



TC00298

Appeal number MAN/07/1317

VALUE ADDED TAX — input tax — denial of right to deduct on grounds of alleged knowledge or means of knowledge of fraud by others — alleged MTIC and contra-trading — whether shown that appellant’s transactions connected with fraudulent evasion of VAT — yes — whether appellant “knew or should have known” of fraud — yes — right to deduct validly refused — appeal dismissed

**FIRST-TIER TRIBUNAL
TAX**

POWA (JERSEY) LIMITED

Appellant

– and –

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

Respondents

**Tribunal : Judge Colin Bishopp
Peter Whitehead**

**Sitting in public in Manchester on 15 to 19, 23 to 26, 29, 30 June and 1 to 3, 16 July
2009**

Michael Patchett-Joyce, counsel, for the Appellant

**James Puzey and Jonathan Barker, counsel, instructed by the General Counsel
and Solicitor to HM Revenue and Customs, for the Respondents**

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DECISION

Introduction

1. This is an appeal against the Commissioners' refusal to pay to the appellant, Powa (Jersey) Limited "(PJL)", almost all of the input tax for which it claimed credit in its VAT return for its three-month accounting period 06/06. The amount claimed was £1,038,880.83 and the amount refused £1,018,181.89. The disputed input tax was incurred in purchases of computer chips; the Commissioners say, as their amended consolidated statement of case puts it, that PJL's transactions "formed part of a transaction chain in which one or more of the transactions were connected with fraudulent evasion of VAT". They also say that PJL "knew or should have known of that fact". They do not go so far as to allege that PJL was a party to any such fraud. They do, however, assert that the transactions formed part of a contrived scheme designed to effect a fraud on the revenue, though again they do not allege that PJL was party to the contrivance.

2. The appellant was represented before us by Michael Patchett-Joyce and the Commissioners by James Puzey and Jonathan Barker, all of counsel. They produced very helpful skeleton arguments and other written submissions, and we are grateful to them for the clarity and economy with which they dealt with the hearing.

3. The disputed decision, as is usual in cases of this kind, is based (or, PJL says, purports to be based) upon the principles expounded by the Court of Justice in *Kittel v Belgium* and *Belgium v Recolta Recycling SPRL* (Joined Cases C-439/04 and C-440/04) [2008] STC 1537 ("*Kittel*"). These are, briefly stated, that a trader who has entered into a transaction, typically the purchase and sale of goods, knowing or having the means of knowing that his transaction is connected with the fraudulent evasion of VAT, forfeits the right to deduct the input tax he has incurred in that transaction.

4. Although what the Court said in *Kittel*, and the context in which it did so, are now well known, it is worth setting out a brief summary as the background to this decision. There is no doubt—certainly it was undisputed in this case—that the system by which VAT is charged on goods exported outside the European Community, or on goods sold by a registered trader in one member State to a registered trader in another, has been exploited for fraudulent purposes, and on a very large scale. The losses to the Exchequer, in the United Kingdom alone, are said to run into billions of pounds and unsurprisingly the Commissioners have taken various steps to combat the fraud. The question in this appeal is not so much whether there has been fraud, but whether the Commissioners' view of PJL's knowledge and precautions is justified.

5. In a typical fraud of the kind alleged here, commonly known as missing trader intra-community, or MTIC, fraud, goods (almost always small but valuable items such as mobile phones and computer chips) are acquired by a registered trader in the United Kingdom from a trader in another member State, and sold to a second UK-registered trader. The goods then usually change hands several times within the UK before they are sold to an overseas trader which, if it is located in a member State of the European Union, is registered for VAT in that member State.

Commonly the transactions all occur within a few days of the entry of the goods into the UK, sometimes even on the same day, so that goods enter the UK in the morning, pass through the hands of several UK traders during the day, and are exported again in the afternoon.

5 6. The first UK vendor, the acquirer from overseas, charges VAT on the consideration paid by his purchaser, but fails to account to the respondent Commissioners for that tax, and disappears. Such documentation as he may have had—if any—relating to his acquisition is never produced to the Commissioners. For the scheme to work he must be a VAT-registered trader who provides the
10 purchaser with a genuine VAT invoice, on the strength of which the purchaser claims an input tax credit. The purchaser’s own sale, and those of the other UK traders save the last in the sequence, usually generate a small profit and, consequently, a small net VAT liability, for which those traders account. The last trader, selling overseas, claims credit for the input tax he has incurred, but has no
15 output tax liability since the sale is zero-rated. Usually this trader makes a significant profit, though that is not invariably the case; occasionally one of the antecedent traders can be shown to have made the greatest profit of all those in the chain. All of these sales and purchases, including the sale to the overseas buyer, are almost always properly documented.

20 7. The acquirer who fails to account for the output tax he has charged to his purchaser is known—these are the Commissioners’ terms—as a “defaulter” or “missing trader”. The trader at the end of the UK chain who sells overseas is known as a “broker”, and those between the defaulter and the broker as “buffers”. The immediate purchaser from the defaulter is known as a “first-line buffer”. It is
25 said in this case that PJL was a broker. The Commissioners’ case, in this as in many similar appeals, is that the transactions were artificially generated, or orchestrated, and that the goods were not bought and sold in order to meet any real demand but as a means of defrauding the Exchequer.

30 8. There are several variations on the typical scheme described above. The most simple is that the goods purportedly traded do not exist; the whole series of transactions is a sham. That is not suggested in this case. The defaulter may not be a registered trader, but may masquerade as one by using—“hijacking”—a genuine trader’s identity. There are a few examples of hijacking in this case. A further device designed, if the Commissioners’ view of it is right, to make the fraud more
35 difficult to detect and prevent, and one which is alleged in respect of some of the transactions in this case, is known (again, this is the Commissioners’ term) as “contra-trading”. It was described in some detail by Burton J in *R (Just Fabulous (UK) Ltd and others) v Revenue and Customs Commissioners* [2008] STC 2123, and a brief summary will suffice for present purposes.

40 9. A contra-trader, a broker in one chain of transactions—again adopting the commonly used jargon, a “dirty” chain—in which a default has occurred, buys goods from a supplier in another member State, and sells them to a UK customer; after one or more further sales and purchases they are sold to a customer in another member State. The contra-trader and, usually, all the other traders in this
45 chain account correctly for their VAT liabilities; taken by itself it is a “clean” chain. The acquirer in the clean chain has incurred a liability for output tax which

(because the values are engineered to achieve this result) matches the input tax credit due to him (or ostensibly due to him) as the broker in the dirty chain. He does not need to make a large repayment claim, attracting the Commissioners' attention, but instead makes a modest payment, or a minimal repayment claim.

5 The same result may be achieved by undertaking a number of transactions generating an aggregate input tax credit matching the broker's output tax liability for the relevant accounting period. It is then the broker in the clean chain who has an input tax claim which, unless they can establish a link between the clean and dirty chains, the Commissioners must meet since the goods in the clean chain
10 have not themselves been used for fraudulent purposes.

10. A trader who knowingly participates in a fraud of this kind will usually be guilty of a criminal offence and, as the court made clear in *Kittel*, will forfeit the right he might otherwise have had of claiming credit for any input tax he has incurred. By contrast, a trader innocently caught up in the fraud, one who neither
15 knew nor could have known that his transactions were connected in some way with fraudulent activity by others, will retain the right of deduction. Between those extremes fall traders who know or have the means of knowing that their transactions are connected with fraud even though they are not themselves participants and who, for whatever reason, carry on with those transactions. They
20 too lose their right of deduction since, as the court put it at para 57 of its judgment, a trader in that position "aids the perpetrators of the fraud and becomes their accomplice".

11. We interpose at this point that Mr Patchett-Joyce raised several arguments about the correct application of a number of principles of Community law, including those expounded by the Court of Justice in *Kittel*. Among them was the
25 question whether a trader risks forfeiting the right to deduct if there is no privity of contract between him and the fraudulent trader, but although he addressed the issue in his skeleton argument he did not ask us to determine it. The question whether privity is necessary is one of the topics to be considered in a group of
30 appeals pending before the Court of Appeal. We proceed upon what has hitherto been the common understanding in the courts and this tribunal that privity of contract between the trader whose right to deduct is in issue and the fraudster is not necessary, and that while knowledge, or the means of knowledge, of some fraud connected with VAT must be established (the burden of doing so being on
35 the Commissioners), it is not necessary to show that the trader concerned knew (or could have known) of the details of the fraud, including the identity of the fraudster. It is enough that he knew, or had the means of knowing, or should have known, that his transaction was, on the balance of probabilities, connected with fraud. We shall deal later with Mr Patchett-Joyce's arguments relating to
40 proportionality, legitimate expectation, legal certainty and equal treatment, since it is first necessary to make some findings of fact.

12. Many of the facts in the appeal were undisputed, particularly those relating to PJJ's background and the detail of the transactions into which it entered, and by the end of the hearing it was not in issue that there were fraudulent defaults in
45 many of the chains of transactions in which PJJ participated; Mr Patchett-Joyce accepted on its behalf that the evidence of fraud by other traders, most of them remote from PJJ, in the majority of the deal chains was compelling. There was

clear evidence that one of its immediate suppliers was a knowing participant in the fraudulent evasion of VAT, but the Commissioners did not advance evidence that PJJ had actual knowledge that this or any other of its suppliers was an active participant.

5 13. There were, however, many issues on which the parties did not agree, at
least at the beginning of the hearing, and we heard the oral evidence of a large
number of witnesses. We had in addition the statements of several other
witnesses, some dealing with matters which were not controversial, others dealing
with matters which, though not agreed, were peripheral or otherwise did not
10 warrant the witness's attending to give oral evidence. Two of the witnesses whose
statements had been disclosed were unable to attend because of illness. As is
common in cases of this kind, we also had a vast amount of documentation.

The undisputed background facts

14. PJJ was incorporated in Jersey on 1 August 2002, but it was dormant until
15 late 2005 or early 2006. It is, or was, a member of what can loosely be described
as the Granville group of companies; though they may not have formed a group in
the formal sense, they were all ultimately (though usually through the medium of
off-shore trusts) in the ownership and control of a family with the name Mohsan.
Though we had no evidence from any member of the family, or from a director of
20 any of the relevant companies, it is apparent from the documentary evidence and
from what we were told by those witnesses who did give evidence on PJJ's behalf
that some of the family members are resident in the United Kingdom and some in
Dubai. Among the group companies was Time Group Middle East ("TGME"), a
company which we understand was registered in Dubai.

25 15. The group also formerly included a UK company, Granville Technology
Group Ltd ("GTG"), a manufacturer of computers targeted at the domestic market
and sold under the names "Time" and "Tiny"; GTG was previously called Time
Group Limited. For some years GTG had a substantial share of the UK domestic
computer market, selling them in shops and via the internet. It bought chips—
30 central processing units or CPUs—for use in its products from both of the major
manufacturers, Intel and AMD.

16. We were told—the evidence available to us was limited but the
Commissioners do not dispute it—that in common with other large manufacturers
35 (original equipment manufacturers or OEMs) it bought more chips than it needed,
taking advantage of its ability to buy at a discount from the normal price of the
chips, and sold its surplus, at a profit, onto the "grey" market, that is a market in
which small OEMs, unable to achieve savings by buying in bulk direct from the
manufacturer, and some retailers selling chips individually for use by consumers
building their own computers, bought their supplies. On occasion large OEMs ran
40 short of chips and made up the shortfall by buying in the grey market.

17. In order to distance itself, even if fairly superficially, from the grey market
GTG used two subsidiaries, Theta Overseas Limited ("Theta") and Powa (Ireland)
Limited ("PIL"), the latter being, as its name suggests, incorporated in Ireland.
We were told that the distancing was in part necessary because Intel and AMD did
45 not wish to be seen to feed the grey market. Theta undertook what was described

to us as GTG's inventory management, essentially ensuring that it had sufficient supplies of the chips it needed, and arranging to dispose profitably of its surpluses. PJJ's case (which on this point the Commissioners do not dispute) is that chip prices were volatile, reflecting a fluctuating demand, and were likely to
5 change without warning as the manufacturers attempted to build up sales, or introduced a new model. Theta bought directly from the chip manufacturers, but PJJ was its intermediary with the grey market, undertaking the sales and purchases of the chips to and from traders in that market. The chips were brought to the Time Business Park in Blackburn, at which GTG had its manufacturing
10 facility, and where the various UK-based companies within the group had their offices. The site included secure storage facilities in which the chips were kept until they were used or sold on.

18. After 2000, PJJ did not file accounts with the companies registry in Ireland or, as was apparent from a letter from its former auditors to the directors and
15 shareholders, a copy of which was within the documents produced to us, provide the auditors with access to its books and records. In August 2005 the auditors resigned, for that reason, and PJJ was later struck off the register of companies because of its failure to file its accounts.

19. GTG entered into administration in July 2005, immediately ceasing to trade,
20 and entered into liquidation in January 2007. One of its joint administrators and, later, liquidators was Andrew Hosking, from whom we heard oral evidence. We will describe that evidence later in this decision. One obvious consequence of GTG's ceasing to trade was that it no longer had surplus chips for sale in the grey market.

20. Once GTG went into administration, and its historic source of chips dried
25 up, PJJ began to deal exclusively in the grey market, buying from other suppliers; Theta, we understand, stopped trading altogether. During the autumn of 2005 or the very early part of 2006 the decision was taken that PJJ should begin dealing in the grey market. We put the matter in the passive voice because it did not
30 clearly emerge by whom and in what circumstances the decision was taken, and we shall have more to say on the matter later. PJJ had been registered for VAT in the UK soon after it was incorporated, but was later deregistered as it was not trading. It submitted an application for re-registration on 20 September 2005, and its application was granted with effect from 1 October. It indicated in its
35 application that it would be trading in computer components, and that it expected to be a repayment trader, with an annual turnover of about £20 million. Trading seems to have begun in January or February 2006. Once it began trading PJJ bought and sold computer chips, exclusively within the grey market.

21. Its first VAT return was for period 03/06, a three-month period; PJJ did not
40 ask to be allowed to make monthly returns, though PJJ had unsuccessfully done so. It was a repayment return. The sum claimed was paid by the Commissioners, who did not subject the return to extended verification.

22. PJJ's second return, for period 06/06, was submitted on or about 4 July
45 2006. It covered sales of an aggregate value of about £7.5 million, generating (since almost all were to overseas customers) output tax of only £7,700, and 43 purchases generating a claimed input tax credit which, after setting off the small

output tax liability, left a net amount reclaimed, as we have mentioned, in excess of £1 million. This return did prompt an extended verification (that is, the Commissioners undertook extensive enquiries into the chains of transactions leading to PJJ's purchases).

5 23. On 16 September 2007 the Commissioners wrote to PJJ stating that they would refuse credit for the input tax incurred in 35 of the purchase transactions. On 30 October 2007 they wrote to the effect that the claim in respect of a further transaction would not be met, and on 20 August 2008 they wrote again, refusing credit in respect of one more purchase. The reasons given for the refusals were in
10 all cases the same: that the appellant's transactions formed "part of an overall scheme to defraud the revenue. The Commissioners are also satisfied that there are features of those transactions, and conduct on the part of [PJJ], which demonstrate that you knew or should have known that this was the case." All three of the decisions are challenged in this appeal.

15 **The factual issues**

24. Mr Patchett-Joyce did not formally concede that there was fraud in the chains of transactions, remote from PJJ, but he did not advance a positive case to the contrary and, as we have mentioned, by the end of the hearing he accepted that the evidence of such fraud was compelling; as he put it, in his closing
20 submissions, PJJ acknowledged "that in many instances the evidence of a scheme to defraud ... is powerful". By "fraud" we mean a deliberate failure to account to the Commissioners for output tax for which the person so failing knew he was liable to account, and a consequent loss of tax. Mr Patchett-Joyce's recognition of the "evidence of a scheme to defraud" carries with it the acceptance that there was
25 a tax loss in those chains—there is no reason to think that there was merely an attempt at fraud—but he did not make the same concession in relation to the three contra-trading chains which the Commissioners have identified. Here, he said, there was no tax loss as the Commissioners had refused the supposed contra-trader's input tax claim. We shall return to this point when we have set out our
30 findings of fact.

25. Mr Patchett-Joyce also did not concede was that there was, as the decision letters said, evidence of "an *overall* scheme to defraud the revenue". We think it appropriate to make some observations about this point now. The consolidated amended statement of case does not allege an "overall scheme", and it does not
35 identify, even indirectly, the supposed participants in such a scheme. It is only in the decision letters that the allegation of an overall scheme is to be found; here, too, there is no identification of the supposed participants. The statement of case does make some allegations of contrivance, with which we deal below, but the examples of contrivance the Commissioners seek to identify are not inter-related
40 and they cannot be said to amount to evidence of an overall scheme, in the sense that PJJ's transactions all identifiably formed part of a single scheme, or even of several schemes. There is certainly some evidence, which we shall relate below, of a scheme, and it is a necessary inference from the Commissioners' case, if it is correct, that some of the traders in each chain were acting in concert; but (with the
45 exception of contra-trade chains and those in which consignments had been split

or combined) the Commissioners did not even attempt to show that apparently unconnected chains were in fact interlinked.

26. However since, even in the decision letters, the Commissioners do not allege that PJJ was a knowing party to any such overall scheme—the letters go no further than to allege that a scheme existed—it does not seem to us important to deal with the point further, save to record that we do not make any finding that there was a single overall scheme implying the collusion of many traders, whether or not including PJJ. We proceed instead on the basis that we are required to determine only the allegations set out in the amended, consolidated statement of case.

27. The most important of the issues stemmed from Mr Patchett-Joyce’s argument that in no case could it be shown that PJJ had dealt directly with a trader which had defaulted (which the respondents accept) and that it did not, and could not, know that other traders, remote (in some cases several transactions removed) from itself would default, fraudulently or otherwise. It is the latter part of this argument which is the central issue in this appeal.

28. The Commissioners put their case, that PJJ knew or should have known that there was fraud elsewhere in its chains of supply, on three primary bases: that those controlling PJJ were very well aware of the prevalence of fraud in the grey market trade in computer chips and went into the business conscious but careless of the risks; that they failed to take any or any proper precautions—in particular the due diligence they undertook was superficial and designed merely to give the impression that care was being taken; and that the controlling minds of PJJ had shown a cavalier attitude to VAT compliance. All of these contentions were in issue.

29. As in other cases of this kind, the nature of the allegations made by the Commissioners against the trader tends to change as evidence emerges during the course of an investigation, and sometimes at the hearing itself. The Commissioners at times came close to an allegation that those controlling PJJ not merely knew, or should have known, of fraud elsewhere in the chains of transactions, but that they were party to it. Such an allegation is not, however, pleaded in the statement of case, nor is it made in any of the decision letters, and we think it appropriate to record, despite the conclusions which appear later, that we make no such finding.

35 *The evidence*

30. We heard oral evidence from the following witnesses:

- Roger Murphy, the officer who made the decisions under appeal and who undertook the investigations which led to those decisions. Mr Murphy became HMRC’s officer responsible for PJJ in April 2006.
- Nikolas Mody, an officer whose duties included examination of PJJ’s VAT returns and who, until Mr Murphy took over from him, was responsible for PJJ.
- Mark Priestley, the officer responsible for GTG and its associated companies.

- 5 ▪ Douglas Armstrong, Stephen Patterson, Erika Carroll, Paul Monk, Robert McNaught, Timothy Reardon, Andrew Siddle, Matthew Bycroft, Karen McDonald, Joanna Preston, Jonathan Laing, Colin Needs, Michael Quartey, Kastur Hirani, Azhar Akram and Peter Cameron-Watson, all assurance officers of HMRC responsible for monitoring one or more of the other traders which feature in the chains of transactions relevant to this appeal.
- 10 ▪ Michael Downer, an officer who examined some CDs discovered in an unrelated police investigation.
- 10 ▪ Tatjana Harris, an accountant in HMRC’s employ, who gave evidence about a loan between TGME and PJJ.
- 15 ▪ Sukhbinder Singh Lotay, also an accountant in HMRC’s employ, who gave evidence about the due diligence undertaken by PJJ.
- 15 ▪ Andrew Hosking, a licensed insolvency practitioner and a partner in Grant Thornton UK LLP, who as we have mentioned was one of the joint administrators and, subsequently, one of the joint liquidators of GTG.
- 20 ▪ Philip Woods, who was the financial controller of PJJ, PIL and other Granville group companies; and
- 20 ▪ Michael Chater, PIL’s and later PJJ’s general manager.

31. The statements of all the witnesses who gave oral evidence had been served in advance, and those statements stood as the witnesses’ evidence in chief, although we allowed additional evidence to clarify or correct the statements, and to bring the evidence up to date.

25 32. We had in addition the statements, which we have read, of several witnesses relied on by the respondents: Roderick Stone, who provides an overview of MTIC fraud and contra-trading, as the Commissioners perceive them, and of the measures the Commissioners have taken to counter them; John Cordwell, Peter Davies, Stewart McCaskell, Pankaj Mandalia and Robert Ross, also assurance officers who were responsible for traders which featured in the chains, and of Ian Henderson, whose evidence was limited to a narration of information set out in some of the Commissioners’ electronic records. Some of the evidence contained in their statements was not accepted by PJJ (as we have mentioned, two witnesses were unable to attend the hearing) and, although we nevertheless decided to read the statements, we have borne that fact, and the absence of cross-examination, in mind in reaching our conclusions.

35 33. The appellant had served the statement of Mick Westley, the director of Techcomp Limited, one of PJJ’s suppliers. Mr Westley did not give oral evidence—we were not told why it had been decided he should not do so. We have read his statement, although Mr Patchett-Joyce did not urge us to do so, but find it adds very little. Mr Puzey made the comment that Mr Westley’s evidence was untruthful in one respect, in that he claimed ignorance of certain information which had indisputably been given to him by the Commissioners about defaults in

Techcomp's chains, but as Mr Westley was, in the event, not relied upon by PJJ, we attach little importance to the point.

34. We should mention at this point that we did not have a statement or any oral evidence from Pauline Bennett, at the relevant time the employee of PJJ who negotiated its sales and purchases under the remote supervision of Mr Chater—remote because Mr Chater seems to have spent nearly all his time overseas. We were told that the circumstances in which Mrs Bennett left PJJ's employment had led to significant bitterness, and it was for that reason that she was not being asked to give evidence. It is, of course, a matter for the parties to determine on which witnesses they rely, but as will become apparent, we found the lack of any direct evidence from Mrs Bennett about her involvement unhelpful. It is conspicuous too that we had no evidence from the directors of PJJ.

35. The statements were supplemented, as is usual in cases of this kind, by documentary evidence extending to a large number of lever arch files.

36. We do not propose to set out the evidence of the witnesses one after the other, but instead to deal with the matters in issue on an essentially chronological topic-by-topic basis. In addition, we do not propose to deal with some aspects of the evidence in detail. A good deal of it was very repetitive, and as the hearing progressed and the issues narrowed it became clear that much of it has limited relevance to the matters we must decide. In particular, there is little purpose in our describing each of the 37 transaction chains since Mr Patchett-Joyce's acceptance that the evidence of fraud is powerful makes it unnecessary for us to make a finding in each case. Where detail is necessary we have set it out; where it is not we do no more than set out our findings of fact and, where appropriate, the inferences we have drawn, identifying the nature of the evidence supporting those findings, and our reasons for making them.

The administration and liquidation of GTG

37. As is apparent from what we have set out above, GTG's financial difficulties which led to its being placed in administration set the scene for PJJ's beginning to trade. Mr Hosking's evidence was that the administration was acrimonious from the outset. He found, he said, that the directors, particularly Tahir Mohsan who was the director with whom he had the most contact, were hostile and uncooperative throughout. He told us too that he found Mr Woods, who had been GTG's financial controller, unhelpful and secretive, and that he suspected him of concealing information and of the manipulation of accounts. Mr Woods had had (as he agreed) unrestricted access to GTG's accounting systems. Mr Hosking believed that he had managed to preserve that access and that he was taking advantage of it by making entries in the records which Mr Hosking and his staff could not prevent since, unlike Mr Woods, they were not freely able to interrogate and make entries in the accounting system.

38. Mr Woods denied that he had been anything other than cooperative, and did not agree that he had dealt, at least in anything other than a legitimate manner, with GTG's accounts after the administration began. He did, however, accept that he had made some adjustments to the accounts. For reasons we develop later we do not accept Mr Woods as a witness of truth. In addition, there can be no doubt

that the directors of GTG were well aware of the nature of Mr Hosking's evidence, since his statement was served in advance of the hearing; they have chosen not to give evidence. For those reasons, and because of his demeanour as he gave evidence, we accept Mr Hosking as a reliable witness. In particular, we
5 accept that Mr Woods and the directors were at best unhelpful and at worst hostile to him and his staff.

39. One of his particular concerns, Mr Hosking said, was that stock listings were inaccurate, both in that they did not correctly record the quantities of stock in hand and in that the values of the stock items were misstated. He also
10 discovered that a considerable amount of stock had been removed by the Mohsan family in the days immediately before he was appointed, at a time when the directors must have been aware that administration was imminent, and that other stock had been concealed. He and his staff were often obstructed, he told us, when they attempted to gain access to parts of the site where stock was, or was thought
15 to be, stored. He found that goods, acquired on credit and subject to a retention of title clause imposed by an arm's length supplier, had been sold (or purportedly sold) by GTG, before it paid its supplier, to Theta, which had made no payment to GTG. One of an administrator's duties if (as in this case) the company cannot be rescued is to sell realisable stock for the benefit of its creditors; in this Mr
20 Hosking believed he and his staff had been deliberately frustrated. It became necessary eventually to appoint administrators to manage another group company which controlled the warehousing facilities on the site, in order that Mr Hosking might secure access to the stock which he believed to be present. We will deal later with a specific allegation relating to the removal of stock.

40. Mr Hosking's statement included an extract from the report he provided, as administrator, to what was then the Department for Business, Enterprise & Regulatory Reform, which is written in terms which are uncompromisingly critical of the manner in which GTG's accounting records, particularly its stock records, had been maintained. The true value of GTG's stock and the value
30 recorded in its books, Mr Hosking said, bore little relation to each other. The report contained an estimate of the value of the stock which appeared to be missing, at not less than £2 million. The report describes the evidence he found of the removal of stock in the few days before his appointment. This part of his evidence was not even challenged.

35 *The VAT compliance background*

41. Part of the Commissioners' case is that—not to mince words—the Mohsan family had scant respect for the law, as their attitude to Mr Hosking showed, that the structure of offshore trusts through which the trading companies were owned and controlled, even if it was not the sole purpose, had the effect of making it
40 difficult for the UK authorities to trace that ownership and control, and that their approach to the various companies' tax obligations was far from exemplary. It is, they say, a reasonable inference that their approach to the grey market trade in computer chips also falls below the standard to be expected of reputable traders. They rely on four episodes in relation to tax obligations, two before PJJ began
45 trading and the other two after its return for period 06/06 had been submitted. In

order to maintain the chronological scheme of this decision we will deal with those two events later.

42. For some time before GTG was placed in administration in July 2005, it had been under investigation by the respondents (as is not disputed) for suspected dishonest evasion of VAT. On 12 May 2004 Tahir Mohsan, who was a director of GTG, signed a statement admitting that the company had deliberately and knowingly under-stated its VAT liability on its returns. An assessment for over £4 million of tax was made in July 2006, and a penalty for dishonest evasion imposed in May 2007. Mr Woods told us that Mr Mohsan's acknowledgment was given during the course of an investigation into alleged irregularities not only in relation to VAT but also in relation to direct taxes. The latter investigation had led, he said, to a modest settlement, at less than £90,000 including interest and penalties; but the VAT investigation was still in progress when the company entered into administration and, because of the administration, the directors had been unable thereafter to deal with it themselves. They had in consequence been unable to reach a settlement which more closely reflected the scale of the understatement, which he believed was much less than the amount assessed. The assessment, and the penalty later imposed on the company for dishonest evasion, stood because the administrators chose not to appeal against them.

43. The acknowledgment signed by Mr Mohsan contains admissions of omissions from the company's accounting records, of inaccuracies in those records and of the submission of inaccurate VAT returns. Mr Mohsan also admitted in the acknowledgment that he knew that the VAT returns were incorrect. We had no detailed evidence of the circumstances in which the acknowledgement came to be signed, in part because the only witness produced to give evidence of financial matters, Mr Woods, told us he knew very little at that stage (even though he was able to speak with apparent authority about the parallel corporation tax investigation), but GTG was professionally represented at the time and we have no real doubt that Mr Mohsan understood what he was signing. The acknowledgement does not make any mention of the amounts of tax evaded, and it is also clear from the documents we have that the amount assessed was estimated, in part no doubt because of the inaccuracies in the accounting records which Mr Mohsan had acknowledged. We cannot be certain, therefore, that the amount evaded was as much as the £4 million assessed, but we are not willing to accept Mr Woods' evidence that the true amount was much lower. But even if we assume it was close to the £90,000 direct tax settlement, the figure represents a substantial sum. Mr Mohsan's acknowledgment, made with the benefit of professional advice, is not consistent with a simple error. We observe in passing that it was not put to Mr Hosking that GTG had any realistic prospect of appealing successfully against either the assessment or the penalty.

44. The second episode we should mention in the context of historic VAT compliance, if only for completeness since the Commissioners did not place great reliance on it, relates to one transaction which PIL undertook shortly before it ceased trading. It was a purchase of what were purportedly Intel chips. Its claim for credit for the input tax incurred on its purchase was initially met, but Mr Mody, PIL's assurance officer, nevertheless made some enquiries about the transaction. He discovered—from Intel itself—that the description of the goods on

the supplier's invoice could not have been of genuine Intel chips, and he made an assessment to recover the input tax, amounting to just over £10,000, an assessment against which PIL did not appeal. Mr Woods described the matter as a "mis-description error", and appeared to be unconcerned about it. We merely
5 comment that we found it surprising that a company which had traded in the computer chip market for several years should adopt so casual an approach to the description of the goods in which it was dealing.

Mr Woods

45. As we have already observed, we do not accept Mr Woods as a witness of
10 truth, and it is convenient at this point to explain why. At the time of the hearing he had been employed by the Granville group for about 15 years, for most of that period as the financial controller of one or more of the group companies. He was formally employed by one group company (the identity of which changed from time to time) but his responsibilities were not confined to that one of the group
15 companies which happened to be his employer. He was the financial controller of PIL throughout its life, and became the financial controller of PJJ when it began trading, being successively employed by those companies. At the time of the hearing he was employed by another group company, Supanet, to which shall need to refer again later. He told us he reported to the group financial director, but
20 it was clear from his evidence that he had frequent contacts with all the directors. It was also apparent to us—and Mr Woods did not suggest otherwise—that he had a great deal of knowledge of the group's affairs. In addition he had acted for many years as the Mohsan family's accountant, although he has no formal accountancy qualification. As we have already said, he had unrestricted access to the group's
25 accounting system, but maintained that the access came to an end when the administration began. We do not accept that claim. Mr Woods was evasive when asked to describe the adjustments he had made, and we prefer Mr Hosking's evidence that he was secretly manipulating the records.

46. Mr Mody, as PIL's and later PJJ's assurance officer, made visits in late
30 2005 and early 2006, with which we shall deal in the next section of this decision. He asked that Mr Chater, PIL's general manager, should attend the meeting. Mr Chater was not present, as he was abroad, and instead Mr Woods saw Mr Mody and answered his questions. He is not recorded to have said at the time, nor did he say in his evidence to us, that he was unable to deal with the questions. He told us
35 that he saw all the documentation relating to PIL's trade, and was personally involved in making and collecting payments. There can be no possible doubt, from his own evidence, that Mr Woods was thoroughly acquainted with PIL's business.

47. Despite his position and the extent of his knowledge, Mr Woods claimed not
40 to know that PIL had not filed its accounts with the Irish authorities since 2000 until August 2005, when the auditors resigned (he said the accounts had been prepared and "sent to Dubai", after which his responsibility ended); he claimed to be unaware at the time of Tahir Mohsan's acknowledgment of VAT evasion; and he claimed to be unaware that GTG's VAT returns which Mr Woods, as its
45 financial controller, prepared himself were incorrect. A major inaccuracy was that the returns sought input tax credit for what Mr Woods admitted he knew was

personal expenditure; any accountant, even unqualified, would know that the claim for credit could not be legitimate. We find it impossible to believe Mr Woods' protestations of ignorance; no-one with the length of service and extensive access to the directors and accounting records which Mr Woods enjoyed could be ignorant of such facts. There were other matters, less important individually, of which Mr Woods said he had no knowledge, usually claiming that Mr Chater alone knew the answer, and we found much of his evidence evasive. For all these reasons we treat Mr Woods' evidence with great caution; where it conflicts with the evidence of other witnesses, particularly Mr Hosking, Mr Mody and Mr Murphy, we have no doubt that their evidence is to be preferred.

48. On one point, however, we do accept Mr Woods' evidence. He told us that his experience with PIL, and the information provided to PIL by the Commissioners, had made him well aware of the risks of trading in the grey market in computer chips. He was conscious, he said, not only of the risk that a trader such as PJJ might find it had bought goods which had been the subject of a fraudulent transaction, but also of the risk of its being used by others for the purpose of contra-trading, a concept which he understood. He knew that it was necessary to take precautions and the nature of the precautions which should be taken, including due diligence in respect of suppliers and customers; and he acknowledged that he knew the Commissioners were vigilant in their monitoring of traders in the market. We had similar evidence from Mr Chater, and it was quite clear that neither was under any illusion about the hazardous nature of the trade on which PJJ embarked.

The start of PJJ's trading

49. On 15 November 2005, during the course of a visit he made to PIL to discuss its recently submitted return for period 10/05, Mr Mody discussed PJJ briefly with Mr Woods; Mr Mody had been informed of its re-registration. He was, he said, surprised to discover that PJJ's registration had been restored since ordinarily the application would have been referred to him by the registration unit before it was granted, but for some reason (not reflecting on PJJ) that had not been done. Mr Woods told him that PJJ intended to deal in goods such as plasma televisions, rather than (as the application for re-registration indicated) in computer components. The trade had not yet begun, and the discussion of PJJ does not appear to have continued any further at that stage, though Mr Mody did learn that PIL and PJJ had the same directors. Mr Woods also told Mr Mody that PIL would continue to trade in computer chips; there is no hint in Mr Mody's note that PIL's trade was to be wound down. The Commissioners' position is that these statements were untrue, that Mr Woods knew already that PIL's trade was to cease, and that PJJ would not deal in televisions. The statements were made, they say, to put Mr Mody off further enquiry.

50. On 15 February 2006 Mr Mody made a further visit to PIL, which had recently submitted its return for period 01/06, and again spoke to Mr Woods. He learnt that, contrary to what he had been told in November, PIL had indeed ceased, or virtually ceased, trading. After GTG's entry into administration and the consequent loss of its principal source of goods, Mr Woods said, it had been dealing in the grey market, but by late 2005 it was doing very little trade, and in

December 2005 none at all. In the course of this discussion Mr Woods told Mr Mody that PJJ's directors had still not finally decided the nature of the trade in which it would be engaged, despite what he had said at the November meeting. In fact, PJJ had bought 67 boxes of CPUs on the previous day and, as Mr Woods
5 knew, the initial due diligence enquiries Mr Chater was to describe to us, all into traders in chips, had taken place at the beginning of the month. It later became clear that PJJ traded from the outset in the grey market for computer chips, effectively taking over the trade in which PIL had been engaged for the last few months.

10 51. Mr Woods' evidence before us was that PIL had what he described as "warranty problems", by which we take him to mean outstanding, or potential, claims from customers to which defective goods had been supplied; his explanation was not entirely clear. That was not a factor mentioned in his or Mr Chater's witness statements and, even disregarding the lack of clarity, we treat the
15 explanation with caution. Even if it is true it does not reflect well on the directors that they allowed the company to be struck off or dissolved in order to escape its liabilities. The alternative conclusion, necessarily an inference but one we prefer, is that by this time it had become obvious to its directors that the Irish authorities would soon take action against PIL (as indeed they later did) and that it would no longer be able to trade. Among the documents produced to us was the auditors' letter of resignation, dated 18 August 2005, drawing the directors' and
20 shareholders' attention to the fact that no accounts had been filed for five years. We did not see any communications sent to the company by the Irish authorities, but it seems probable that there were warnings that action would be taken by them if the accounts were not brought up to date. Even in the absence of warnings it must have been obvious to the directors and Mr Woods that the Irish authorities would not sit back for ever. Whatever the reason for PIL's ceasing trade, it is clear that PJJ began trading in computer chips, buying, though by no means
25 exclusively, from PIL's suppliers, and selling, but again not exclusively, to its customers, and that in about January 2006 PIL ceased trading altogether.

52. Mr Woods also told Mr Mody at the meeting on 15 February 2006 that the goods in which PJJ was to trade would be received at the secure warehouse at Blackburn. PIL had, we understand, received all the goods in which it dealt, and not only those which had been intended, at least potentially, for GTG's
35 manufacturing needs, at Blackburn. The 67 boxes which had been bought on the previous day had also, it seems, been received at Blackburn, but Mr Woods agreed as he gave his evidence that was not the case in respect of every other consignment purchased by PJJ; goods were released to it at freight forwarders' premises and transported from those premises direct to PJJ's overseas customers or to the premises of freight forwarders nominated by those customers. Mr
40 Woods' explanation was that the cost and delay of bringing the chips to Blackburn would impede PJJ's trading, and it was for that reason decided not to adopt that course.

53. In our judgment the Commissioners are right about what Mr Woods told Mr Mody in November 2005 and February 2006. The evidence showed that almost the entirety of PJJ's trade was in computer chips; Mr Chater identified only two transactions in other goods. Instead, it seamlessly carried on where PIL had left

off and, as we shall relate in more detail later, Mr Chater moved from one company to the other, doing exactly as he had done before. Indeed, PJJ made a virtue of its having taken over PIL's suppliers and customers, as evidence of the care it was taking in protecting itself from the risk of becoming involved in fraud.

5 We are satisfied that PJJ's directors concealed its intended trade for as long as possible in order to avoid unwanted attention from, at the time, Mr Mody. The assertion that the goods in which PJJ was to deal, whatever they might be, would be brought to Blackburn, too, seems to us to have been designed to give Mr Mody some false reassurance.

10 54. Before leaving the topic of PJJ's starting to trade we need to deal with two further points. The first is the contention that PJJ took over PIL's unsold chips, leaving it with stock on which it could draw to satisfy its customers' orders. There was, in our view, scant evidence either that this had occurred at all, or of the quantities involved, even though the Commissioners accepted that there had been
15 some transfer of stock. Whatever the quantity of stock transferred, the evidence showed that none of it was actually traded in the period with which we are concerned, and we regard this feature of the case as insignificant. Mr Chater told us that some of PJJ's purchases were of goods intended for later sale, but closer
20 examination showed, at least in respect of the goods the subject of the 37 relevant transactions, that although there may have been a delay of a few days between PJJ's purchase and sale, the goods were invariably bought in order to fulfil an order: there was always an exact match between purchase and sale. We do not find that PJJ was buying for, and selling from, stock.

25 55. The second relates to a loan made to PJJ by TGME, a loan which was the subject of Miss Harris's evidence. Her view was that PJJ's assets were insufficient security for a loan of £1.5 million, the amount referred to in the agreement between the two companies, and its profits were not enough to service, at least on commercial terms, a loan of that magnitude. As between associated
30 companies, or companies in ultimate common control and ownership, as these were, those are not, in our view, factors of great significance, though the mix of formality and informality in the agreement and the attendant arrangements is perhaps unusual. What is more surprising is that the loan agreement was accompanied by a side letter by which, as part of the consideration for the making
35 of the loan, PJJ agreed to act as TGME's undisclosed agent for the sale of products described in an inventory (which we did not see) and to provide warehousing facilities for those products, and to do so for no reward at all.

40 56. Neither Mr Woods nor Mr Chater was able to explain the loan agreement and side letter. Mr Woods, as in relation to many other matters, claimed to know almost nothing about it and Mr Chater, despite his being PJJ's general manager, said he did not participate in making the decision to take the loan, though he did seem to be aware that a loan had been made. We say "seem to be aware" as his
45 evidence on the topic, as on much else, was vague when it was not evasive. With one possible exception, to which we shall come, PJJ does not in fact seem to have sold any goods as TGME's agent, and the purpose of the side letter is obscure. The one piece of information Mr Woods was able to offer in response to Miss Harris's evidence was that the whole £1.5 million had not been drawn, but he was able to provide no more specific information. There are several unexplained

oddities in the documents, and it is surprising to say the least that Mr Woods knew as little as he claimed about the arrangement, but we do not feel able to draw any further conclusion from this evidence.

The chains of transactions

5 57. In period 06/06 there were, as we have recorded, 37 purchases in respect of
which an input tax credit has been denied. There was no dispute about the identity
of the supplier in each case, nor that the supplier had accounted for the output tax
on the sale, after deduction of the input tax incurred in its own purchase. Mr
Murphy, by enquiry of other officers (most of whom gave evidence) and
10 and interrogation of the Commissioners' computer records, was able to trace the
chains of transactions back for several further steps, until he reached a defaulting
trader, a hijacker, a contra-trader (as the Commissioners believe the trader to be)
or a blocker. A "blocker" is a trader which features in the chain of supply, is not
itself a defaulter or hijacker, but which fails to provide sufficient information
15 about its own purchase to enable the supplier to be identified. The
Commissioners' suspicion is that a blocker is usually a first line buffer,
concealing not only the identity of the acquirer but also the overseas source of the
goods. Mr Murphy's view, which we consider to be entirely reasonable, is that a
genuine trader would not fail to produce such evidence, at least without a good
20 explanation, and the fact that such a trader has not done so is a reliable indication
that it has set out to frustrate the Commissioners in their investigation of the
chains of supply. There were three cases in which Mr Murphy traced the goods to
an alleged contra-trader, but all the other chains led back to a defaulter, a hijacker
or a blocker, and Mr Murphy considered them to be dirty chains.

25 58. Mr Patchett-Joyce made the point that Mr Murphy had, in essence, carried
out a paper exercise, that is he had constructed the chains from information
supplied to him by other officers, some of whom had themselves done no more
than consult the Commissioners' records. He did not argue that Mr Murphy's
analysis was inaccurate in that he had failed to use the information supplied to
30 him correctly, but there must, he said, inevitably be doubt about the accuracy of
an analysis based on evidence garnered in this way.

59. In many cases there would be substance to Mr Patchett-Joyce's argument.
Here, however, the information obtained by Mr Murphy was backed up by
extensive, even if not entirely complete, paperwork, in the shape of purchase
35 orders, invoices, release notes and similar items. We were satisfied from that
evidence that Mr Murphy has traced the relevant chains accurately. In those few
instances in which it had been necessary for him to draw an inference, we are
satisfied too that the inferences he has drawn are reasonable and justified by the
surrounding, even if indirect, evidence.

40 60. The chains, as Mr Murphy had identified them, were set out in
diagrammatic form on "deal sheets" which he prepared. They showed, to the
extent he had been able to trace them (that is, as far back as a defaulter or a
blocker), the transactions between the various traders who had dealt in the goods
before they were sold to PJJ, the sale or occasionally sales to PJJ and its own sale
45 or sales to its customers. In the majority of cases there was a simple sequence,
each trader buying a quantity of chips and selling the entire consignment to its

purchaser. In other cases the consignment was split by one of the traders, which sold some of the chips to one customer and the remainder to another (or occasionally two others), and in a few a trader bought two consignments and combined them in a single sale. We found these sheets very helpful.

5 61. In every one of the chains with which we are concerned PJJ acted as the broker, buying from a UK supplier and selling to a customer resident overseas, in the majority of cases in another member State of the European Union, though there were four sales to a customer in Hong Kong, three to a customer in Switzerland and one to the USA. It was undisputed that PJJ was entitled to zero-rate its sales. There were more sales than purchases since PJJ sometimes divided
10 the goods it had bought between several customers, though on each occasion it sold all of the chips it had bought. It is for that reason that we consider that the stock, if any, it took over from PIL is irrelevant.

15 62. The deal sheets were supported by a mass of documentation, to some of which we were taken as the witnesses gave their evidence. At the beginning of the hearing, Mr Patchett-Joyce indicated that the Commissioners would be required to establish fraud. By its end he accepted that the evidence of fraud by one or more of the participants in the chains, apart from those leading back to alleged contra-traders, at a point before the goods reached PJJ's immediate supplier, was
20 convincing, to the point that, in order to advance another argument, he was himself drawing attention to the extent of the fraud. For this reason, and despite the fact that we heard many witnesses who described their own investigations which led to Mr Murphy's preparation of the deal sheets, we do not consider it necessary to describe most of the chains, save in the most general way, or to deal
25 in detail with more than a few aspects of the evidence about them.

63. In many of the cases about which we heard evidence, the assurance officer responsible for a trader had attempted to visit the trader, only to find he had disappeared. In others, the trader was present, but was able to produce his trading records only with difficulty or reluctance. Most had managed to achieve a high
30 turnover, measured in millions of pounds per month, within a very short time after setting out in trade. Many had been carrying on quite different types of business, suddenly changing to dealing in computer chips but able to produce no evidence that their directors had any experience in that market. All had little or no staff, often consisting only of the trader's single director, and very small, minimally
35 equipped offices, or were using domestic premises and, in one case, a wine bar. In some cases it could be shown that what are referred to in the jargon as "third party payments" had been made. It is by no means conclusive, nor necessary, evidence of fraud that one trader is required to pay his supplier's supplier, but it is at least inconsistent with the workings of a true market in which it is in the interests of a
40 legitimate trader to conceal his own source from a customer who, were he to discover the source, might go directly to that trader in the hope of buying more cheaply. Mr Patchett-Joyce himself pointed out that in some of these cases an instruction to pay a third party had been passed down the chain several times, so that ultimately a purchaser paid the bulk of the price to a trader five or six
45 removes from him, and a small amount, insufficient to cover the VAT charged on the sale, to his immediate supplier.

64. One trader identified by the officers was traced to Scotland, where he had gone (from Yorkshire) when put in fear of his safety by persons who, he told the officer, had forced him to allow them to use his VAT registration number. His legitimate business, which he had consequently abandoned, had nothing to do with trade in computer chips, mobile phones or any other goods commonly associated with fraud of this kind. Although we had no evidence, even a statement, from the person concerned, but only the officer's evidence of what he had been told, the story was convincing, and Mr Patchett-Joyce did not challenge its truth—indeed, he referred to it as an example of the fraud on which he was himself by then relying. One of the officers, Mr Downer, had received some CDs which the police found in a raid unconnected with VAT fraud, and which they had handed to the Commissioners. The CDs contained spreadsheets relating to some of the chains leading to PJJ; the spreadsheets included more steps in the chains, and more detail, than could possibly be known to any one trader in a legitimate market. The Commissioners rely on the CDs as evidence of a scheme; that in our view is an inevitable conclusion, although it does not follow that all of PJJ's transactions form part of that scheme. We should make it clear too that PJJ did not feature in the spreadsheets, although one of its immediate suppliers did.

65. We think it worth describing one set of transactions in this same context. Mr Murphy established that a German company sold 2,600 chips to a trader which had hijacked the identity of a company known as KEP 2004 Ltd (at least, KEP 2004 claimed that its identity had been hijacked; Mr Patchett-Joyce, in our view rightly, suggested that the claim was false). On the same day the (purported) KEP 2004 sold all of the chips to Time Corporates Ltd, but in two transactions, one in respect of 2,000 chips and the other in respect of the remaining 600. The parcel of 2,000 chips was then sold successively to Resolutions (UK) Ltd, Nirvana Trading Ltd, Bluestar Trading Ltd, Micropoint (UK) Ltd, Megantic Services Ltd, Rapid Global Ltd and Techcomp Ltd. The other 600 were sold successively to Resolutions (UK) Ltd, Nirvana Trading Ltd, RS23 Ltd, The Fones Centre Ltd, Grandbyte Computers Ltd and Techcomp Ltd. Techcomp then sold all the chips, but still in two parcels of 2,000 and 600, to PJJ which sold the entire 2,600, in a single transaction, to a Danish customer. The documents secured by Mr Murphy show that all of the transactions, from start to finish, took place on a single day, 6 April 2006. It follows that within the space of 24 hours, the goods had entered the UK from Germany, had passed through the hands of, in one case, 10 and, in the other, nine UK traders, and had then been sent to Denmark.

66. The Commissioners do not argue that PJJ knew that the goods had passed through the hands of so many traders in a single day, nor that it knew the identity of any of the participants apart from its own supplier and customer. They do, however, say that the transactions are not of a kind one might expect in a legitimate market. We agree. It is entirely understandable that a trader will buy a single consignment of goods, all to the same specification, and divide it into two consignments for sale to different customers, but the division of a consignment into two, both sold to the same customer, in separate deals and at different prices on the same day, as is the case here, requires an explanation. None was offered. Within these chains Time Corporates, Resolutions (UK) and Nirvana Trading each bought two consignments of identical goods, from the same supplier and on

the same day, but at different prices. In addition, Nirvana Trading sold the two consignments to different customers, but after the goods had changed hands a few more times, they were all bought by a single purchaser, Techcomp.

5 67. It is not possible to say, from these two sequences of transactions alone, that the trading was contrived, though the coincidence that the two consignments found their way to Techcomp after they had been separated is remarkable if not more. But there are other chains which have the same characteristics. Even when the consignment remained intact it is in our view extraordinary that, again within the space of a single day, it entered the country, was traded by several UK dealers, 10 and was then re-exported. In none of the chains traced by Mr Murphy was there a trader which PJJ could identify as a manufacturer or an authorised supplier which might have a surplus of chips bought for their intended purpose of being used in computers, nor of a trader—an OEM or a retailer—which might itself have a need for chips.

15 68. There were other oddities. Sometimes goods were released, or at least a release instruction to a freight forwarder was dated, before not only the customer but also the supplier had placed an order for the goods. There were release notes which pre-dated payment. PJJ itself sometimes released goods to its purchasers before payment. There was evidence of the third party payments to which we have 20 referred, though no evidence, nor any reason to think, that PJJ either made or accepted such payments. There were several chains in which all the traders before PJJ made very small profits, marking up the chips by only a few pence each, while PJJ made a much more substantial profit. Mr Chater explained that the exporter needed to make a substantial profit in order to cover the cost of 25 transporting the goods to the overseas buyer's premises; that explanation is undermined to some extent by the fact that in some cases PJJ itself made a very modest profit. Nevertheless we do not think much can be read into the level of PJJ's profit; rather more important is the fact that many of the antecedent traders made minute profits, not occasionally but repeatedly. We doubt whether such 30 frequent small profits are a characteristic of a genuine arm's length market. This feature of the case is not, however, a major factor in our conclusions.

69. In our opinion Mr Patchett-Joyce's ultimate acceptance that there was extensive fraud in the earlier parts of the chains was well judged. He adopted the 35 entirely proper course of testing the evidence, and the equally proper course of recognising that the evidence of fraud was irrefutable. Save in the case of the contra-trading chains, there was either ample evidence of fraudulent default, or ample evidence from which an inference of fraudulent default could be drawn. The Commissioners had made assessments against those traders who could be identified, and (more as a matter of form than with any hope of payment) against a 40 "taxable person purporting to be" each trader whose identity had been hijacked. We accept the evidence that none of those assessments has been paid, and that the Commissioners have established a tax loss in those chains. Again, Mr Patchett-Joyce accepted that the evidence to that effect was convincing.

45 70. The contra-trading chains are, of course, rather different since by their nature they do not lead to a tax loss, but are designed to conceal a dirty chain, and make the offsetting of the input tax incurred by the contra-trader in that chain

harder to detect and to counter. The clean chains identified by Mr Murphy have, however, the same characteristics as the dirty chains, of the rapid changing of hands within the UK of goods which arrive in the country at the beginning of the day and leave at the end of it. The evidence shows that the contra-traders had
5 offset, or sought to offset, large output tax liabilities against closely matching input tax credits in the manner described by Burton J in *Just Fabulous*. We have no doubt that Mr Murphy is right to say that they are indeed contra-traders, and that their purpose was the fraudulent evasion of VAT. Again, it is not argued that PJL knew the identity of the contra-traders, or that it knew the chains in which it
10 featured were being used specifically for contra-trading; the Commissioners base their case on its knowledge or means of knowledge that those chains were being used for some purpose connected with the fraudulent evasion of VAT.

The negotiation of PJJ's transactions

71. We had very little evidence about the detail of the manner in which PJJ's
15 purchases and sales were negotiated, principally because Mrs Bennett did not attend the hearing, and Mr Chater, even though he was ultimately responsible for the negotiations, was able to tell us surprisingly little. We think it appropriate to begin this section of our decision with some remarks about Mr Chater's evidence. It related not only to the negotiations but also to PJJ's due diligence.

20 72. In his statement he described himself as having been PIL's general manager; yet he, like Mr Woods, claimed not to know of PIL's failure to file its accounts. When pressed on the point, he told us that he was responsible only for sales, and that Mr Woods or the group finance director had dealt with the accounts. He was vague about the circumstances in which PIL ceased to trade and about the reasons
25 why PJJ started to deal in computer chips, though he nevertheless emphasised the experience of the market in chips which he had acquired while PIL was trading, and in previous employments, and the large number of contacts within the industry he had made. His statement went on to say that the main sources of surplus chips, while PJJ was trading, were US and Chinese OEMs, but he was
30 unable to explain why PJJ did not buy, even once, from an OEM or an authorised distributor, despite the range of contacts which he had established.

73. We found Mr Chater, too, an unsatisfactory witness. In addition to his inability to give explanations which one would normally expect a general, or even
35 a sales, manager to be able to give with ease, he was defensive, and sometimes evasive, as he gave his evidence. We have no confidence that he was truthful, and we treat his evidence with great caution. Some parts of it, as we shall indicate, we found incredible.

74. By his own account Mr Chater had no "hands on" involvement in the negotiations, since he spent almost all his time overseas. It was Mrs Bennett who
40 contacted, or received enquiries from, prospective buyers and sellers, who ascertained what quantities of chips were available and required, who agreed matters such as price and delivery and who arranged the inspections of the goods with which we shall deal shortly. She also handled the paperwork—raising and receiving purchase orders and invoices, making payments and ensuring that PJJ
45 was paid. There was some, but very vague, evidence that she had an assistant; even with an assistant our impression was that the burden on her of arranging all

the transactions in which PJJ engaged at the material time, if they were on an arm's length basis, was formidable. We had no evidence about the assistant save that we were told he was a freelance salesman, and we had no evidence from him. We were left with no information about what, if anything, he did on a day-to-day basis.

75. Mr Chater told us he kept in touch with Mrs Bennett, several times each day, by telephone and by internet communication using MSN Messenger. The need to keep Mr Chater informed in this manner can only have increased the burden on Mrs Bennett. Mr Chater said in his statement that Mrs Bennett sent him an email each evening, attached to which was a spreadsheet setting out details of the quantities of chips available from PJJ's preferred suppliers and the prices demanded, together with corresponding details of customers' requirements and the prices they were willing to pay. Mr Chater said he reviewed the spreadsheet overnight, and each morning gave Mrs Bennett instructions about those deals he was willing to authorise, those he would not, and those he wished her to renegotiate.

76. Mr Chater produced what he said was an example of the spreadsheet. The copy we had was very difficult to read, but it is apparent to us that it is not a sheet setting out the fruits of Mrs Bennett's enquiries on a single day, since it runs from 3 April to 16 August 2006. It was very far from clear to us, from examination of the spreadsheet and from Mr Chater's evidence, how he was able to determine from such limited information as the sheet contained which prospective deals were worth pursuing and which should be rejected. It is also difficult to understand how PJJ could conduct its business by means of overnight spreadsheets, since its own evidence was that the market was fast-moving, and that deals needed to be concluded quickly. That was the explanation offered for the rapid changing of hands of the goods which we have already described. A supplier might have a certain quantity of goods available at an acceptable price on one day; there was no evidence available to us that Mrs Bennett was able to reserve the goods at a fixed price until the following day, when Mr Chater had been able to give his authority to her to proceed, or of any other means by which PJJ could be confident the goods would still be available. Similarly, we have no clear idea how she could persuade a potential purchaser to wait until the next day while she checked with Mr Chater whether she should proceed with a particular transaction.

77. Even if we were to accept that Mrs Bennett produced a daily spreadsheet, we had no documentary evidence of Mr Chater's instructions to her, such as her notes made following their telephone conversations once he had been able to consider it. Similarly, we have no record of her negotiations with suppliers or customers; one would expect some note, even a brief handwritten record, whether the negotiations were successful or unsuccessful. Much of Mr Chater's evidence was to the effect that Mrs Bennett "would have" taken a particular course of action, yet Mr Chater was able to make even this assertion only by considering the limited available documentary evidence of deals which had taken place two or three years before he prepared his statement. He told us that he had prepared a "procedure sheet", a single page of routine instructions to be followed by Mrs Bennett, but even that was not produced to us. The reality is that we have almost

no reliable information about the manner in which Mrs Bennett actually went about identifying possible purchases and sales, of reaching agreement with suppliers and customers, and of creating and processing all the attendant documentation.

5 78. Again, the absence of evidence is not itself conclusive. The fact is, however, that PJJ has produced nothing to counter the Commissioners' contention, supported as it is by some evidence, even if circumstantial, that PJJ was engaged in a contrived market, that is one in which transactions were not freely negotiated but pre-planned, even if PJJ was not itself party to the planning. Nothing
10 produced by PJJ is inconsistent with the Commissioners' contention; PJJ's failure to call not only Mrs Bennett or to produce any other first-hand evidence of the manner in which the deals were negotiated necessarily leads to doubt about whether evidence to counter the Commissioners' case exists. We will return to the question whether anything more can be read into the absence of any such
15 evidence.

Due diligence and other precautions

79. As in other cases of this kind, the nature and quality of the precautions undertaken by PJJ are of critical importance. There are two aspects which need to be considered: the due diligence PJJ undertook into its suppliers and customers,
20 and the care it took in relation to individual transactions. The examination of the evidence which follows reflects the observation of the Court of Justice in *Kittel*, at para 51 of its judgment ([2008] STC 1537 at 1554), that "traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud" are "able to rely on the legality of those
25 transactions without the risk of losing their right to deduct the input VAT". The corollary is not that a trader who does not take adequate precautions loses the right to deduct, but that he risks doing so; the ultimate test is that adumbrated by the Court at para 61 of the judgment:

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

80. An honest trader who takes proper precautions is, obviously enough, less
35 likely to find that he has entered into a transaction "connected with fraudulent evasion of VAT" than one who has not taken adequate precautions. The nature and quality of the precautions taken are, therefore, relevant to the question whether the trader concerned "knew or should have known" that he was entering into such a transaction. A trader will not be fixed with knowledge he did not have
40 and could not reasonably have acquired, but will be fixed with the knowledge he could have acquired by the exercise of reasonable care. What is "reasonable" must, of course, be judged against the background of the trade in which the person claiming the right to deduct is engaged.

81. There is no dispute that Mr Woods and Mr Chater, as well as PJJ's
45 directors, were well aware of the hazards of the trade in which PJJ and later PJJ were engaged. As we have recorded, Mr Woods and Mr Chater both

acknowledged that they knew that MTIC fraud was endemic in the grey market in computer chips and that they understood how the fraud worked. Mr Chater accepted too that he was familiar with the requirements of the Memorandum of Understanding and the Code of Conduct agreed between the Commissioners and many dealers in computer chips and mobile phones. The requirements, perhaps better described as firm suggestions, have no statutory force, and do not displace a trader's own discretion; as Floyd J put it in *Mobilx Ltd v Revenue and Customs Commissioners* [2009] STC 1107 at [87], "the company has to exercise independent judgment, not delegate its judgment to HMRC." We accept, too, Mr Patchett-Joyce's point that, the Memorandum of Understanding and Code of Conduct notwithstanding, there is no positive obligation to undertake due diligence, or at least due diligence of any particular kind; it is up to the trader to determine how best to shield himself from the risk of participating in transactions connected with fraud. Nevertheless, the Memorandum and Code contain (as PJJ accepts) useful guidance, in the form of a non-exhaustive list of possible precautions and warning signs. It is recognised that a trader cannot normally know who is his supplier's supplier, or its customer's customer, and that he cannot be expected to undertake due diligence enquiries of traders other than those with whom he deals.

82. However, the Commissioners' published guidance indicates clearly that they do not consider that precautions end with due diligence of immediate counterparties; they expect traders to take care to ensure the integrity of their supply chains, which necessarily demands further steps. That guidance, of course, reflects the Commissioners' view, but in our view it is entirely consistent with what was said by the Court of Justice at para 51 of its judgment in *Kittel*, as was tacitly accepted by Floyd J in *Mobilx* (see [85]). Careful enquiries into the *bona fides* of suppliers and customers is a sensible starting point, but a trader can never be certain that his supplier has himself been diligent, or that, even if unwittingly, he has not sold goods which are tainted with fraud. For reasons to which we shall come a trader must also pay some attention to the *bona fides* of his purchaser.

Due diligence

83. The Commissioners accept that PJJ undertook some due diligence enquiries into its suppliers and customers; their case is that what was done was superficial and of limited value, to the extent that its real purpose was not the protection of PJJ, but window-dressing, designed only to give the impression that proper precautions were being taken. Some of its suppliers and customers were already known to Mr Chater and PJJ's directors because PIL had been dealing with them for several years. We interpose at this point that although PJJ indicated that it intended to deal with those traders exclusively, and indeed made a point of it during the course of Mr Mody's February 2006 visit, in fact it dealt with others with which PIL had not traded. It is also pertinent that one trader with which Mr Chater claimed PIL had an established relationship had in fact made only one supply to it.

84. Mr Chater's evidence was that on 7 February 2006 he and Mrs Bennett flew to the Netherlands where they saw representatives of seven traders—four customers and three freight forwarders—and then flew to London where they

visited the premises of three suppliers and one freight forwarder. The purpose, he said, was to renew his acquaintance with traders with which PIL had dealt, to introduce PJJ and Mrs Bennett (although, as an employee of PIL, she would already have been known to its suppliers and customers), and to bring up to date the information PJJ already had about the other traders, or to obtain information where there had been no prior relationship. These are the due diligence enquiries to which we referred when describing Mr Mody's visit to Mr Woods on 15 February 2006. Similar enquiries were later made of other traders with which PJJ dealt. We did not see any example of a case in which PJJ had made enquiries only to decide not to do business with the prospective supplier or customer.

85. Some of Mr Chater's questions of other traders, he said, were designed to discover the quality of their due diligence enquiries into their own suppliers. PJJ handed over what Mr Chater described as an "information pack" containing copies of PJJ's certificate of incorporation, VAT registration certificate, some other information such as its bank account details, and a form which the recipient was asked to complete and return to PJJ, essentially providing similar information to that PJJ had provided, plus annual accounts. We saw some examples of the completed forms and of the certificates and other documents which the traders had provided; none included any accounts. PJJ relied, he said, on the information provided, and on periodic checks on the validity of its suppliers' VAT registrations, to ensure that it dealt only with reliable traders. As Mr Patchett-Joyce emphasised, it had never traded with a supplier which could be shown to have defaulted.

86. We saw the notes Mr Chater prepared of his and Mrs Bennett's visits on 7 and 8 February 2006 which, as he conceded, he had completed from memory on his return to Blackburn. They consist, in essence, of basic check lists. The copy documents collected did little more than show that the companies with which PJJ traded existed, were correctly named and had extant VAT registrations (and PJJ periodically checked with the Commissioners' office at Redhill, or through the Europa website, that the registrations remained extant). There was no difference, in scale or depth, between the due diligence enquiries undertaken into new trading partners and those relating to companies with which PIL had dealt. Mr Chater was unable to explain, at least to our satisfaction, why that was so.

87. The Commissioners' evidence came mainly from Mr Lotay, who told us he considered that what was done was of limited value, an exercise of form rather than substance. Some transactions had taken place before the due diligence enquiries into the supplier or customer had been carried out, an indication in his view that it was not considered of importance but had been undertaken merely in order to show that something had been done. He was critical of PJJ's having made no attempt to obtain trade references, or accounts or similar information, from any of its counterparties, an omission which, he said, meant that it had no real idea of the financial standing of its customers and suppliers, and of their ability to fulfil their contracts. Mr Chater's explanation was that trade references, in his experience, were of little value and particularly so in the case of suppliers and customers with which PIL had dealt for some years; and PJJ had no need to obtain accounts since it protected itself by never granting credit—if the purchaser did not pay, the goods were not released.

88. This latter assertion was not, however, consistent with other parts of his evidence. First, he told us that PJJ had an understanding with those traders with whom it had a long term relationship (that is, those with which PIL had previously dealt) that payment would be made for all of the deals undertaken in any week at the end of that week. We interpose, though the point is perhaps a minor one, that we saw no evidence, such as a statement of account, that this was in fact done. Second, there was at least one occasion in the period with which we are concerned when goods were released to a purchaser which did not pay either immediately or at the end of the week, but some time later, and even then only after it had been chased for payment; and, as we have mentioned, there were other instances when PJJ was exposed to the risk of non-payment by early release of the goods.

89. Mr Lotay's evidence was that a trader such as PJJ cannot protect itself fully by refusing to pay for goods until it has inspected them and found them to be satisfactory (a topic with which we deal in the next section of this decision) and by not releasing goods to a purchaser until payment is received. In our judgment it is difficult to resist that conclusion: when, as in most if not all of the transactions with which we are concerned, a purchase is made for the purpose of fulfilling a customer's order, a trader in an ordinary arm's length market will wish to be sure that his supplier has the capacity to supply, so that he is not left unable to fulfil the order, and that his customer has the ability to pay, so that he is not compelled to buy goods for which he then finds he has no customer. Mr Chater seemed entirely unconcerned by these risks, dismissing them as irrelevant.

90. We accept Mr Patchett-Joyce's point that asking for a supplier's or customer's management accounts (as Mr Lotay had suggested) goes too far and is unrealistic, but it is not in our view unrealistic to ask for annual accounts or some other evidence of a counterparty's financial standing. One has to wonder why annual accounts were included among the documents PJJ requested of their suppliers and customers (even though, in the event, their production was not insisted upon) if PJJ thought them irrelevant. Even credit checks undertaken of a reliable third party agency would have given PJJ some reassurance; if they had been undertaken in this case, as Mr Puzey was able to demonstrate, they would have revealed companies with little or no capital assets, short trading records, remarkable levels of turnover and, in the case of one company, a very large unsatisfied judgment against it.

91. We have come to the conclusion that the Commissioners are right to argue that the due diligence undertaken by PJJ was limited in extent and consequently in its value; it was casual and formulaic. It was apparent from his demeanour as he gave evidence that Mr Chater recognised that PJJ needed to show that it had made some due diligence enquiries of its suppliers and customers, but that in his view it was of little utility since he relied instead on the relationship of trust he said he had built up with PIL's suppliers and customers. That might be a reasonable course to adopt in the case of companies with which PIL had traded for some time, but not in respect of those with which PJJ had only just begun trading. We were left with the clear impression that, as the Commissioners argue, the due diligence enquiries were made (or, perhaps more accurately, documented) in order to show that enquiries were made, rather than for the underlying purpose of protecting PJJ. In reaching that conclusion we do not entirely discount Mr

Chater's contention that he was able to, and did, rely on trust in some cases, nor do we overlook Mr Patchett-Joyce's point that in fact PJJ did not deal directly with a defaulter. The underlying question, to which we shall return, is whether that is so because PJJ's due diligence, and Mr Chater's relationships of trust, were effective in protecting it, or because the transactions were so arranged that PJJ was never truly exposed to risk.

Inspections and other precautions

92. As we have indicated, it is necessary not only to ensure that those with whom one deals are trustworthy and capable of performing their contractual obligations, but that the transactions themselves are untainted. An ordinarily reliable supplier may, perhaps quite innocently, supply goods which have been used for fraudulent purposes; it is apparent from what the Court of Justice said in *Kittel* (assuming the English authorities are right that privity of contract is not necessary) that a purchaser of those goods who knew, or had the means of knowing, of that fraud is as much exposed to the risk that his claim to deduct the input tax incurred in the purchase will be denied as one who knowingly deals with a fraudulent trader. The obvious checks to be made are that the goods offered are those agreed to be traded, and that there are no other features of the transaction which call its genuineness into question.

93. Among the documents produced to us were inspection records of the goods in which PJJ dealt. These were not provided in every case, and it was not clear to us whether PJJ arranged an inspection of every consignment (but failed to preserve or produce the resulting report), or only some. Mr Chater claimed that all goods were inspected, but if they were PJJ did not preserve the resulting reports. The inspections were invariably carried out either by the freight forwarders at whose premises the goods were held or at those premises by an inspection agency; no employee of PJJ appears ever to have examined the goods in which it dealt (leaving aside such goods as were taken over from PIL and those delivered to Blackburn in February 2006 which, as we have already indicated, are irrelevant to the transactions with which we are concerned). The reports consist of sheets in a standard form on which various boxes are completed, some by manuscript text or numbers, others by a tick or cross. The reports are brief, though they appear nevertheless to cover, even if sometimes superficially, most of the essential points. The majority include a list of the numbers applied by the manufacturers to the outer boxes (that is, the large cardboard boxes in which, usually, several hundred chips were packed). We heard no evidence from a freight forwarder about the manner in which the inspections were undertaken or the time spent on them (and neither Mr Chater nor Mr Woods could give us any detail) and we were left to form our own view about their thoroughness. The Commissioners also make the point that there are some distinct oddities about the inspection reports. We need take only a few examples.

94. On 25 April 2006 PJJ bought a consignment of 315 chips, in a single box, from Techcomp and sold the same consignment to Zaanstrait BV, a Dutch customer. The documentation relating to the entire chain obtained by Mr Murphy includes a single inspection report, prepared by a freight forwarder in the Netherlands. The documentation relating to PJJ's own purchase shows that the

goods were then at the premises of a freight forwarder in the United Kingdom, and it can be determined from PJJ's invoice to Zaanstrait that PJJ was to arrange shipment from the UK freight forwarder's premises to those of the Dutch freight forwarder. There is no record within the available documents that this
5 consignment was inspected by or on behalf of PJJ before the purchase and sale were agreed, though we accept that it might have been. The Dutch report does not identify its addressee, but it is dated 25 April 2006, and it seems probable that it was prepared for Zaanstrait when the goods arrived. It identified the goods by quantity and model, and by box and lot number. It described the condition of the
10 goods as "used" and in a column headed "discrepancies" appeared the entry "7 trays broken". The report was extremely brief, and gave no further detail of any kind about the condition of the chips or their packaging. There was no evidence available to us about how the report came into PJJ's possession, or about the reasons why it did. In particular, there was no evidence that the condition of the
15 goods was disclosed—either to or by PJJ—before it entered into the transactions, that the condition of the chips themselves was checked and documented, that the price was renegotiated, or that any of the chips were rejected.

95. On 27 April 2006 a consignment of 1,900 chips was inspected by PJJ's preferred UK freight forwarder, Forward Logistics. There were 380 boxes,
20 containing five chips each—these were chips ultimately destined, or supposedly destined, for individual retail sale to those wishing to build their own computers. One would imagine that the condition of the packaging of chips to be sold in this manner was itself of importance, since it is notorious that retail purchasers will reject poorly packaged products, or demand a discount from the price. Of the 380
25 boxes, 102 were recorded to have external damage, and 24 internal damage; one of the four pallets on which they arrived also needed replacement. The general condition of the outer boxes was described as "fair", but 17 had extra labels, 23 torn labels, 55 had been re-sealed, 113 had knife marks and 124 pen marks. The inner boxes were described as "mildly damaged"; the report form does not
30 provided a space for a record of the condition of the chips themselves, and none was given. There were other sundry comments about the condition of the outer boxes. In this case the serial and batch numbers of the boxes were not recorded.

96. On 8 May 2006 PJJ bought and sold a consignment of 4,725 chips, in 15
35 boxes each containing 315 chips. The inspection agency's report lists the box and batch numbers, and gives some details of the specification of the chips, which appear to have been identical. The condition of three of the boxes is described on the report as "poor", the others being no better than "average". Five are said to have "excessive" tape, an indication either that they have been opened and resealed on several occasions, or that they have been inspected by Customs
40 officers—some reports distinguish between the two types of tape, but this does not. A column of the report headed "Number of missing CPUs" has the entry "yes" against every box. It is possible to accept that this is a mistake, and that "yes" has been used where "none" would have been appropriate, yet the entry is, at the least, unclear. There was no evidence produced to us to suggest that Mrs
45 Bennett checked with the agency about the meaning of the entry, or otherwise verified that in fact each box contained its full complement of chips.

97. More importantly, it was clear that one of the boxes listed on this report had already been bought and sold by PJJ on 23 March 2006. On the first occasion, the supplier was The Imperium Corporation Ltd and the customer Kama, a German company. On the second, the supplier was again Imperium, and the customer
5 Emisfer, a French company. Mr Chater was asked why PJJ had accepted the same box twice, an eventuality the reports were intended to prevent. His response was that Mrs Bennett had in fact rejected the box and had asked Imperium to replace it, but that her doing so was not recorded on the report. In fact, it is not recorded
10 anywhere: there is no documentary evidence to suggest that Mrs Bennett took any action at all.

98. Had she done as Mr Chater said she would have needed to contact Imperium to ensure that a replacement box was provided. There was no record that she did so and (since Imperium seems to have traded in the same way as PJJ, by immediately selling all the chips it bought) it is difficult to understand how, as Mr
15 Chater suggested, it was able to secure a replacement box immediately. We saw no communication to Imperium, even a letter after the event complaining about the fact that it had sold the same box twice (Mr Chater said there was no need for a letter as the trading relationship was coming to an end for other reasons), nor any report of an inspection of the replacement box. Alternatively she would have
20 needed to contact the customer to persuade it to accept fewer chips than had been agreed. Again, there is no documentary evidence that she did so. Mr Chater could not even recall when Mrs Bennett told him of the event, though he did recall that he told her in future to make a written record of the rejection and replacement of boxes which, we should record, she appears to have done as there were later
25 incidents of boxes being offered more than once and PJJ's consequent actions were documented. Nevertheless, the complete absence of any record that this box was rejected and replaced or that the purchase and sale were re-negotiated forces us to doubt Mr Chater's evidence that one of those courses was followed.

99. Those engaged in the grey market, he said, knew that boxes had been
30 traded, and correspondingly moved, before, since that was the nature of a grey market. Although PJJ tried to buy chips from a supplier close to the source—in which case it could expect boxes in good condition—that was not always possible, and it was necessary sometimes to accept damaged boxes. Damage, as he accepted, was a consequence of multiple movements, and was often caused by
35 careless fork lift truck drivers. However, provided the chips themselves were not damaged beyond repair (usually, he said, the damage consisted of no more than bending of the pins which could easily be bent back into position) the goods remained saleable and PJJ would accept them. The presence of Customs markings was, he said, not significant; it indicated no more than that Customs
40 officers had seen the goods on importation, and there was nothing more to be read into the fact. Similarly, as other traders also undertook inspections it was to be expected that boxes would show signs of having been opened and resealed.

100. Whenever Mrs Bennett received a report indicating that the boxes were significantly damaged she was expected to telephone the freight forwarders in
45 order to obtain their confirmation that the chips themselves were undamaged, and if that confirmation was not forthcoming she was to reject the damaged chips. Mr Chater's evidence was that Mrs Bennett "would have" taken up any adverse

comment with the freight forwarders when she received the report on a consignment. Again, we are hampered by not having Mrs Bennett's own evidence, but must instead rely on Mr Chater's claim about what she did (or, more accurately, would have done). It is somewhat undermined by the fact that there
5 was no evidence, in the form for example of a handwritten endorsement on the inspection report, that Mrs Bennett had made even one such call, still less did we see a single example of a consignment, or part consignment, rejected by Mrs Bennett because of the condition of the chips, despite the extensive damage recorded on some of the inspection reports. We also saw no correspondence or
10 record of any other type of communication between PJJ and its supplier about the condition of the boxes which were supplied, nor any communication to a purchaser warning it that the boxes were in poor condition, even if the chips within them were undamaged. Nor was there any evidence of renegotiation of the price when chips were found to have bent pins. We are surprised, though in the
15 absence of evidence of practice in the computer manufacturing industry cannot put it any higher, that an OEM would be willing to accept chips with bent pins. The chips in which PJJ traded each had several hundred pins; the labour of straightening even a few of them, to manufacturing tolerances, must have been significant.

20 101. We also find it puzzling that, if the condition of the outer boxes was of little consequence and the condition of the chips within paramount, the inspection reports go into a lot of detail about the outer boxes, yet say very little about the chips. Even when inner damage is reported, the record is of damage to the trays on which the chips are placed within the box, rather than to the chips themselves.
25 Yet it is apparent from the inspection reports that in most cases the boxes were opened. That may have been done primarily for the purpose of ensuring that the contents were what they purported to be, but it would not have taken much additional time to comment on the condition of the chips.

30 102. In short, Mr Chater dismissed damaged outer boxes as a matter of little concern. The impression with which we were left, not least by the manner in which he dealt in his oral evidence with the inspection reports, was that the condition of the goods—that is, the chips themselves—was, in truth, a matter of no real importance. We do, however, accept, as we have just mentioned, that there were some instances when Mrs Bennett detected that a consignment contained
35 boxes which could be identified, from the manufacturers' numbers, to have been traded in previously by PJJ, and with the one exception described above there was good documentary evidence that she rejected those boxes.

40 103. It is apparent from the deal sheets that PJJ had only a small number of suppliers, all within the UK, and a small number of customers, all outside the UK. The respondents emphasise the fact that seven of PJJ's purchases in the period were from a UK supplier, Plazadome Ltd, and that in every case the same goods were sold to PJJ's Dutch customer, Zaanstrait. There are other cases in which
45 more than one consignment of goods bought from a particular supplier was sold to the same customer, and frequent recurrences of the same names within the deal chains before the goods reached PJJ, but Mr Puzey was to emphasise these transactions because there was also good evidence (which PJJ does not dispute) that, in the recent past, Plazadome had made direct supplies to Zaanstrait. By the

end of the hearing Mr Patchett-Joyce conceded that Plazadome was a knowing participant in fraudulent chains. We should record that there was no evidence before us which indicated that Mr Chater was aware at the time of Plazadome's knowing participation in fraudulent activity. He told us also that he was not aware that the two companies had traded together, and had no reason to think there was anything untoward about the transactions.

104. His evidence was that he was acquainted with a Mr Budgen, then employed by another company which, Mr Chater learnt, had bought goods from Plazadome. In March 2006 he was trying to obtain a supply of chips and approached Mr Budgen, who was able to supply them but at a price greater than Mr Chater was willing to pay. He therefore asked Mr Budgen whether he would object if he approached Plazadome, and Mr Budgen said he would not. Mr Chater did approach Plazadome, but according to his statement he did not after all do so in order to obtain the chips he needed. Instead, he saw Plazadome's director when they both happened to be in Dubai, exchanged information with him, and took the first steps towards establishing a trading relationship. Only then did PJJ start buying from Plazadome; that the goods were then sold to Zaanstrait, to which Mr Budgen had by then moved, was, Mr Chater said, a coincidence.

105. We do not find that claim plausible. Even if it were true we agree with Mr Puzey that it does not explain why Plazadome was willing to sell to PJJ goods which PJJ immediately sold to Zaanstrait, when Plazadome could as easily and at greater profit have sold them direct; nor, conversely, does it explain why Zaanstrait approached PJJ in order to buy goods it could have obtained more cheaply from Plazadome. The evidence showed that until the end of March 2006 Plazadome and Zaanstrait traded directly with each other; thereafter they invariably traded through PJJ. PJJ always made a profit from the transactions; its interposition between Plazadome and Zaanstrait consequently reduced the profit one or the other could have made, and served no evident commercial purpose. Mr Budgen would certainly have become aware of the former relationship when he moved to Zaanstrait, even if he did not know of it before. Mr Chater may not have been aware of Plazadome's knowing participation in fraud, but we are quite unable to accept his claim that he did not know that Plazadome and Zaanstrait had formerly had a trading relationship. His evidence on the topic was evasive and we have no doubt it was untrue. He should have refused to participate in what was plainly an artificial arrangement, but did not do so.

106. In similar vein Mr Puzey pointed to the fact that PJJ, despite Mr Chater's self-professed long experience and extensive network of contacts, was repeatedly buying chips which, as Mr Murphy's tracing of the deal chains showed, had passed through the hands of several other traders—on occasion as many as nine—within the UK, each of those traders having made a profit, even if sometimes a modest profit, and when it could be seen that some at least of those traders had been engaged in the trade for a very short period. How was it, he asked rhetorically, that those traders, many of which had been dealing in computer chips for a short time, could buy more cheaply, and from a supplier which was closer to the source, than PJJ which, according to Mr Chater, set out to buy from a supplier as close to the manufacturer as possible yet, despite Mr Chater's years of experience and extensive contacts, never succeeded in doing so? It is, in our view,

a valid question and we consider it significant that neither Mr Chater nor Mr Woods was able to supply an answer.

The post-06/06 events

107. The respondents place considerable emphasis on events which occurred shortly after PJL's return for period 06/06 was rendered, while the administration was still in progress. Among the stock which Mr Hosking knew was in GTG's possession was a large number of television set-top boxes, designed to enable the owner to access the internet by means of a dial-up connection, using his television as the screen. The boxes were programmed to dial the number of another group company, Supanet Ltd, an established internet service provider and Mr Woods' employer at the time of the hearing. Mr Hosking commissioned a valuation of GTG's known stock, including these boxes—it was this valuation which led him to the conclusion that the values of many items had been misstated in GTG's records. It showed that the set-top boxes were of negligible value and would realise nothing; indeed the cost of removal from site of the boxes was expected to exceed their realisable value. That view was, Mr Hosking said, confirmed by Tahir Mohsan, who told him the boxes were obsolete and might fetch 50p each in the local market. Mr Hosking did not attempt to dispose of the boxes.

108. In September 2006, by which time it had been made aware by the Commissioners that it could not expect early repayment of the amount claimed, PJL entered into a series of transactions which, the Commissioners say, were designed to generate an artificial tax credit in order to secure for PJL, by indirect and improper means, the input tax credit it had claimed. TGME sold the boxes to PJL, at a unit price of £49. This was done without Mr Hosking's authority, or even his knowledge, and it is by no means clear what, if anything, was done to give title to the boxes to TGME. Its sale, or purported sale, to PJL was treated as zero-rated, on the basis that PJL was acting as TGME's undisclosed agent, possibly pursuant to the loan agreement we have described above, though it is not clear to us that this was indeed the basis of the relationship. The agency arrangement had the additional advantage that TGME did not need to become registered for VAT in the UK. PJL then sold the boxes to Supanet for £50 each, but in four transactions, one in each of Supanet's following quarterly accounting periods. The aggregate consideration was about £5.6 million, excluding VAT. Supanet sold the boxes to Time Group Distribution Ltd, another group company based in the same Dubai building as TGME. The boxes were shipped to a company called New Alpha Kings, based in Hong Kong, of which Mr Chater is, or was, a 50% shareholder. The purpose was said to be that they needed adaptation in Hong Kong in order that they could be sold in India.

109. The result of these transactions was that PJL had an output tax liability while Supanet had a claim for the same amount as input tax credit. Supanet duly made its repayment claims, by offsetting the input tax against the quite substantial output tax liabilities its ordinary trading activities (as an internet service provider) generated. The effect of staggering PJL's sales to it was that its input tax claims, though large, were at first not sufficiently large to trigger investigation; only the last of the relevant returns was queried, a query which led the Commissioners to discover what had been done. PJL accounted for but did not pay the output tax

liability it had created; Mr Woods made no secret of the fact, at the time, that he had been told not to pay by “Dubai”, meaning the Mohsan family, in retaliation for the Commissioners’ refusal to meet PJJ’s 06/06 repayment claim.

5 110. Neither Mr Woods nor Mr Chater could tell us, three years after their sale, what had become of the boxes, in particular whether any of them had been sold in India. As we have said, the boxes were pre-programmed to connect to Supanet’s servers yet Mr Woods, secretary and financial controller of Supanet, was unable to tell us whether it had any Indian customers, or even when it might expect to obtain any.

10 111. The boxes were, in our view, effectively stolen from GTG. Mr Patchett-Joyce suggested that Mr Hosking had abandoned them. While it may be that, in the event, he was pleased to be relieved of the responsibility of disposing of them, it was not his evidence, and we do not find, that he had made the decision to abandon them. Their sale at a price which far exceeded the negligible true value
15 (we reject Mr Woods’ assertion that they were worth as much as £50 as pure invention), the sale by one Dubai based company to another with the quite unnecessary intervention of two UK companies, all in common control, and Mr Woods’ inability to tell us whether any had ever been sold make it obvious that there was no purpose behind these transactions than the artificial generation of an
20 input tax credit. The evidence that the set-top boxes had a market in India was impossible to believe when, three years on, it was quite obvious none had actually ever been sold.

112. On 28 September 2007 PJJ sold, or purported to sell, 16,500 licences for the use of software called “Flourish” to Geomore Technology, another Granville
25 group company. The licences were in turn supplied, or purportedly supplied, to PJJ by Sapphire Brands Ltd, a Jersey company the Commissioners contend is also a member of the Granville group (a contention which Mr Woods did not dispute). Geomore claimed credit for the input tax it had incurred, on the basis that it intended to make an onward taxable, if zero-rated, supply of the licences to a
30 company in the Middle East. The Commissioners made enquiries about the transactions during the course of a visit in January 2008 when Mr Murphy and Mr Priestley saw Mr Woods. They asked for details of the function of the software, which Mr Woods was unable to give; he was also unable to name the Middle Eastern customer. It emerged that no money had changed hands, and that the
35 transactions, if undisturbed, would have led to an input tax credit in PJJ’s hands matched by an output tax liability in another group company’s hands, which that company was unable to meet as it then went into administration and thereafter liquidation. In fact the Commissioners did intervene, taking the view that the software did not exist and consequently that the supplies had not taken place, and
40 the input tax claim was disallowed. PJJ did not appeal against that decision.

113. Mr Patchett-Joyce sought to justify, or at least diminish the importance of, the transactions in the set-top boxes by arguing that PJJ did not conceal from the Commissioners that it was proposing not to pay the output tax it had generated. It is true that it did not conceal its actions, but that does not justify what was plainly
45 an artificial device arranged for no purpose other than to secure repayment, by illegitimate means, of the input tax for which credit had been claimed. It is

understandable that traders, or at least those traders who have genuine claims, become frustrated by the time taken by extended verification, but that frustration does not justify resort to self-help of this kind.

5 114. Similarly we are satisfied that the transactions by which group companies claimed to have bought and sold software whose purpose could not be explained and of which no example could be produced, in circumstances which the financial controller of one of the main participants in the transactions was unable to explain, make it clear to us that these too were wholly artificial transactions, and that the purported sales and purchases were a sham designed only to generate tax
10 liabilities which would not be met and claims which the participants hoped the Commissioners would meet.

Conclusions

The legal tests

15 115. We have already indicated that we propose to apply what is understood in the United Kingdom to be the relevant test, namely whether PJJ, in the person of its controlling minds—its directors, Mr Woods and Mr Chater—entered into transactions knowing or with the means of knowing that they were connected with fraud, regardless of whether the fraud was committed by its immediate
20 counterparty or by a trader at one or removes from it in the chain, or in another chain linked by a contra-trader. As we have said, there is evidence that one of PJJ's immediate counterparties, Plazadome, was at least a knowing participant in dirty chains, and Plazadome's relationship with Zaanstrait must, to put it at its lowest, cast some doubt on the latter's *bona fides*. There is, however, no evidence before us from which we might make any finding of knowing involvement in
25 respect of any other of PJJ's immediate counterparties. Save for Plazadome, none of the traders which featured on the CDs discovered by the police was in a direct contractual relationship with PJJ. We recognise too that, with the exception of Mr Westley's statement, we have no evidence from any other trader, and that we must be cautious about making findings of fraud against traders who have not had the
30 opportunity of answering the accusation.

116. We interpose at this juncture, in order to dispose of it, another argument Mr Patchett-Joyce advanced. He made the point that there was little or no evidence available to us of the extent or quality of other traders' due diligence enquiries; indeed, he asked many of the officers about the investigations they made into the
35 due diligence undertaken by companies for which they were the assurance officers and in most cases learnt that they had made no such enquiry. He was, moreover, able to point to numerous examples of transactions where proper due diligence could not possibly have been undertaken, particularly when the purported seller's identity had been hijacked. In many cases it was an irresistible inference that the
40 parties to a transaction knew very well that it was not above board.

117. His argument was that the Commissioners, despite having no information about the matter, and having sought no such information, and even when it must have been clear to them that the trader concerned was not innocent, nevertheless allowed to it the credit for input tax which it claimed, by setting it off against its
45 output tax liabilities. The Commissioners accept that the assertion is factually

correct, and that as a matter of policy they investigate the input tax claims of brokers, but not usually of buffers.

118. That approach, Mr Patchett-Joyce argued, was discriminatory and disproportionate. Traders whose claims should clearly have been refused found that they were allowed, while PJJ, which could be shown to have undertaken due diligence, whose paperwork was in good order and which could not be shown, even once, to have bought from a defaulter, found that its input tax claim was refused. The tribunal, he said, should not support such an approach, which was contrary to the Community law principles of equal treatment, was disproportionate to the aim—of preventing fraud, not by PJJ but by others—offended PJJ’s legitimate expectation and was contrary to the principle of legal certainty.

119. These arguments have been advanced in other appeals before this tribunal and its predecessor and have been rejected as reasons for allowing an appellant’s right to deduct. The arguments have found no greater favour in the High Court. They are, we understand, all soon to be considered by the Court of Appeal in the group of appeals to which we have referred and we see no benefit to the parties or to other readers of this decision in our rehearsing them yet again. It is, we think, sufficient to say that in our opinion it is apparent from what the Court of Justice said in *Kittel*, at paras 54 to 61 of its judgment, that all of those principles are subservient to the objective of preventing fraud. The Court pointed out at para 54 that “preventing tax evasion, avoidance and abuse is an objective recognised and encouraged by the Sixth Directive”, and at para 59 that

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

120. It is true that there is ample evidence that others too knew or should have known of their participation in fraud and that the Commissioners could, even should, have refused their claims to deduct yet failed to do so. The difficulty with Mr Patchett-Joyce’s argument is that he is, in effect, asking us to determine that because the Commissioners have treated some traders incorrectly, we should require them to treat PJJ equally incorrectly. The observation of the Court we have set out above is not hedged with any condition about the treatment by the fiscal authority of other traders in the chain, even the immediate counterparties. That the Commissioners may have allowed input tax claims which they should have refused is not, therefore, a consideration for us.

Conclusions on the facts

121. Heeding as we do the warning we have given ourselves that we have not heard from the other traders involved, the evidence of fraud is nevertheless overwhelming and wholly convincing. In addition, as we have mentioned, Mr Patchett-Joyce accepted that there was a mass of evidence of fraud, even if he did not concede every detail. It is against that background that we have concluded it

5 serves no useful purpose to describe each chain. We are equally satisfied that in all the dirty chains in which PJJ found itself there was a fraudulent failure to account for output tax, and that in the case of the clean chains leading to contra-traders a fraudulent purpose—within the linked dirty chain—has likewise been established. The clean chains are of a like kind, with all the same features bar a default, with the dirty chains; it is impossible to believe that they are any less fraudulent in their ultimate purpose.

10 122. The significant features, appearing over and over again, are the hijacking of identities (or the false claims of hijacking), the making of third party payments, the speed with which numerous transactions between recently established and inexperienced traders took place, the similarities between many of the chains, the complete absence of any manufacturers, authorised distributors, retailers or OEMs from the chains, the entry of the goods into the UK in the morning followed by their departure in the afternoon and the apparent absence of any trading risk.
15 When one adds to those features the information found on the CDs discovered by the police and the relationship between Plazadome and Zaanstrait to which we have referred it is in our view an irresistible conclusion that the trade is contrived. Put another way, it is impossible to believe that in a genuine market, in which each trader deals with every other on arm's length terms, all of these factors
20 would be found. It does not, in our view, make any difference to that conclusion or to the outcome of this appeal whether the contrivance is the product of one overall scheme or of several. As the Commissioners do not argue that PJJ was a party to the fraud, its knowledge, or means of knowledge, is to be judged on a transaction-by-transaction basis, and not by reference to any supposed scheme.

25 123. We remind ourselves at this point of the parties' positions. The Commissioners rely on the combination of three basic factors: PJJ's admitted knowledge of the prevalence of fraud within the trade in which it chose to engage and the need to take precautions; the inadequacy of the steps it in fact took to ensure that the transactions in which it entered were not tainted by that fraud; and
30 the attitude of those controlling it to tax compliance. The last of those factors does not, of course, bear on the extent of PJJ's knowledge, but is relevant to the credibility of PJJ's claim that it was a prudent trader which took all the precautions which were reasonably necessary, and had no reason to suppose that any of its purchases were connected with fraud. PJJ does not dispute the first of
35 those factors; it denies that its precautions were inadequate; and it challenges the Commissioners' interpretation of the third, as well as its relevance.

40 124. The main plank of PJJ's case with regard to the second factor is that it took all the precautions which could reasonably be thought necessary by any trader in its position, and that the quality of the precautions it took should be judged by their success: the Commissioners could point to no case in which PJJ had bought goods from a defaulter, or sold them to a trader which did not account correctly for its VAT liabilities. If its due diligence succeeded in that objective, PJJ says, the Commissioners' criticisms of it were misplaced since additional, or different, due diligence would have achieved no more.

45 125. We had no evidence about the standard of the overseas customers' tax compliance but the Commissioners do not advance any case in relation to it and

we have no reason to suppose that it was not correct. However, the fact that on several occasions goods sold by PJJ had been offered to it a second time necessarily meant that its customer had reintroduced the goods to the UK market, a fact which Mr Chater recognised to be a characteristic of fraud. It is for that reason that, in our view, some due diligence enquiries into customers was at the least advisable.

126. PJJ also argues that, despite what the Commissioners demand in their Public Notices, a trader cannot verify the entirety of its supply chain since it has no means at its disposal of identifying traders who have previously dealt in the same goods. It can, as we accept PJJ did, ask its suppliers for their assurance that they have themselves undertaken due diligence enquiries into their own suppliers, but it has no means of verifying that assurance, and even then it can go no further than its own immediate supplier. It must necessarily rely on trust. When PJJ discovered that Emisfer had returned goods PJJ had sold to it to the UK market, PJJ not only rejected the chips but broke off trading relationships because its trust had been abused. That, it says, is the conduct of a reputable trader wishing to steer clear of risk.

127. We have already made the point that the test is not whether PJJ took adequate precautions, but whether it knew or had the means of knowing that its transactions were connected with fraud. We have also recorded our conclusion that the Commissioners are right to argue that PJJ's precautions were superficial. That may be because it chose to adopt a casual approach, and its success in avoiding entering into a transaction directly with a fraudster was due to good fortune. The alternative conclusion is that the precautions were superficial because, as the Commissioners argue, the truth is they were unnecessary and (which is the inevitable corollary) PJJ knew they were unnecessary. They also argue that the checks on the numbers of the boxes were made, not because PJJ was concerned about dealing with that same box twice for its own sake, but because it recognised that the repeated circulation of boxes was an easily identified characteristic of fraud which, if found in PJJ's own chains, would lead the Commissioners to refuse their input tax claims. Their underlying case is that those orchestrating fraud of the kind which has occurred here must ensure that all the transactions, whether or not the participants are in the know, actually take place, and that the money changes hands. There is accordingly no risk and the due diligence is undertaken merely in order to demonstrate to the Commissioners that precautions such as those suggested by the Code of Conduct have been taken.

128. We are satisfied that this contention is made out. As an example, we found Mr Chater's account of his and Mrs Bennett's trip to the Netherlands and London implausible. If they did indeed see seven traders in the space of a single day it is an inescapable conclusion that their meetings must have been very short and of limited value. We had no separate evidence, such as contemporaneous and detailed notes, of the visits; the brief "check list" records Mr Chater prepared from memory when he returned to the office were almost worthless. There was no continuing exchange of information; once basic details had been obtained nothing more was done apart from the periodic checks on the continuing validity of the suppliers' VAT numbers.

129. We cannot say it was impossible for Mrs Bennett, with an assistant, to have undertaken all the negotiation of the purchases and sales, to have dealt with all the attendant paperwork and payments, to have monitored the inspection reports and to have arranged transport of the goods, even through a freight forwarder, while
5 keeping Mr Chater informed by frequent communication with him, but we find it difficult to accept that she was able to do so if PJJ was truly engaged in an arm's length market. It is true that in the relevant period there were only 37 purchases, but there were approximately twice as many transactions altogether, since each of the purchases led to a sale, and in a genuine market there would inevitably be, in
10 addition, many negotiations which did not lead to a successful outcome. We had no evidence from Mr Chater about the time Mrs Bennett spent on fruitless negotiations. His evidence about the deals referred to him by Mrs Bennett which he did sanction was at best vague; his evidence about unsuccessful negotiations and those possible transactions which he did not sanction was virtually non-
15 existent. The absence of any cogent and plausible evidence about the manner in which PJJ's trade was conducted can only fortify the conclusion that PJJ was, and knew that it was, engaged in an artificial, contrived market,

130. Mr Chater's evidence about the inspection reports was in our view incredible. We leave aside for present purposes the oddity about the entries
20 relating to missing chips; although the oddity demands an explanation, which was not forthcoming, we accept that there may be one. The condition of the boxes is, however, another matter. We recognise that an end user will be much more concerned about the condition of the chips than that of the box, but it obvious that if the box is damaged more than superficially he will want to assure himself that
25 the contents are undamaged. Yet, as we have mentioned, the condition of the chips was regarded, both on the inspection reports and by Mr Chater as he gave his evidence, as a matter of little concern. We have come to the conclusion that his lack of concern, too, is a clear indication that he knew this was not a genuine market in which chips would eventually reach an OEM. The evidence about the
30 immediate, undocumented replacement of boxes offered for a second time, or the renegotiation of transactions, was likewise incredible, at least in the context of a genuine arm's length market.

131. We come finally to the attitude of those controlling PJJ and its associated companies to VAT compliance, and indeed the law generally. Again, we are left
35 in no doubt that the Commissioners are right. For the reasons we have already given we do not accept Mr Patchett-Joyce's dismissal of the sales or purported sales of the set-top boxes and the Flourish software as immaterial. Those episodes, coupled with the admission of dishonest evasion and the relatively minor mis-
40 description of the Intel chips, demonstrate clearly that those controlling PJJ cannot be regarded as straightforward, honest businessmen doing their best in a difficult market.

132. In summary, we are satisfied that PJJ went into what its directors, as well as Mr Woods and Mr Chater, knew was an artificial market intending to profit from
45 it. They may well not have been participants in the fraud, but as the courts have pointed out, in *Kittel* and elsewhere, a trader in PJJ's position aids the fraudsters by making the transactions possible. Mr Chater and Mr Woods either knew that it was entering into transactions connected with the fraudulent evasion of VAT or

had the means of knowing of the connection but closed their eyes to it. They were well aware of the hazards of the trade on which they chose to embark but made no genuine effort to protect themselves from those hazards. We reach the same conclusion in respect of each of the relevant transactions.

5 **Outcome of the appeal**

133. The Commissioners were right to refuse PJJ the right to deduct the input tax it incurred and the appeal must be dismissed. Exercising the provisions of para 7 of Schedule 3 to the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 we direct that PJJ is to pay the Commissioners' costs of and incidental to the appeal, to be the subject of detailed assessment on the standard basis by a costs judge of the High Court if they cannot be agreed.

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Colin Bishopp

Tribunal Judge

Date of release: 11 December 2009

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