stock strongly disagreed that this telephone conversation could properly have given rise to such an impression. We do not consider it necessary to make any detailed findings of fact in relation to this conversation, but we do accept AI's assertion that he genuinely believed following that conversation that HMRC did not have concerns relating to the source of the goods bought from PPSM and sold to GECX.

171. After consulting with GM, AI therefore informed MP on 20 January 2016 that he could continue with the GECX deals.

Final resumption of trading with GECX

172. It seems that PPSM had already lined up some further deals for sale to GECX through RCL, as MP sent four separate proforma invoices to GECX by email on 20 January 2016. One of them appears to have been cancelled later, but the other three went through as deals 18, 19 and 20 over the next few days.

Deal 18

173. This was for 900 SanDisk Extreme SD cards 512GB at a unit cost of €334.74, total sale price €301,266. RCL received payment of their proforma on 22 January, and paid PPSM's invoice the following Monday, 25 January 2016. They issued their invoice on 22 January. The

goods do not appear to have arrived at RCL and been made ready for despatch to GECX until 19 February 2016. They were collected on 22 February.

Deal 19

174. This was for 1500 Bose QDC20 Acoustic Noise Cancelling headphones at a unit cost €255.92, total sale price €383,880. RCL received payment of their proforma on 26 January 2016 and paid PPSM's invoice the same day. They issued their invoice to GECX on the same day. It is not clear when the goods actually moved.

Deal 20

175. This deal was an exact copy of deal 19 above in terms of the goods and the price. RCL received payment of their proforma on 2 February 2016 and paid PPSM's invoice the same day. They also issued their invoice to GECX on the same day.

Final termination of trading with PPSM

176. On 3 February 2016, AI had a telephone conversation with officer Stock of HMRC, who told him that the majority of PPSM's trades went back to a missing trader. Confirmatory letters would follow in due course. AI immediately instructed MP to suspend trading with PPSM. Payment had been received the previous day from GECX in respect of a new order, but that payment was returned to GECX.

177. RCL carried out no further trades with PPSM or GECX, though it came to light that PPSM was still carrying on that trade for some time afterwards, using other intermediaries.

THE LAW

178. In the first FTT decision, a brief summary of the law was given at [3] to [5]. That summary is uncontentious, and is sufficient for present purposes. We do not propose to repeat it here. As set out in the UT decision when remitting the appeal to the FTT, the key question for this Tribunal to address is whether RCL should have known that the Challenged Deals were connected with fraudulent evasion of VAT.

THE ARGUMENTS

179. There was no material dispute as to the legal principles to be applied. The key argument was what result they should give rise to in this case. Their submissions can be summarised as follows.

For HMRC

180. Ms Vicary observed that an explanation had been provided by RCL as to why they had engaged in the twenty Challenged Deals. In deciding whether RCL should have known of the connection of those transactions to fraud, this Tribunal was required to consider the explanation that had been advanced. As she argued it: "in order to dismiss the appeal this tribunal would have to be satisfied that the explanation that has been provided by this appellant for engaging in the deals was in all the circumstances a reasonable one. It is only by satisfying itself that the explanation given by the appellant was reasonable that this tribunal would be able to determine that there was another reasonable explanation and therefore the connection to fraud was not the only reasonable explanation."

181. Ms Vicary then submitted that RCL's explanation boiled down to a simple assertion that they acted reasonably when they believed what PW had told them about his need to involve RCL, and that this amounted to a reasonable innocent explanation for the transactions in spite of all the other "red flags" which she submitted were (or ought to have been) identified by RCL by reference to VAT Notice 726 and HMRC's "How to spot missing trader VAT fraud" leaflet.

182. She submitted that the history of provision to RCL of education about VAT fraud (and the delivery of associated leaflets and notices) showed that they were (or should have been)

well aware that the market in which they carried on business was one in which there was a great risk of VAT fraud. So far as reliance on PW was concerned, his “great reputation in the industry” actually boiled down simply to the fact that AI and MP had known PW as a nodding acquaintance at Prism ten years previously, and AI was aware that PW had joined Prism from CentreSoft, a large and reputable company, at a position senior to him. RCL had not carried out any meaningful due diligence into PPSM, the only visit to their office being carried out by a junior salesman in order to oversee the movement of funds on the first console deal between the two companies, which had already been agreed by that time. A basic credit check had only been carried out after the first deal with PPSM had been agreed, and the account opening documents which were obtained from PPSM at that time were wholly inadequate, with no trade reference being taken up. When PW approached RCL about the GECX business, his initial email ticked a large number of the “risk factor” boxes in HMRC’s published material (of which RCL was, or should have been, aware). With regard to GECX, the position was even more stark. RCL had accepted at face value a claim on a GECX web page of a connection to the Al Rajhi group of companies; it could have derived no comfort from the credit checks they belatedly carried out; and the trading account application they received, which showed no trade referees apart from PPSM, and gave bank account details in Leicester, raised more questions than it answered.

183. In the round, she argued that RCL clearly should have known, from all the surrounding facts, that the Challenged Deals were connected to fraud and that RCL’s explanation as to why the deals were innocent simply could not be accepted as reasonable.

For RCL

184. Mr Brown argued that whilst RCL had some awareness of fraud within their industry, they did not (and could not reasonably) have the detailed understanding that HMRC were attributing to them. The last of the “tax loss” letters sent to them by HMRC had been nearly two years before the Challenged Deals. They had been approached by someone AI and MP regarded as highly reputable with a business opportunity that made sense and they had taken advantage of it after doing what seemed to them to be a sensible level of investigation before doing so. None of their research had given rise to any concerns, indeed in relation to PPSM the available material (including the poor credit rating) supported the reasons PW had given for wanting to involve RCL in the first place. PPSM were still dealing with GECX, with HMRC’s knowledge, nearly 18 months after the last of the Challenged Deals, and when they were eventually denied input tax recovery in relation to deals which they put through a different broker, that denial was not on the basis that PPSM were themselves inviting their new customer to “get involved in VAT fraud”, rather it was because PPSM themselves had ignored all the features of the trading which should have led them to the conclusion that it was connected to VAT fraud. So far as GECX was concerned, RCL had taken what steps they could to satisfy themselves of their substance and respectability, and there was no reason to doubt their apparent connection with the Al Rajhi group, especially bearing in mind the positive results that came back from their Euler Hermes enquiries on the Swiss and UK GECX companies.

CONSIDERATION OF THE ISSUES

Preliminary points

185. The issue we have to decide, as referred to at [4] above, is whether RCL should have known that all or any of the twenty Challenged Deals were connected to the fraudulent evasion of VAT; and in considering that question, we are required to consider whether there was a reasonable explanation of the Challenged Deals other than those transactions being connected

with the fraudulent evasion of VAT, consisting of that summarised at [18(7)] and [18(8)] of the Decision⁴, when viewed against the background of the totality of the evidence.

186. As was said in *Mobilx*:

59. The test in *Kittel* is simple and should not be over-refined. It embraces not only those who know of the connection but also 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.

187. It is also clear (see *Mobilx* at [83], endorsing *Red 12 v HMRC* [2009] EWHC 2563 at [111]) that –

... 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.

188. If Ms Vicary was arguing (see [180] above) that once an explanation had been given by RCL for the transactions they had undertaken, the burden then lay on them to establish that the explanation was a reasonable explanation which explains away any potential connection to fraud, we reject that submission. It is clear that the burden of showing that the taxpayer “should have known” of the connection to fraud lies on HMRC, and that burden must be discharged notwithstanding any purportedly innocent explanation for the transactions which is advanced by the taxpayer. As is made clear in the terms of the UT’s direction remitting this matter back to the FTT (see [4] above), the examination of the explanation advanced by RCL is simply a necessary part of the Tribunal’s consideration of the core question of whether RCL “should have known” of the connection to fraud and, like the Tribunal’s consideration as a whole, should be carried out in the light of the totality of the evidence.

Should RCL have known of the connection to VAT fraud?

189. We are satisfied that RCL was well aware of the high risk of fraud in the trading of high value goods in the technology sector. They had themselves had direct and recent experience of such fraud or attempted fraud – see [78] to [83] above. They had also received numerous warnings from HMRC, including some information on what to look out for and what steps to take to limit their risk. We accept that RCL did not have detailed knowledge of the various different ways in which VAT fraud could be implemented, but they were (or should have been) well aware of the need to satisfy themselves as to the standing and substance of their trading counterparties and the credibility of the opportunities presented to them.

⁴ See Appendix 1 to this decision.

190. RCL argue that they relied in large part on the explanations given by PW and that it was reasonable for them to do so, given his reputation in the industry and their prior acquaintance with him. But on closer examination, the personal connection with PW was in fact quite a tenuous one, and their knowledge at the time of his prior experience was limited to the fact that he had been recruited into Prism at a senior level from CentreSoft, a large and reputable company in the gaming industry.

191. It would not have been reasonable for RCL to take everything that PW told them at face value without making any further enquiry, and they do not seek to argue that it would. The argument is that, in the light of their prior knowledge of PW, their decision to take up the opportunity he offered was a reasonable one after the further enquiries which they in fact made.

192. But when the scope of those enquiries is considered, they fall short in a number of respects.

193. First, since PW had told them that the whole arrangement was instigated as a result of GECX wanting to make a large volume of purchases by way of intra-EU acquisition from the UK and his only contact with them had been through meeting them at a trade show, RCL were clearly aware that PW was not in a position to provide any real verification of the substance and bona fides of GECX, and should have concentrated much more on independent verification of it themselves. Having very recently had experience of “impersonation fraud”, they should have been particularly sensitive to ensuring that GECX was indeed part of a large and reputable group of companies, and not simply accepted the statement on GECX’s website that they were.

194. The GECX webpage was in any event singularly uninformative. Apart from claiming the connection with the Al Rajhi group, the business activities it referred to were either entirely irrelevant to the trading which was proposed by PPSM or were so vague that they gave an impression of being interested in any trading opportunity that might be profitable.

195. The unsigned letter of introduction should also have rung alarm bells. The description in it of GECX’s current activities as “commodities trading, brokerage, logistics, and finance. The core focus is on metals (base metals, bulk ore and steel/ Ferro-alloys) and soft commodities (fertilizer, palm oil, sugar and wheat), as well as coal and LPG” did not appear relevant to the purchases which they were making, and their stated intention of “becoming a leading name in the mobile phone trading business”, whilst not linked to the deals being offered by them, should have caused a great deal of concern.

196. Added to this, GECX’s trading account application form should also have caused concern at RCL.

197. In it, GECX claimed to have a turnover of over \$100 million and 18 employees. Such a business could be expected to have quite a significant head office. AI had told HMRC previously that it was RCL’s invariable practice to visit significant new customers and suppliers, mentioning a visit to Italy that had been made for that purpose; given the size of the deals that were being offered in this case, it is all the more surprising that no such visit was attempted.

198. The inclusion of details of a bank account in Leicester on the trading application form submitted by a Greek subsidiary of a multi-national group supposedly based in Saudi Arabia should have sounded a very loud alarm bell for RCL. It appears this was simply not noticed.

199. The same application form gave only one trade reference, PPSM. This again should have prompted a follow up. At the very least, RCL should have asked for another independent trade reference, and since the form also stated that the last audited accounts were dated 2014, copies of those accounts should have been requested – it could be expected that a significant subsidiary

of a large multi-national group would provide evidence to back up the claims made as to its size, and would have its accounts signed off by a large and reputable firm of auditors.

200. Finally, whilst the boxes on the trade application form stating that copies of a current utility bill and director's passport were attached, there were no copies in the evidence before us to show that these had in fact been provided.

201. When considering the opportunity being offered to them, RCL should have considered how commercially rational it was for their counterparties to be dealing with them on the terms proposed. So far as PPSM were concerned, there was at least a clear explanation of why they were offering this opportunity. RCL did not know the terms of PPSM's dealings with their own suppliers, but they were aware that PPSM could not pass title to the goods being supplied until they had been paid by RCL. Thus, so far as RCL were aware, PPSM could "line up" their suppliers but only be under an obligation to pay them once they had themselves received payment from RCL. This of course left RCL with the risk that they would pass on to PPSM the payment that they received from GECX (plus the additional VAT) but then the goods would never be acquired or supplied by PPSM (whether because PPSM or some earlier supplier in the chain "took the money and ran"); whilst this left RCL in an uncomfortable position, it clearly made good commercial sense for PPSM.

202. The commerciality from GECX's point of view however was far less clear. Under the terms proposed, they would be required to pay RCL "up front" for the goods, with delivery only occurring weeks later. GECX knew nothing of RCL and had never had contact with them. They had not asked RCL for any accounting or other information before starting to deal with them. It is not known whether they carried out any credit checks on RCL, but in any event they had agreed to pay £383,252.60 to RCL (and subsequently did so) without any apparent clarity (or indeed anxiety) about when they were going to receive the goods they were paying for. They may have considered themselves as contracting primarily with RCL (that is who they contacted when they were asking for apparent shortages to be dealt with), but if they were actually looking to PPSM to be responsible for delivering the goods to them, their position was even less rational – they were proposing to part with very large amounts of money in the expectation that the goods would in due course arrive, but with their only recourse being against PPSM, a company with negligible assets. This issue would have become all the more acute once it was confirmed on RCL's sales documentation to GECX that they were acting purely as agents for PPSM and responsibility for delivery of the stock lay with PPSM. In short, RCL should have asked themselves why a supposedly extremely large and reputable company were prepared to put themselves into this extremely risky situation.

203. We consider the Czech deals (and the questions surrounding them) to be no different in nature to the Greek deals for this purpose. By the time they took place, they were essentially little more than a continuation of the previous pattern with a substitute entity wheeled in by GECX in place of their Greek company.

204. It is also striking that it was only towards the end of April 2015, long after the first Challenged Deal had been completed, and when potentially very large volumes of transactions were in prospect, that RCL carried out their credit checks against the Swiss and Czech GECX entities. The fact that no credit check could be made against the Greek company with which they were actually dealing should have made them even more determined to follow up other avenues to satisfy themselves as to their standing and bona fides, and the total denial of credit insurance in relation to the Czech company due to their late filed accounts was hardly an encouraging sign for what was supposed to be a subsidiary of a major international group of companies. In the face of all the other warning signs, we do not consider that the availability of significant amounts of credit insurance in respect of other companies bearing the GECX

name could properly constitute sufficient reassurance for RCL as to the standing and bona fides of the GECX company with which they were actually dealing.

205. RCL had clearly received extensive warnings and were well aware of concerns about VAT fraud in their market sector. They should have been aware of the content of VAT Notice 726 and HMRC's "How to spot missing trader VAT fraud" at the time of PW's approach to them. The features of the arrangement which PW was offering raised a number of the issues which were identified as potential concerns in both those documents. Whilst PW may have been known to AI and MP for some time, that had been little more than a nodding acquaintance ten years previously and very little was actually known of his background or of his activities in the last ten years, except that he had clearly not been particularly successful; the arrangement he proposed involved a series of "pre-packaged" deals with an entirely unknown offshore trader on high value goods at a fixed profit margin with no contractual arrangements in place, requiring no commercial expertise, risk or effort on the part of RCL (apart from the risk of not being able to recover its input VAT). The deals under consideration were very different in nature from RCL's normal deals, and orders of magnitude greater in value. RCL essentially relied entirely on PW's assurances as to the trustworthiness of GECX. Their independent assessment of GECX was extremely limited, as set out above. In our view, after considering the totality of the deals effected by RCL (and their characteristics) and what RCL did or omitted to do, and what they could have done, together with all the surrounding circumstances, we find that RCL should have concluded that the only explanation for the Challenged Deals was that they were connected to fraudulent evasion of VAT. In reaching that conclusion, we have of course considered the explanation given by RCL as to how the Challenged Deals arose, but we do not consider that explanation to be a reasonable one in the circumstances when viewed against the background of the totality of the evidence, for the reasons we have given.

206. There were also isolated examples of events during the course of trading that should have rung further alarm bells (some of which are mentioned in our description of the deals set out above), but we do not consider them to do anything more than reinforce the alarm bells that should have been ringing strongly from the outset and therefore we do not set them out as necessary to our decision.

207. In short, after considering the totality of the evidence, we consider HMRC have established that RCL should have known that the only reasonable explanation for the circumstances in which their purchases took place is that the transactions were connected to fraudulent evasion of VAT.

CONCLUSION

208. In view of our findings above, the appeal is **DISMISSED**.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

209. 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.

**KEVIN POOLE
TRIBUNAL JUDGE**

Release date: 06th FEBRUARY 2024

APPENDIX 1

PARAGRAPHS 18(7) AND 18(8) OF THE FTT DECISION

18. Mr Inglis's evidence included the following:

....

- (7) In February 2015 he was approached by Peter Wildman of PPSM saying he would like to sell consoles and games to the Company. He knew Mr Wildman briefly while at Prism, and was aware of his reputation in the industry as a highly respected and well-connected businessman. Mr Wildman had previously been with Sony and Centresoft (the largest UK distributor), before Prism, and had set up PPSM in September 2006. Due diligence on PPSM included an Experian credit check that rated the company as "high risk". He did not consider that unusual for small companies in the industry, and indeed large UK games distributors may also have reportedly poor credit ratings. Further checks were carried out, and the Company insisted on a goods inspection report and a visit to PPSM's premises. Checks were also made on PPSM's freight agent, DL Freight. The Company obtained a trade application form, certificate of incorporation, VAT certificate, and company headed notepaper.
- (8) In March 2015 he and Mr Pappalardo met with Mr Wildman at Revive's offices, to discuss a business opportunity. Mr Wildman explained that he received stock requests from an extremely large international distributor with purchasing headquarters in Greece and its parent company in the Middle East; Mr Wildman had met the customer at the IFA Electronics trade show. However, the transactions were too large for PPSM to fund the VAT element as it would need to buy most of the goods from UK suppliers who would charge VAT, and the exports to Greece would not carry VAT and thus there would be refunds of VAT. Mr Wildman wanted Revive to help export the goods by contracting with the Greek customer; purchase orders would then be sent by the Company to PPSM, who would source the goods; the customer would pay in advance; PPSM generally made around 4% margin, which it would split equally with the Company. Mr Wildman intended to take the trading back into PPSM when it could fund the VAT. Mr Wildman stated that all PPSM's suppliers were large organisations, including official distributors of the products. Mr Wildman gave Mr Inglis the choice of having the goods delivered to the Company's warehouse, or instead being delivered to the customer by PPSM's freight company, ON Logistics; Mr Inglis chose the latter route as more efficient.

APPENDIX 2

"DUE DILIGENCE" SECTION OF HMRC LETTER DATED 23 SEPTEMBER 2011

Verifying VAT Numbers

It is imperative that you apply 'due diligence' to all your business transactions, and you must be able to satisfy the Commissioners that you have taken reasonable steps to ascertain the 'bona fides' of all your customers and suppliers. Please refer Public Notice 700/52, Section 6. These checks should include verification of the VAT numbers of all the suppliers and customers that your company intends to deal with. Those VAT numbers should be verified via our Wigan Office on 01942 666749 or by fax on 01942 666696.

I would also ask that you verify VAT numbers on a transaction-by-transaction basis rather than just verifying a VAT number the first time you have dealings with the trader. This check should be performed on the day the transaction takes place.

Credit checks

I would strongly advise you to carry out credit checks for all your suppliers and customers as a matter of routine. Checks via independent third parties are obviously more reliable than checks done on account information provided by the customer or supplier.

Annual Accounts check

Request the potential supplier or customer to provide you with their last two years **audited accounts**. The balance sheet, turnover, overhead expenses, profit/loss accounts etc would again provide you with the information to help you to decide whether to proceed with the transaction or not.

Bank Reference checks

It would be prudent to ask for a reference from your supplier and customer's bank.

I would refer you once again to Public Notice 726: Joint and Several Liability in the Supply of Specified Goods and the checks suggested therein.

I must stress that the checks contained in this letter and Public Notice 726 are guidelines for the kind of checks you could make to help avoid dealing with high-risk businesses and individuals. The checks you will need to make, and the extent of them, will vary depending on the individual circumstances of your trade and you are free to ask the most appropriate questions required to protect you in the particular circumstances of your individual transactions. As explained in Public Notice 726, where you have genuinely done everything you can to check the integrity of the supply chain, you can demonstrate you have done so, have taken heed of any indications that VAT may go unpaid and have no other reason to suspect VAT would go unpaid, the joint and several liability measure will not be applied to you. However, if you knew, or had reasonable grounds to suspect, that VAT would go unpaid then the measure can be applied to you.

APPENDIX 3

SECTION 6 OF NOTICE 726

6. Dealing with other businesses – How to ensure the integrity of your supply chain.

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

The following are examples of indicators that could alert you to the risk the 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?

2) Commercial viability of the transaction. For example:

- Is there a market for this type of goods – such as superseded or outdated mobile phone models or non-UK specific models?
- What research have you done to test whether these goods are available as described and in the quantities being offered?
- Is it commercially viable for the price of the goods to increase within the short duration of the supply chain?
- Have normal commercial practices been adopted in negotiating prices?
- Is there a commercial reason for any third party payments?
- Are normal commercial arrangements in place for the financing of the goods?