[2019] UKFTT 313 (TC)

TC07141

Appeal number: TC/2017/05285

VALUE ADDED TAX – input tax – denial of right to deduct on grounds that the Appellant knew or should have known that the transactions were part of fraud by others – alleged MTIC – whether shown that the Appellant's transactions connected with fraudulent evasion of VAT – yes – whether Appellant knew or should have known of fraud – no - appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

CLOVER EQUIPMENT UK LIMITED **Appellants**

- and -

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

TRIBUNAL: JUDGE JENNIFER DEAN
MR MOHAMMED FAROOQ

Sitting in public at Manchester on 19 – 22 November 2018

Mr N. Ginniff, Counsel for the Appellant

Ms J. Newstead Taylor, Counsel instructed by HM Revenue and Customs, for the Respondents

DECISION

Introduction

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1. This is an appeal by Clover Equipment UK Limited ("the Appellant") against the decision of HM Revenue and Customs ("HMRC") contained in a letter dated 31 March 2017 to deny input tax of £73,325 it incurred in relation to its purchases of plant equipment, machinery and vehicles in VAT period 06/16.

10 2. The basis of HMRC's decision and its case before this Tribunal is, as set out in its Statement of Case, that the relevant transactions carried out by the Appellant in VAT period 06/16 were connected with the fraudulent evasion of VAT and that the Appellant knew or should have known of this fact.

Missing Trader Intra-Community Fraud: Legislation and Case law

15 3. The legislation governing the right to deduct is contained within Sections 24 – 26 of the Value Added Tax Act 1994 and the VAT Regulations 1995 (SI 1995/2518). If a trader has incurred input tax which is properly allowable, he is entitled to set it against his output tax liability or to receive a repayment if the input tax credit due to him exceeds that liability. Evidence is required in support of a claim (Article 18 of the
20 Sixth Directive and regulation 29 (2) of the VAT Regulations 1995).

4. Missing Trader Intra-Community Fraud ("MTIC fraud") has been described frequently by the courts and tribunals and we do not consider it necessary to set out an explanation in great detail; instead we respectfully adopt that of Roth J in *POWA (Jersey) Ltd v HMRC* [2012] UKUT 50 (TCC):

25 "1. This is yet a further case of so-called missing trader or "MTIC" fraud on the system of VAT. The decision of the First-tier Tribunal ("FTT") conveniently describes the nature of a typical MTIC fraud as follows:

"5 … 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
30 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
35 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.

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
40 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 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 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.

In the jargon that has developed to describe the various participants in such chains, the initial importer of the goods who fails to account for the output tax he has charged to his purchaser and disappears, is known as the "defaulter" or "missing trader." The trader at the end of the UK chain who sells the goods to a purchaser overseas is known as a "broker". The traders between the defaulter and broker are referred to as "buffers"... "

5. *Kittel v Belgium, Belgium v Recolta Recycling* SPRL (C-439/04 and C-440/04) [2006] ECR 1-6161 *("Kittel")* provided the legal basis for the denial of the right to deduct in certain circumstances:

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

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

55. Where the tax authorities find that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retroactively … It is a matter for the national court to refuse to allow the right to deduct where it is established, on the basis of objective evidence, that that right is being relied on for fraudulent ends...

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

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

58. In addition, such an interpretation, by making it more difficult to carry out

fraudulent transactions, is apt to prevent them.

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

…

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

6. The *Kittel* test was further clarified by Moses LJ in *Mobilx Ltd and The Commissioners for Her Majesty's Revenue and Customs, The Commissioners for Her Majesty's Revenue and Customs and Blue Sphere Global Ltd, Calltel Telecom Ltd & another and The Commissioners for Her Majesty's Revenue and Customs* [2010] EWCA Civ 517 ("*Mobilx*") at [30]:

"...the Court made clear that the reason why fraud vitiates a transaction is not because it makes the transaction unlawful but rather because where a person commits fraud he will not be able to establish that the objective criteria which determine the scope of VAT and the right to deduct have been met."

7. As to a trader's state of mind, Moses LJ in *Mobilx* provided the following guidance:

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

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

8. Christopher Clarke J gave the following guidance in *Red12 v HMRC* [2009] EWHC 2563 at [109] – [111]:

"Examining individual transactions on their merits does not, however, require them to be regarded in isolation without regard to their attendant circumstances and context. Nor does it require the tribunal to ignore compelling similarities between one transaction and another or preclude the drawing of inferences, where appropriate, from a pattern of transactions of which the individual transaction in question forms part, as to its true nature e.g. that it is part of a fraudulent scheme. The character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and "similar fact" evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.

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

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

9. In *Megtian Limited (in administration) v HMRC* [2010] EWHC 18 (Ch) Briggs J stated at [37] and [38]:

"In my judgment, there are likely to be many cases in which a participant in a sophisticated fraud is shown to have actual or blind-eye knowledge that the transaction in which he is participating is connected with that fraud, without knowing, for example, whether his chain is a clean or dirty chain, whether contra-trading is necessarily involved at all, or whether the fraud has at its heart merely a dishonest intention to abscond without paying tax, or that intention plus one or more multifarious means of achieving a cover-up while the absconding takes place.

Similarly, I consider that there are likely to be many cases in which facts about the transaction known to the broker are sufficient to enable it to be said that the broker ought to have known that his transaction was connected with a tax fraud, without it having to be, or even being possible for it to be, demonstrated precisely which aspects of a sophisticated multifaceted fraud he would have discovered, had he made reasonable inquiries. In my judgment, sophisticated frauds in the real world are not invariably susceptible, as a matter of law, to being carved up

> into self-contained boxes even though, on the facts of particular cases, including Livewire, that may be an appropriate basis for analysis."

10. In *Fonecomp Limited v HMRC* [2015] STC 2254 it was submitted that the words "should have known" (per Moses LJ in *Mobilx*) meant "has any means of knowing" (at [51]) and that the Appellant could not have found out about the fraud even if it made inquiries because the fraud did not relate to the chain of transactions with which it was concerned. Arden LJ in the Court of Appeal ([2015] EWCA Civ 39) (with whom McFarlane and Burnett LJJ agreed) said, at [51]:

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

11. In *Davis and Dann Ltd v Revenue & Customs Commissioners* [216] STC 126, the Court of Appeal approached the "should have known" test on the basis of Moses LJ's comment in *Mobilx* that it required that "the only reasonable explanation" for the transactions must have been connection to fraud. In *AC (Wholesale) Limited v The Commissioners for Revenue & Customs* [2017] UKUT 191 (TCC) the UT concluded that the "only reasonable explanation" test was simply one way of showing that a person should have known that the transaction was connected to fraud (at [29] & [30]):

> "Moses LJ was clear that the test in *Kittel* was a simple one that should not be over refined. It is, to us, inconceivable that Moses LJ's example of an application of part of that test, the 'no other reasonable explanation', would lead to the test becoming more complicated and more difficult to apply in practice. That, in our view, would be the consequence of applying the interpretation urged upon us by Mr Brown. In effect, HMRC would be required to devote time and resources to considering what possible reasonable explanations, other than a connection with fraud, might be put forward by an appellant and then adduce evidence and argument to counter them even where the appellant has not sought to rely on such explanations. That would be an unreasonable and unjustified evidential burden on HMRC. Accordingly, we do not consider that HMRC are required to eliminate all possible reasonable explanations other than fraud before the FTT is entitled to conclude that the appellant should have known that the transactions were connected to fraud.
>
> Of course, we accept (as, we understand, does HMRC) that where the appellant asserts that there is an explanation (or several explanations) for the circumstances of a transaction other than a connection with fraud then it may be necessary for HMRC to show that the only reasonable explanation was fraud. As is clear from *Davis & Dann*, the FTT's task in such a case is to have regard to all the

circumstances, both individually and cumulatively, and then decide whether HMRC have proved that the appellant should have known of the connection with fraud. In assessing the overall picture, the FTT may consider whether the only reasonable conclusion was that the purchases were connected with fraud. Whether the circumstances of the transactions can reasonably be regarded as having an explanation other than a connection with fraud or the existence of such a connection is the only reasonable explanation is a question of fact and evaluation that must be decided on the evidence in the particular case. It does not make the elimination of all possible explanations the test which remains, simply, did the person claiming the right to deduct input tax know that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT or should he have known of such a connection."

12. The burden of proof in this type of case rests with HMRC; per Moses LJ in *Mobilx* (at [81]):

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

13. In applying the principles set out in the authorities cited above we have approached this appeal by recognising that while we must consider the merits of the individual transactions the transactions should not be viewed in isolation. In considering the issue of knowledge and means of knowledge of the Appellant we only took into account information known to him during the relevant period and we attached no weight to evidence established with the benefit of hindsight.

Issues

14. The issues to be determined in this appeal are as follows:

(a) Was there a tax loss;

(b) If so, did the tax loss result from fraudulent evasion;

(c) If so, were the Appellant's transactions which are the subject of appeal connected with that fraudulent evasion; and

(d) If so, did the Appellant know or should it have known that its transactions were so connected.

15. In its Notice of Issues (undated) the Appellant confirmed the following:

(a) The Appellant accepts that the deal chains are accurate in so far as they refer to the supplier of goods to the Appellant and the Appellant's customer for each deal; and

(b) The deal chains are accurately traced.

The Appellant does not accept that its transactions were part of an orchestrated fraud or that a tax loss occurred as a result of VAT fraud. The Appellant has no knowledge

beyond that of its immediate transactions but does not dispute the facts alleged in the witness statements on behalf of the Respondent.

Undisputed Background Facts

16. Mr Sean O'Grady is the sole director of, and until 15 March 2017 was also the sole shareholder in, the Appellant. The Appellant was incorporated on 30 April 2014 and registered for VAT with effect from 19 January 2015. The Standard Industrial Classification was "wholesale of other machinery and equipment and freight transport by road".

17. The Appellant has registered offices at 116 Duke Street, Liverpool and at the time of VAT registration traded from residential premises at Apartment 1104, Beetham Tower, 111 Old Hall Street, Liverpool and from June 2016 traded from residential premises at Apartment 2704, West Tower, 8 Brook Street Street, Liverpool.

18. On or about 15 July 2016 the Appellant submitted its 06/16 VAT Return reclaiming a repayment of £143,428.92. The Return related, in part, to the Appellant's purchases of plant and machinery. On 19 July 2016 the Appellant was informed that the 06/16 Return had been selected for extended verification.

19. On 15 March 2017 Mr O'Grady transferred his shareholding in the Appellant to Clover Holdings Ltd of which he is sole director and shareholder. Mr O'Grady is also a director or company officer of the following:

- Recycling Energy Ltd;
- KSS Quality Services Ltd;
- S. O'Grady Truck and Plant Sales Limited;
- Recycling Energy Ltd;
- SOS Storage (Gwynedd) Limited;
- Vaughan Parry Associates Limited.

20. On 31 March 2017 HMRC informed the Appellant that its claim to input tax of £73,325 in respect of 5 transactions had been denied.

Transactions connected to fraudulent tax losses

21. We are concerned in this appeal with 5 transactions ("the Relevant Transactions") in VAT period 06/16 in which the Appellant. Details of the transactions and the Appellant's suppliers and customers are as follows:

DEAL NO.	INVOICE	GOODS/UNITS	SUPPLIER

	DATE		
1	23 June 2016	Komatsu pc360 Lc-10	RJC Regeneration Ltd
2	27 June 2016	Hitachi zxais 330-5	RJC Regeneration Ltd
3	28 June 2016	Scania R560	Frizell Tipping Ltd
4	28 June 2016	Komatsu PC138	DPD Civils Ltd
5	30 June 2016	• Volvo A25D Dumper Truck 2003 • Volvo A25C Dumper Truck 1996 • Takeuchi TB175W Ruber Duck 2007	KSD Commercial Services Ltd

22. In deals 1 – 3 the Appellant's immediate suppliers (RJC and Frizell) purchased the plant from DPD. In Deal 4 the Appellant purchased directly from DPD. In deal 5 the Appellant's supplier KSD purchased from RM Civils Ltd ("RM").

5 23. HMRC submit that both DPD and RM failed to account for tax thereby causing a tax loss and that, furthermore, the tax loss was fraudulent.

Defaulting traders

24. In respect of the alleged defaulters we heard evidence from HMRC officer Arnold who adopted and confirmed the contents of officer Nixon's witness statement
10 as Mr Nixon has, since making the statement, retired.

25. DPD was incorporated, registered for VAT and commenced trading on 19 March 2015. DPD submitted nil VAT returns for periods 06/15 to 03/16 and no VAT returns for periods 06/16 to 09/16. DPD has not made any VAT payments.

26. HMRC received information to show that DPD had made supplies and received acquisitions on which it had not accounted for VAT. DPD was issued with 5 assessments totalling £1,455,825 plus interest of £14,882.69. The assessments remain unpaid and have not been appealed.

27. DPD's VAT1 declared its trading activities as 'civil engineering'. HMRC have seen no evidence to indicate that DPD ever traded in this sector and in fact it appeared to trade in plant and machinery. DPD was de-registered on 17 November 2016.

28. HMRC officers attended DPD's registered business address but there was no answer. On 14 October 2016 Mr John McNally, the director and shareholder of DPD from 8 August 2016, met HMRC officers Nixon and Arnold. The visit by HMRC took place as HMRC held evidence that DPD had made sales to the Appellant in the sum of £48,000 in June 2016 yet DPD had failed to submit a return for that period. At an unannounced visit to the registered business address in Co Tyrone on 6 October 2016 no one was present at the address.

29. At the meeting on 14 October 2016 Mr McNally claimed to be unaware of the business activities of DPD's previous directors. He stated he used to trade in plant and machinery in the Republic of Ireland and he ran a business for someone in Australia. Mr McNally had three other businesses in the Republic of Ireland. Mr McNally stated he was aware that DPD had defaulted on its VAT liability but that he was not concerned as he had wanted a business which was established. He was advised that there was a current assessment of approximately £530,000 raised and sent to the registered business address on 13 October 2016. Mr McNally stated that the company had approximately £2 million of stock although he did not know where the stock was held nor had he seen it. He requested time to update DPD's VAT returns and accounts however failed to provide proof of trading and records. DPD was de-registered with effect from 17 November 2016 on the basis that no evidence was provided to show that DPD was or intended to make taxable supplies.

30. Mutual assistance from the Irish Authorities established that DPD had transacted with Cloonlara Plant Exports Ltd on 4 February 2016. Associated businesses of Cloonlara Plant Exports Ltd were MG Plant Exports Ltd and MG Plant and Machinery Sales Ltd both of whom stated that Mr McNally was involved in organising deals on behalf of DPD in February 2016 prior to his appointment as director of DPD and despite having told HMRC that he was not aware of DPD's business activities prior to his appointment. Cloonlara Plant Exports Ltd also provided delivery documents for plant and machinery which were signed upon receipt of goods by a 'JPMcN' as a representative of DPD.

31. Mr McNally was appointed as director of UK Plant Sales Ltd on 1 December 2016. The company is based in Manchester and is currently being monitored by HMRC in relation to purchases which trace back to fraudulent UK defaulters.

32. HMRC raised assessments totalling £1,470,707.69 which have not been paid or appealed. Officer Nixon concluded that DPD was set up to intentionally facilitate

MTIC fraud and default on its debts and that in relation to Mr McNally "the façade of attempting to be compliant was to mislead".

33. RM was incorporated on 15 June 2009 and registered for VAT with effect from 4 July 2016. RM was on quarterly returns but did not submit any returns nor did it make any payments. HMRC used RM's bank statements to calculate and raise 3 assessments against RM totalling £804,853. The assessments remain unpaid and have not been appealed.

34. RM declared its trading activities as 'fitting telegraph poles' however HMRC have no evidence to indicate that RM ever traded in this sector; it appeared to trade in plant and machinery. Attempts by officer Nixon to make contact with RM by telephone and a visit by officers Nixon and Arnold to its registered business address in Omagh were unsuccessful and RM's VRN was cancelled with effect from 2 November 2016. Officers Nixon and Arnold concluded that RM was a business set up intentionally to facilitate MTIC fraud and default on its debts.

Submissions

35. The Appellant submitted that it is unable to accept or deny a tax loss as it is not in a position to challenge HMRC's evidence. The financial evidence in relation to R M Civils does not cover 1 October 2016 to 2 November 2016 and there is no evidence to demonstrate a loss of VAT. There is no evidence as to the sources of purchases (UK or not), whether a profit was made and what input tax may have been incurred. In relation to DPD there is no financial information beyond the sales which relate to the deals in this appeal. The Appellant also notes that although there is evidence that the companies failed to submit returns there is no evidence that losses have actually occurred. As at the dates of deals 1 – 4 DPD had submitted returns and was not yet due to make a return for period 06/16. As at the date of deal 5 RM was not registered for VAT.

36. The Appellant contends that failure to submit returns is not, of itself, proof of fraud. Similarly, a failure to respond to correspondence from HMRC and/or assessments is not proof of fraudulent action or intent. The Appellant highlights, in relation to DPD, that Mr McNally responded promptly to and met with HMRC, seeking time to bring DPD's VAT affairs up to date. Email correspondence followed when Mr McNally was abroad. There is no direct evidence of fraud and Mr McNally's conduct implies that none existed. Mr McNally's involvement in deals carried out by DPD in the past is not evidence of his knowledge of its affairs or compliance with VAT obligations. DPD's purchases from a company whose principal person was a director of other companies which had in the past done deals with defaulting traders is circumstantial evidence only. No efforts have been made by HMRC to take action despite knowing Mr McNally's current whereabouts. The lack of contact with RM Civils is not evidence of fraud and HMRC's investigations were limited.

37. HMRC submitted that the Appellant's transactions are clearly connected with the fraudulent evasions of VAT. In deals 1 – 3 and 5 the Appellant purchased from

one of two defaulters and is therefore in a direct supply chain one step removed from the defaulter. In deal 4 the Appellant purchased directly from the defaulting trader DPD.

38. HMRC submit that both DPD and RM failed to account for tax. HMRC received information that DPD had made supplies and received acquisitions on which it had not accounted for VAT, accordingly 5 assessments were issued totalling £1,455,825 plus interest of £14,882.69. The assessments remain unpaid and have not been appealed. RM failed to submit any returns and did not make payments; using RM's bank statements HMRC raised 3 assessments totalling £804,853 which remain unpaid and have not been appealed. Both companies had an obligation to account for tax; it is not for HMRC to speculate what tax may or may not be due from a trader. Relying on *Dynamic Corner Ltd v HM Revenue and Customs* [2013] UKFTT 271 (TC) at [234] – [238] the Tribunal held that a tax loss had been proved despite there being no evidence *"as to what input tax would have been allowed."*

39. Furthermore in evidence HMRC officer Arnold explained the evidence as to where the companies' purchases came from. RM's bank statements show that it made payments to MPL and Cappagh; it is therefore a reasonable inference that its payments to those companies related to the purchase and sale of plant and machinery in which RM traded. As both MPL and Cappagh were based in the Republic of Ireland the invoices to RM would have been zero-rated. RM was therefore obliged to declare the acquisitions and tax thereon. The input tax element would be reduced to zero and RM would be left owing money to HMRC. In the absence of VAT returns HMRC issued best judgement assessments on the information they held and concluded that the sales were subject to VAT. Similarly DPD's non-UK suppliers would have issued zero-rated invoices and the VAT implications would have been the same as for RM. Mrs Arnold explained that HMRC had attempted to establish contact with the traders but that the lack of communication and records was deemed to indicate fraud as no contact was made even following assessments being raised. Mrs Arnold added that her review of RM's bank statements indicated that at any one time there was insufficient money for the company to meet its tax liability yet the statements show numerous transactions. Mrs Arnold clarified that her evidence related solely to the defaulting traders and that she could not comment on the Appellant's knowledge, actual or constructive, of fraud.

40. As to the fraud element HMRC rely on the following. In relation to DPD:

- It's declared trading on the VAT1 was 'civil engineering' yet there was no evidence it ever traded in this sector. There is evidence that DPD traded in plant and machinery;
- It submitted nil returns for periods 06/15 – 03/16 and no returns for 06/16 – 09/16. DPD has made no VAT payments, it has not paid the assessments raised nor has it appealed the assessments;
- There was no answer at a visit to DPD's registered business address;

- In evidence officer Arnold explained that contact by a de-registered trader is not unusual. HMRC had concerns as to Mr McNully's credibility for instance his knowledge and lack of concern as to the debt to HMRC which he thought was £250,000 but was in fact £500,000, the assets DPD was said to have but in respect of which he had taken no steps to identify, locate or confirm the assets, his denial of knowledge of DPD's previous business activities when mutual assistance indicated he had been involved prior to his appointment as director;

- Mr McNully failed to provide proof of trading and records;

- DPD had purchased from MPL Plant Hire Ltd, the principal person of which was a director of 3 companies between 2013 and 2015 which purchased approximately £3.45 million net of plant and machinery from fraudulent UK traders. The principal person was prosecuted for theft. This information demonstrated, as stated by officer Arnold, that this was not isolated trading.

41. In relation to RM:

- Officer Arnold's evidence was that the VAT1 was inaccurate in declaring RM's trade as 'fitting telegraph poles'. There was no evidence of any such trade and the VAT1 post dated deal 5;

- In deal 5 RM sold 3 vehicles to KSD who sold to the Appellant. RM's invoice to KSD is dated 25 July 2016 however KSD's invoice to the Appellant pre dates it, being dated 30 June 2016. The inference to draw is that RM was registered for VAT on 4 July 2016 and therefore in order to reclaim the VAT the invoice needed to post date registration;

- RM was uncontactable despite numerous efforts by HMRC to make contact.

42. HMRC submitted that the evidence of Mrs Arnold, Mr Sharrock and Mr Nixon demonstrates that the defaulters failed to account for tax and that the origins of the purchases leading to the tax losses were clearly explained in evidence. The issue of fraud can be proved by either direct evidence or inference. In this appeal the evidence taken both individually and cumulatively relating to DPD, RM and the trading partners of the Appellant leads to the compelling conclusion that the tax loss results from fraudulent evasion. The accuracy of HMRC's tracing of the chains of supply was not challenged and the connection is therefore established.

43. HMRC submit that these factors taken both individually and cumulatively provide cogent evidence that the tax loss was connected to the fraudulent evasion of VAT.

Findings on whether the tax loss was fraudulent and whether the Appellant's transactions connected with fraudulent tax losses?

44. We were satisfied that HMRC had demonstrated tax losses in the chains. We rejected the Appellant's submission relating to evidence regarding potential input tax

due to the defaulting traders; we were satisfied that RM and DPD had an obligation to account for tax and failed to do so in circumstances where there was evidence of trading. Our view was reinforced by the evidence of officer Arnold in respect of the transactions undertaken by the defaulting traders which gave rise to the tax losses and we accepted the evidence as to why no input tax would have been due to the traders which could have a bearing on the losses. We agree with the approach taken in *Dynamic Corner Ltd v HM Revenue and Customs* and we were satisfied that the loss did not need to be quantified or particularised as long as were satisfied that there was a loss.

45. We concluded that the tax losses were fraudulent. In respect of both RM and DPD we inferred from the companies' respective failures to declare trade or submit returns to reflect that trade taken together with the failure to pay or appeal the assessments raised against them was indicative of the fraudulent nature of the transactions. We noted that despite numerous attempts, RM was not contactable at the registered place of business nor did it seek to make contact with HMRC following the assessments being raised. The fact that RM traded in a manner inconsistent with the information provided on the VAT1 reinforced our view that in assessing the evidence overall we were satisfied that RM fraudulently facilitated tax losses.

46. In relation to DPD, we considered the actions of Mr McNully and concluded that his contact with HMRC was a facade when balanced against his involvement in DPD's trading prior to his appointment as director which he denied, the assets about which he appeared to know nothing, his knowledge that DPD had submitted no VAT returns since registering for VAT, his confirmation that DPD had carried out transactions since his appointment and the continued failure to provide HMRC with any records, which we were satisfied was indicative of his knowledge and involvement in facilitating fraudulent tax losses.

47. As to whether the transactions were connected, there was no challenge to HMRC's tracing of the deal chains and we were satisfied that that the evidence was reliable and that that the Appellant's transactions were connected to fraudulent tax losses caused by the defaulting traders.

48. We concluded in respect of the issues set out at [14 (a) – (c)] above that HMRC had proved to the requisite standard that the Appellant's transactions were connected to fraudulent tax losses.

Did the Appellant know, or should it have known that the transactions in this appeal were connected to fraud?

<u>Evidence on behalf of HMRC</u>

49. HMRC relied on a number of factors as indicators that the Appellant, through Mr O'Grady, knew or should have known that its transactions were connected to fraud. HMRC officer Sharrock gave evidence in relation to those factors as HMRC officer White who made the decision to deny input tax now works for a different directorate within HMRC. Mr Sharrock explained that he reviewed all of the

documents produced for the case by Officer White before writing his witness statement.

The Appellant and Awareness of MTIC fraud

50. Mr Sharrock highlighted a meeting at HMRC's offices on 15 April 2015 which was attended by Mr O'Grady. At the meeting the details of the Appellant's trading were established, MTIC fraud and due diligence were discussed with Notice 726 being issued to Mr O'Grady. Mr O'Grady was advised that the HMRC VAT Validation Unit was able to provide more up to date information in verifying traders than the Europa website. Following the meeting on 13 May 2015 HMRC issued a letter to the Appellant setting out the risks of MTIC fraud.

51. A further meeting with HMRC took place on 27 August 2015 at which Mr O'Grady was accompanied by his accountant. At the meeting it was established that the Appellant's due diligence mainly consisted of checks on Companies House and the Europa website. On 26 February 2016 the Appellant was notified that it was being placed on the monitoring programme due to concerns over MTIC fraud. On 24 March 2016 Mr O'Grady attended another meeting with HMRC at which the formation and administration of the Appellant was discussed together with Mr O'Grady's associations with other companies which were:

- SOS Storage;
- GRU Energy;
- SOS Grady Plant;
- KSS Traded.

52. Mr O'Grady advised HMRC that he had a stocking facility with Close Bothers of £150,000 - £200,000 and a loan of £100,000 from Peterborough Plant. Due diligence, MTIC fraud, VAT repayments and inspections were discussed.

53. HMRC contend that Mr O'Grady ought to have been fully aware of the risks associated with MTIC fraud as a result of the discussions and letters issued to the Appellant.

Commercial Checks and due diligence

Suppliers

54. Mr Sharrock provided the following evidence in relation to the Appellant's suppliers:

(a) RJC

55. RJC was incorporated on 19 February 2013 with an effective date of VAT registration of 20 June 2013. Its business activity is shown as 'Renting & leasing of agricultural machinery and equipment' and the sole director is Mr Joe Frizell. The

VAT application gave the business activities as plant hire and haulage with intended taxable supplies with an estimated turnover of £2,000. The company indicated that it did not intend to trade with the EU. On 26 June 2013 HMRC write to query the estimated turnover which was corrected to £2,000,000.

5 56. At a visit by HMRC on 13 October 2015 RCJ stated that it used staff from its associated business and its main business activity was renting machinery to the construction industry. RCJ's VAT returns from period 10/13 to 10/17 show cumulatively:

- Sales of £2,901,537;

10

- Purchases of £4,276,147;
- A net repayment position for VAT of £307,859, and
- No sales or purchases from or to the EU.

57. On 21 December 2016 RJC was notified that it was being added to HMRC's MTIC trader monitoring programme.

15 *(b) Frizell*

58. Frizell was incorporated on 2 May 1989 and registered for VAT with effect from 15 February 1992 and de-registered on 23 February 2017. The company's business was 'Renting and leasing of agricultural machinery and equipment'. Joe Frizell and Trevor William Frizell were the company directors and Ann Katherine Frizell was a
20 director and company secretary. The company is currently in administration. In its application for VAT registration the company's business activities were described as 'Tipping of building waste'.

59. Frizell's VAT returns from period 07/14 until deregistration show cumulatively:

- Sales of £3,587,286;

25

- Purchases of £5,134,673;
- A net repayment for VAT of £385,110.

60. Frizell was assessed for £70,000 relating to the purchase of land that was declared to be for its own use but in fact was leased to RJC. RJC and Frizell are associated by ownership and shared premises.

30 61. On 7 December 2016 Frizell was notified that it was being added to HMRC's MTIC trader monitoring programme.

(c) KSD

62. KSD was incorporated on 29 January 2015. Its declared business activities were:

- Sale of used cars and light motor vehicles;
- Other retail sales not in shops, stalls or markets.

63. The directors were/are:

- Bharat Barry Singh appointed on 1 September 2015;
- Lord Dildar Singh appointed on 29 September 2015 and resigned on 13 May 2017;
- Lakhvindar Singh appointed on 1 September 2015 and resigned on 1 May 2015.

64. Dildar Singh trading as KSD Commercial Services was registered for VAT from 1 February 2015. The application for VAT declared the main business activity as 'General trader' and 'skip hire' with an estimated turnover of £80,000. In a response for further clarification Mr Singh advised HMRC that "we cross hire plant and machinery to service the construction industry. We buy and sell recycled aggregates. We will be buy (sic) and selling plant and machinery. Cross hire of haulage for delivery of aggregates and muck away."

65. KSD was notified that it was being added to HMRC's MTIC trader monitoring programme and on 10 January 2017 it was advised that a purchase from DPD had been traced back to a tax loss.

Customers

(d) MPL

66. MPL was incorporated on 18 March 2015 and registered for VAT from 19 March 2015. DPD was a company that made a number of high value purchases from MPL in 2015 and 2016. In period 06/16 the Appellant sold MPL three vehicles that MPL subsequently sold to DPD.

(e) Cappagh

67. Cappagh was incorporated on 7 March 2015 and registered for VAT from 7 March 2015. It was deregistered on 17 August 2016 and struck off on 24 September 2017.

(f) Rowlands

68. Rowlands was incorporated on 22 February 2006 and registered for VAT on 24 October 1988 to Anthony Edward Rowlands who registered as a milk roundsman and agricultural contractor. The milk round was sold in August 1993 with plant hire becoming the main business activity.

(g) Millar

69. Millar was incorporated on 2 February 1996 and registered for VAT from 20 February 1996. Its business was stated to be 'wholesale of agricultural machinery,

equipment and supplies'. At a visit to the company on 2 August 2017 HMRC officer Nixon recorded that in respect of its trading partners:

- DPD – Mr Millar said the director had the surname Duggan but he could not recall his first name. The VAT number had been checked and was valid at the time of the deals. Mr Duggan had called and offered Mr Millar machines. The goods were delivered by the supplier, Mr Millar did not know by whom. Payments are made by bank transfer.

- RM – The director is Glen but Mr Millar could not recall the surname or where the company is based. The VAT number was checked before making a purchase and payment was made via bank transfer. The goods were delivered to the yard but Mr Millar did not know by whom.

- Peterborough Plant Sales – the contact is Sean Riley whose stepson is director,

(h) Lavin

70. Lavin was incorporated on 7 September 2012 and registered for VAT from the same date.

(i) Nezaj

71. Nezaj was incorporated on 13 September 2012 and registered for VAT from 1 November 2012. Its business activities were stated as 'Remediation activities & other waste management services'. The sole director is Milazim Nezaj.

72. Mr Sharrock explained that the importance of due diligence had been stressed to the Appellant at meetings with HMRC. Mr Sharrock noted that the Appellant had appointed accountants prior to the company being VAT registered and that it had used HMRC's Validation Unit to check its counterparties' VRNs. Mr Sharrock explained that the checks carried out by the Appellant confirmed the validity of some VRNs but not all. However there was no record of the Appellant attempting to validate its counterparties in the deals which form the subject of this appeal.

73. The Appellant produced a sample of its due diligence documents at the meeting with HMRC on 24 March 2016 and a further set as part of the extended verification process. The documents provided were as follows:

Deal 1 –

- RJC Companies House print

- MPL Europa check dated 29 February 2016

Deal 2 –

- RJC Companies House print

- Cappagh Europa check dated 17 July 2016
- Cappagh incorporation details

Deal 3 –

- Frizell Companies House print

Deal 4 –

- DPD Europa check dated 10 February 2016

Deal 5 –

- KSD Europa check dated 14 February 2016 showing the sole owner as Dildar Singh. Mr O'Grady dealt with Barry Singh
- Lavin Europa check dated 16 July 2016
- Lavin Incorporation details
- Cappagh Europa check dated 17 July 2016
- Cappagh incorporation details

74. Mr Sharrock took the view that the documents were sparse and could not have provided any reasonable assurance to the Appellant regarding its trading partners.

75. An email from Mr O'Grady to his accountant Mr Nimmo at Cobham Murphy dated 5 September 2016 was provided in which Mr O'Grady set out his due diligence in June 2016 which can be summarised as follows:

- DPD/Miller – Mr O'Grady met the director of DPD at Euroauctions and stated "everyone seemed to know him as a construction guy/truck and plant dealer. Previously I bought 1 truck off him, was pleasant enough to deal with, checked the item in this case (Komatsu) previously checked company and VAT no. Sold it to Miller tractors, one of the biggest plant deals I know. Comp going over 20 years with net worth of over £5m"
- RJC "Family run business run by Joe Frizell, son of Terry. My father has known Terry since the 90's, they live over the road to the yard, employ tens of people, they run trucks, diggers, dozers, dumpers etc…Previously checked the company out and VAT no…"
- Frizell – "run by Joe and his father, incorporated 02/3/89 (before I was born) seen truck, received inv…paid details on inv."
- KSD "known Barry Singh a while, known his father longer, got put onto him through some crushed brick job, been to his house several occasions and yard,

inspected items, already previously dealt with them and checked the VAT no at that point, paid details on inv."

- "I always take a view of the company as a whole, where there based, do they have a yard? Does anyone else know them? Has anyone I know previously dealt with them. These things are important to me not only to keep HMRC happy and the VAT accounted for but for the sake of my own money."

76. The email made a number of references to "paying the details on the invoice" which we understood from Mr O'Grady's evidence to mean that there were no deals highlighted in which an amount different to that on the invoice was paid as opposed to referring to the timing of payment as appeared to be suggested by HMRC. The email also made reference to other companies with which the Appellant traded, the fact that he would sell goods after carrying out work on them and that he would sell to traders who would export for instance to the USA or Asia which Mr O'Grady explained in oral evidence could make more profit but was not the type of trade which he carried out for cash flow reasons.

77. The Appellant used two Eire based hauliers in the transactions; Daytona Heavy Haulage Limited ("Daytona") and Gateway Transport Limited ("Gateway"). The Appellant's checks on Daytona were limited to a Europa check on 25 August 2015 and a Company Check print showing the address, age of company (incorporated on 13 December 2012) and latest accounts dated 31 December 2013. No due diligence documents were provided in respect of Gateway.

78. In oral evidence Mr Sharrock accepted that Mr Frizell and Mr O'Grady had known each other for a lengthy period of time and he would not have expected to see checks on identification as part of the Appellant's due diligence. However, he noted that the financial position of the company and its creditworthiness had not been checked although he agreed that due diligence is more than just the sum of documents.

79. Mr Sharrock stated that there was no detail provided as to who Mr O'Grady had spoken to or how he obtained information although he accepted that HMRC had not raised any further queries in this regard.

Nature of trading and payments

80. The Appellant paid suppliers once it had received payment from customers. Mr Sharrock noted the lack of formal written contracts or agreements between the parties in each of the deals and the pattern of companies only paying the supplier after payment is received from the customer. Mr Sharrock agreed that he has seen businesses involved in trading high value goods in which there were no contracts and he accepted that the deals were discussed on the telephone but that he would have expected to see something in writing for the parties' own protection.

81. Mr O'Grady explained to HMRC at the meeting on 24 March 2016 that he would normally locate a customer, obtain a deposit and then purchase the goods. Mr

Sharrock noted that the payment information available for the relevant transactions did not follow this pattern as full payment rather than a deposit was paid by the customers. However Mr Sharrock clarified that he had only looked at the deals which form the subject of this appeal and therefore was unable to say whether deposits were taken in other deals and if so, how often and the type of deals they were.

82. Mr Sharrock noted the back to back nature of the deals although he accepted in cross-examination that although this may be an indicator of fraud it is simply one factor to take into account and in this case, it was not a major feature as not all of the invoices contained the same date and therefore would not be considered back to back deals. Mr Sharrock also agreed that it may not be unusual for goods to be kept on land belonging to a third party but the issue was a concern to HMRC as there was the possibility that less scrupulous traders would seek to miss Mr O'Grady out of a deal when inspecting goods on the third party's land.

83. Mr Sharrock stated that in respect of the deal documentation he had no concerns about documents missing and had accepted Mr O'Grady's explanation that documents such as purchase orders were not used in the industry and that the deals were supported by the documents that had been produced. He agreed that Mr O'Grady had been dealing in plant and machinery for years and therefore the offers received from trading partners were not unprompted, which had, in the past, often been viewed as a typical feature in MTIC frauds.

84. Mr Sharrock noted that in deals 1 – 3 the Appellant made significantly higher profits than its suppliers RJC and Frizell even though Mr O'Grady had been established in the industry for less time:

	Company	**Profit**
Deal 1	RJC	£1,500
	Appellant	£14,500
Deal 2	RJC	£1,000
	Appellant	£7,000
Deal 3	Frizell	£1,000
	Appellant	£10,875

85. In oral evidence Mr Sharrock confirmed that the Appellant reached a substantial turnover quickly and that in the pre VAT registration meeting Mr O'Grady had explained that it would vary and set out the reasons why more profit was made on some deals than others however the point HMRC were making was that presumably all traders in the chains would seek to make the largest profit available. Mr Sharrock confirmed that he did not view the Appellant's turnover as 'too good to be true' nor

did he question the level of profit made; he reached no other conclusion on pricing other than to note that the Appellant made more profit than others. He agreed that Mr Singh was not a specialised dealer and would trade in anything to make even a small profit, however he queried whether Mr Frizell had good contacts given his experience in buying plant and equipment for hire and use. Mr Sharrock explained that he had tried to find evidence of pricing in the trade but it was dependant on the condition of the plant and equipment and therefore he was unable to comment.

86. Mr Sharrock's examination of the deal documentation demonstrated unusual features, for instance invoice 1311 in relation to deal 1 is dated 8 July 2016, the value of £133,000 is shown as already paid however 8 July 2016 is the 'due date'. Mr Sharrock queried why a due date is shown if the payment was received before the invoice issued. However in cross examination Mr Sharrock confirmed that he had no reason to doubt the Appellant's explanation that the information is automatically generated by the computer.

87. The RJC sales invoice to the Appellant notes 'extensive damage and electrical issues on above machine'. The DPD invoice to RJC carried no such warning nor does it have any disclaimer. The Appellant's invoice to MPL makes no reference to such damage. It stated: 'sold as seen. No warranty given or implied and on the understanding that all faults and failings as may arise are at your own expense.' The Appellant's invoice also includes the sale of 'hitch and 1 bucket' although these associated items are not mentioned anywhere else in the invoice chain. The invoice from DPD to RCJ contained a different serial number for the item to the rest of the supply chain. HMRC queried this with RJC who subsequently obtained an amended invoice from DPD. RJC also had 2 different formats for its sales invoices; one of which quotes the Company Number as the VAT registration number. When this was raised with RJC HMRC was informed that the alternative format was the correct one.

88. The deal documentation for deal 2 contained the same anomaly in respect of the Appellant's invoice showing pre-payment and a due date. The dates of the invoices in the chain are inconsistent in that DPD supplied RJC 2 days after RCJ had supplied to the Appellant.

89. The deal documentation for deal 3 contained the same anomaly in respect of the Appellant's invoice showing pre-payment and a due date. The invoices from DPD to Frizell and Frizell to the Appellant refer to a 'Scania R560'. The Appellant's invoice refers to a 'Scania R560' and adds 'tipping gear and alloy wheels'. HMRC checked the vehicle registration details which showed that from 18 July 2014 to 13 July 2016 the registered keeper was E & M Fairhurst & Son of Lancaster and from 8 August 2016 Rowland was the owner. Mr Sharrock noted that at the time the vehicle was sold by DPD and Frizell it was still registered to Fairhurst. Mr O'Grady explained to HMRC that the vehicle was moved from Frizell's premises to premises owned by Mr O'Grady's sister. HMRC took the view that it remained unclear when the vehicle was moved as the Appellant only paid for it 2 weeks after the invoice was raised by Frizell. HMRC was also advised that Rowland's inspection of the vehicle was carried out by a representative of Frizell.

90. The deal documentation for deal 4 contained the same anomaly in respect of the Appellant's invoice showing pre-payment and a due date. DPD's invoice refers to the Komatsu and states 'no hitch or bucket'. The Appellant's documents state 'C/w hitachi and 3 buckets' ('hitachi presumably should read 'hitch'). HMRC was advised that the vehicle was inspected on site in Manchester but also that the vehicle was stored at the vendors; as DPD was based in Northern Ireland the two statements are contradictory. HMRC was informed that the customer Millar purchased the vehicle based on a description over the telephone and arranged collection/transportation although there is no evidence to show where it was collected from.

91. The deal documentation for deal 5 contained the same anomaly in respect of the Appellant's invoice showing pre-payment and a due date. KSD's sales invoice comes before that of RM Civils its supplier. The Appellant sold 3 vehicles to 3 separate companies but two of the sales pre-date the RM Civils sale which should start the supply chain. The Appellant stated it inspected the goods at a yard belonging to its customer; HMRC queried why the inspection would take place after the Appellant's sale.

92. Mr Sharrock accepted that there may be explanations for the anomalies raised and that some would not necessarily have been known to the Appellant. However he explained that he was pointing out the features and making the point that he would expect the documents to contain full descriptions at each stage as whilst there may have been no issues in the deals, the differences in documentation may have become an issue in the event of a problem.

93. Mr Sharrock accepted that the non-registration of ownership is common in the industry, adding that HMRC did not place significant reliance on this. He explained that some of the explanations had been provided during the ADR process however he had been unable to refer to them in making his statement in accordance with procedure. Mr Sharrock stated that there was a lack of clarity as to the full picture, for instance when the Appellant took control of a machine, when he paid for it and who was responsible for insuring it. There may also have been an issue if a trader has paid for the goods but has no control over them. Mr Sharrock agreed that the Appellant and witnesses had confirmed that payments took place in this way and he accepted that there may be variations as to how Mr O'Grady conducted different types of deals, however he noted that having been told that deals took place in a certain way, the deals in these appeals did not follow that pattern.

Loan

94. Mr Sharrock highlighted his concerns that although the Appellant had received a substantial loan from Peterborough Plant Sales Limited (Peterborough) the exact amount was unclear as Mr O'Grady had stated at a meeting on 27 August 2015 that the loan was £96,000 but at a meeting on 24 March 2016 he had stated £100,000. The loan had been made without any formal, written agreement with the arrangement being that it would be repaid after 1 year with £20,000 interest. Mr Sharrock noted that there were no terms and conditions to cover events such as non-payment or late payment. He also noted that whether the loan was made personally or company to

company, Peterborough is involved in similar trading to the Appellant and he queried why a commercial rival would provide a loan.

Insurance

95. The Appellant was insured to the value of £250,000 which did not cover the value of stock. Mr O'Grady provided the insurance schedule to HMRC; Mr Sharrock noted that as the Appellant operates from Mr O'Grady's home address and stock is stored at the premises of vendors and third parties it is unclear whether the Appellant's stock is covered by the insurance. In respect of the insurance documents relating to Daytona provided by the Appellant, Mr Sharrock stated that there was no full schedule as to what was covered. Furthermore, given the anomalies in the invoice dates and lack of formal contracts it cannot be established when title and ownership of the goods was transferred.

96. Mr Sharrock accepted in oral evidence that there was no evidence showing figures to support HMRC's contention that the Appellant was not insured at all times but noted that Mr O'Grady had accepted that there may be occasions where that was the case.

Evidence on behalf of the Appellant

97. We heard evidence from Mr Sean O'Grady and Mr Joseph Frizell. We were also provided with a witness statement from Mr Lord Dildar Singh, more about which we will say in due course.

Awareness of fraud

98. Mr O'Grady explained in oral evidence that the importance of due diligence and HMRC's VAT Validation system had been explained to him by HMRC officer D'Rozario at his first meeting with HMRC. Mr O'Grady explained that he had tried the VAT validation Unit but that responses were slow, in one case taking about 26 days. Whilst it said whether or not a VAT number was live, it did not provide any information as to whether he should trade with the company and in his view gave no more information than the Europa website which was quicker; any response that took longer than 1 day was pointless as Mr O'Grady needed to give people answers and the deals could not wait for a few weeks. He explained that he could not afford to lose a deal which may be worth £8,000; in this type of trade 1 digger might come up, not 100s and therefore delay could mean that he lost the deal as the supplier offered the digger to someone else and deals do not come about every day, there may only be one per week or two weeks. He also noted that he could not recall any occasion on which Europa had given incorrect information and stated that he checked the VAT numbers for each transaction. Mr O'Grady stated that in respect of certain large, reputable companies he would limit his due diligence; he likened these companies to the 'Tesco of the industry' and noted that he wouldn't check the VRN of Tesco every time he bought fuel.

99. Mr O'Grady described the purpose of due diligence as being to satisfy himself that the trade is genuine. He did not agree that it was to prove anything to HMRC but

rather to show them what he had done; at the time he was not aware that he had to show HMRC anything and believed it was sufficient to tell them the checks carried out which they could verify and see he was not lying. He added that paperwork in itself does not always indicate that due diligence is sufficient; the surrounding circumstances must also be looked at. Mr O'Grady stated that it did not concern him that he was on HMRC's MTIC monitoring programme as he was doing nothing wrong; it was of no relevance unless he had known of fraud in which case he would have panicked. He stated that he simply kept on doing the same checks of VAT numbers and visits.

100. Mr O'Grady accepted that he had appointments as a director of a number of companies prior to establishing the Appellant. Mr O'Grady explained his involvement in each of the companies which varied from active to agreeing to act as company secretary in Vaughan Parry Associates Ltd for a friend without any knowledge of or involvement in the company. In Mr O'Grady's words he "had experience of putting my name down as one" but the only trading experience he had had was through KSS. He explained that he had no knowledge of MTIC fraud prior to setting up the Appellant and that KSS had not carried out due diligence as his father was unaware of MTIC fraud and struggled using computers as he was dyslexic.

101. Mr O'Grady explained that on or around 2013 he started helping his father to sell plant and machinery through KSS. As his knowledge and experience grew Mr O'Grady's involvement also grew and he took an active part in all aspects of the business. Subsequently Mr O'Grady set up the Appellant, explaining that he wanted to set up his own brand and that he did not trade through the Appellant while he traded with KSS which was later dissolved.

Nature of trade

102. Mr O'Grady explained that the Appellant trades in the purchase and sale of moveable plant and machinery. The company was established on 30 April 2014 by Mr O'Grady as a result of his contacts in the industry both in the UK and overseas, predominantly Eire and the USA. Mr O'Grady established contacts while working in his father's company which has a multi million pound turnover.

103. In relation to his associations with other companies highlighted by HMRC, Mr O'Grady provided a list of 6 companies with which he has been involved, all of which have been dissolved save for 2 which are dormant.

104. The Appellant has no other employees. The aim was to become a reliable, well-known specialist in plant acquisition and sales. The financing of the business was arranged by a facility from Close Brothers Ltd and a privately obtained loan.

105. The business has always operated mainly by telephone from Mr O'Grady's home. He can be approached either by a trader who has plant to sell or by a person who needs equipment. Once approached Mr O'Grady uses his knowledge to find a supplier or customer. The majority of transactions are carried out 'back to back' once the two parties have agreed on price. This is beneficial to the Appellant as it does not

want to hold stock. Payments can occur in one day and it is not infrequent that stock sold is actually still owned by the supplier until the deal is done.

106. Sources of equipment are not provided in the industry or to the Appellant by its supplier to avoid Mr O'Grady by-passing a trader in future deals, similarly Mr O'Grady does not disclose information about his suppliers to his customers.

107. Mr O'Grady negotiates prices with a view to obtaining the best profit for the Appellant whilst also retaining the goodwill of the parties. Mr O'Grady does not know what his supplier paid for the goods nor what the customer intended to do with the goods beyond what he was told in negotiations. In oral evidence Mr O'Grady explained that that Mr Frizell and KSD know the values of machines to a certain extent but the goods cannot be compared to vehicles such as cars where values can be found through Parkers or online as machines differ in specification and condition. Mr O'Grady explained that it is standard practice in the industry for no formal contracts to be in place; no other traders including large scale dealers used contracts, only those using finance. Mr O'Grady explained that his invoice is the receipt and he had explained the industry practice to his HMRC caseworker yet in this appeal HMRC have failed to understand how the industry works. He acknowledged that Notice 726 refers to contracts but stated that the guidance is not moulded to a specific industry and the contract element did not apply to his. In relation to the profits made by the Appellant, Mr O'Grady knows his market and potential customers. Traders such as KSD are general traders who are content to make a small commission for brokering a deal rather than acting as principal as the Appellant did.

108. In relation to the apparent anomalies highlighted by HMRC Mr O'Grady explained that the software on his computer automatically inserts a due date as the same date as the invoice unless it is overwritten. Mr O'Grady could not comment on disclaimers and errors contained in the invoices of his trading partners which were not prepared by him. Where the Appellant's invoice included a disclaimer, Mr O'Grady noted that MPL had fully examined the vehicle before purchase. As to dates being inconsistent, Mr O'Grady stated that in the industry the due date is not relevant and he would not change it on the computer as the important date is when payment is made as until then the goods do not belong to you. He added that some traders give credit and would let him take a truck away, that would happen between traders who know and trust each other.

109. The fact that the Appellant's invoice may contain information which was not contained in that of the supplier is simply because Mr O'Grady decided to highlight certain features, such as tipping gear and alloy wheels which were on the vehicle he purchased. Mr O'Grady provided clarification as to where vehicles were stored and who had viewed them, explaining that there was some confusion over the word 'customer' as he regards both trading partners, suppliers and purchasers, as customers.

110. Mr O'Grady explained that it was not unusual for vehicles not to be registered to traders as it devalues the machine. He also stated that many deals are carried out on a back to back basis which does not infer that the transactions are fraudulent. Mr O'Grady explained the different types of trade he conducts; back to back deals such as

those in this appeal and those where plant is bought and taken into stock to find a buyer; in the latter the Appellant would take a deposit form a potential purchaser pending sale. Mr O'Grady explained that with the experience he now has he is able to make a judgement call as to whether a trader is serious and whether he can accept the trader's word. He added that in some cases it was detrimental to his reputation to ask for a deposit, for instance in the case of Millar which is successful and established.

111. As to the contradictions highlighted by HMRC in relation to where goods were stored and inspected and whether this was inconsistent with Mr O'Grady's explanation that traders do not provide details of suppliers or customers, Mr O'Grady explained that it is common practice to store goods at yards belonging to third parties, particularly in the case of the Appellant as the company does not have storage facilities.

112. In relation to the specific examples highlighted by HMRC Mr O'Grady clarified that his accountant Mr Nimmo had asked questions over the telephone which he had answered. Mr Nimmo had put the answers into table form and provided the documents to HMRC however some of the anomalies relied on by HMRC were simply errors made by Mr Nimmo in recording Mr O'Grady's answers. By way of example Mr O'Grady clarified that in respect of the vehicle in deal 4 and one of the items in deal 5, Mr Nimmo was mistaken in telling HMRC that it was stored at the vendor's premises; this error was later rectified with HMRC officer White.

113. Mr O'Grady answered the specific queries raised by HMRC, for instance in relation to deal 3 Mr Nimmo had recorded the goods as being inspected for the customer by "a representative of Frizells June 2016", however Mr O'Grady clarified that the goods were inspected by him on 11 July 2016 at Frizell's and then driven to North Wales Gwynedd Skip Hire which he uses for the free access. The vehicle was a truck and he stopped en route to let the customer, Rowlands, inspect it. The customer agreed to buy it but it needed work so Mr O'Grady took it to the yard and cleaned, painted and prepared it. Mr Sharrock accepted that Mr O'Grady had said the machine was moved but he had not mentioned work done on it; he agreed that this could possibly affect the value but that was a matter upon which he couldn't comment.

114. Mr O'Grady explained that he did not always use his sister's yard, sometimes he would inspect the goods at the seller's yard and telephone a potential customer who would accept or refuse the offer there and then. Mr O'Grady would then complete the deal with the seller, put an invoice in, get the money sent and provide the customer with the address to pick it up. He explained that a seller would not steal business from him as he would want to keep using Mr O'Grady's customer base and the harm to a trader's reputation is not worth it.

115. Mr O'Grady explained in respect of deal 2 that when he was offered the vehicle he was told it came with a hitch and 2 spare buckets and that was the deal he presented to Mr Millar. Mr O'Grady explained that he assumed Millars would send the machine to the USA where they were selling well but he could not wait the 6 – 8 weeks it would take to be paid for a deal in the USA. He therefore sold the machine that day, invoiced and was paid on the same day. When he received an invoice from

DPD it made no mention of the hitch and buckets. Mr O'Grady was not sure if this was dishonest on their part but he 'had it out' on the phone and the matter was resolved. Although DPD said they would send an amended invoice this was never received. Mr O'Grady explained that the make, model and registration are the important details and although his actions in respect of the hitch were sloppy he knew it was coming and told his customer to check. Mr O'Grady agreed he could have chased for an amended invoice from DPD but pointed out that the deal was done and it would not alter the result.

116. Mr O'Grady highlighted one of the documents prepared by Mr Nimmo from their telephone call in which it was recorded that Mr O'Grady had inspected goods at the premises of Nazaj (the customer). He noted that this answer made no sense and was a mistake by Mr Nimmo; this was evidence from later answers recorded which stated that Mr O'Grady had collected the goods to take them to Nezaj's premises.

117. Mr O'Grady stated that he spent approximately £2,000 on advertising platforms such as machine Retrader and Autotrader's plant trader site. He stated that is how he and Nezaj had made contact as he has about 3-4,000 contacts and if he advertises a vehicle it can be sent to around 500 people in the UK, ROI or USA.

118. In relation to the profits made Mr O'Grady did not accept that making £14,500 indicated that the deal was fraudulent; he stated he had made much more on other deals and where the purchase price is higher he looks for a better profit margin. He added that values of goods are affected by location; generally customers in ROI would pay more for machinery and as it is an export for the Appellant he would not look for small value deals. Mr O'Grady stated that had HMRC looked at his other deals they would have seen that there was nothing different about the deals in this appeal as compared with others. Mr O'Grady denied that he had closed his eyes to fraud, stating that the profits in these deals were not unusual and that whilst he looked to make a profit he only traded where he was satisfied that the deals were legitimate. The deals under appeal represent 0.5% of his trade.

Due diligence

119. Mr O'Grady explained in oral evidence that due diligence would vary for each customer. Many transactions are carried out with businesses that he has known for many years and has visited. Checks are made via Companies House and the Europa website as HMRC's VAT Validation Unit (which Mr O'Grady also used) is too slow to respond when negotiations for a deal are taking place. Mr O'Grady would also see what information he could find on Google and he now uses Creditsafe, a service which he pays for. He would go to a trader's yard, for example Mr Frizell, where the machines and trucks are stored and in the case of Mr Frizell it was likely that the goods would be on finance. In respect of KSD there were two companies; Mr Singh was director of both and his son worked with him. He stated that Mr Singh did not have much knowledge about the industry but would buy and sell anything on which he could make a profit. Mr O'Grady explained that he would check that machines were not stolen or had finance.

120. Mr O'Grady stated that the suppliers in all deals save one were KSD and RJC, companies he has continually traded with. Mr O'Grady noted that HMRC allowed the input tax reclaims of both suppliers and stated that no amount of due diligence would have cast any doubts on the companies or the viability of trading with them. He added that there is no comprehensive guide given by HMRC about the appropriate level of due diligence and it is therefore a subjective matter.

121. Mr O'Grady stated that although HMRC had explained to him about MTIC fraud, they had not advised him to keep records each time he traded. As to creditworthiness Mr O'Grady agreed it was relevant to a degree; he explained that traders were willing to trade with him in the Appellant's infancy on the basis of reputation and what they could see of the company and for that reason Mr O'Grady took the view that what he saw and heard about a trader is better than paperwork. However he agreed it made sense to check the paperwork for example a trader may have CCJs or a director may have been struck off and stated that it was an issue to which he applied common sense. As the Appellant did not give credit he was not concerned about payment as if the customer did not pay they did not get the machine. Mr O'Grady pointed out that in relation to his suppliers, he did not have creditworthiness of £500,000 yet just recently he paid that in a deal. Once he was invoiced, so long as the goods are not on HP, he had title to the goods. He added that he could never know the true financial position of a company even with a credit check as companies can obtain loans or borrow money and therefore until the year end accounts are submitted it was impossible to know added to which simply because he sells £300,000 of equipment but has only £60,000 in the bank does not mean he does not have the competency to do the deal.

122. In respect of the specific due diligence produced by Mr O'Grady he clarified that the documents produced were those which he had printed off but that he had carried out additional checks such as re-checking VAT numbers for which he had not kept a paper record. In respect of RJC Regeneration Ltd the due diligence paperwork showed that the company was active and that Joe Frizell was the director. He knew that tens of people were employed by Mr Frizell, had been to his home and yard, met his family and knew he was established in construction. Mr O'Grady noted that the company is still active today and that even if he had a printed record of all due diligence the tax loss in his chain would still exist. Mr O'Grady had no concern about the classification of the company; the vehicles in the relevant deals were construction related which was the industry the company was in and the reference to 'agricultural machinery and equipment' covers a large range of equipment and therefore the fact he knew that the company did not deal in agricultural goods was of no concern.

123. In respect of MPL Mr O'Grady agreed that that the only document produced was a Europa check which was 3 months before the deal. However, he reiterated that he had explained to HMRC a number of times that deals took place over the phone and he had not been aware that he had to print out all checks. He had continued to check that the company was live – and it remains so today.

124. As to RJC and Cappagh Mr O'Grady repeated that whether or not he had printed off a VAT validation, the company would still be registered and the tax loss would

still exist. The fact that a company was new did not trouble him as he had been in that position when starting out. Furthermore the deal was back to back so the Appellant was paid in order for the goods to be received. Mr O'Grady agreed there were no documents in relation to Rowlands but stated that it was a customer and therefore it did not matter if it was VAT registered in his deal, plus the company was local and Mr O'Grady had been to yard, seen the employees and the company trucks. He added that the customer was an end user and was not selling the goods on and therefore he had no reason to suspect connection to fraud.

125. Mr O'Grady stated that the Europa check which was out of date was obtained for his first deal with DPD which was on or around the time of the Europa check. He had met the director, received the goods and the deal was successful. He stated that at that time he was being monitored by HMRC and no issue had been raised by them and therefore he was satisfied that it was safe to trade with DPD a few months later when another deal came up.

126. In respect of Millar Mr O'Grady stated that it is a large company and as a customer it paid VAT to the Appellant. He had no concerns about money being paid by third parties and there were no features of his deals which were identified in HMRC's Public Notice relating to fraud.

127. Mr O'Grady agreed that KSD's invoice stated it was a limited company when in fact it was registered as a sole proprietor. However he stated he had checked the VAT number and address and Mr Singh's name kept coming up which was correct as it was Mr Singh who was the company and there was no reason to suspect Mr Singh was hiding anything.

128. Mr O'Grady agreed there was no due diligence print outs in respect of Nevaj. As to Lavin's accounts which were last filed in December 2015 when the relevant transaction was June 2016, Mr O'Grady explained that the document would flag up if there was an issue with the accounts and the document does not say that the accounts are overdue.

129. There are no due diligence documents exhibited in relation to the haulier Gateway/Lohan but Mr O'Grady explained that Richard and Maurice Lohan had grown up with his father, worked with his cousin and lived in a small village of about 300 people which indicated to him that they were not going to disappear. He had also spoken to a number of people who recommended the company and he had no reason not to trust the information which fitted with what he had seen. Similarly, in respect of Daytona, Mr O'Grady had obtained verbal references from a number of people. Mr O'Grady agreed that his paperwork may be sloppy but stated that even with documentary evidence of his checks there would still have been no indication of fraud. He added that knowing he was being monitored, if he had any reason to believe or knowledge of fraud he would have been more likely to ensure all paperwork was recorded and provided.

Loan

130. Mr O'Grady stated that the Appellant did not borrow money from Peterborough Plant Sales Limited as suggested by HMRC. He stated that it had been explained during the ADR process that Mr O'Grady loaned the funds to the company having personally borrowed money from Mr Sean Reilly of Peterborough Plant Sales Ltd.

131. Mr O'Grady explained in cross-examination that he considered that the loan came from Mr Reilly although the payment was made by the company Peterborough Plant Sales Ltd. He had sold machinery through KSS to Peterborough in the past, which is how he knew Mr Reilly. He agreed that his father may also have traded with them through a North West Plant too and was shown a document which confirmed this. Mr O'Grady explained that Mr Reilly was not a competitor as it trades in a different area approximately 300 miles away. He added that his type of trading differs to plant hire which is more cut-throat whereas he and other traders will speak to each other about offers they have received and agree prices from which they will then split the profit; rather than competing they work together.

132. Mr O'Grady clarified that although not in writing the loan was in the sum of £96,000; HMRC's reliance on his reference to £100,000 was pedantic as it was a £4,000 difference on a large amount of money. He had asked for £100,000 and been given £96,000. There were no formal terms and conditions but if the money was not repaid Mr O'Grady would be charged more interest and blacklisted in the industry. Mr Reilly has a significant amount of wealth and does not need the money, rather he sees it as business whereby he would receive £20,000 interest at the end of the year, plus he knew and trusted Mr O'Grady. The money has now been repaid.

Insurance

133. The Appellant has the insurance it needs for the stock it owns and holds and handles at any one time. If there are occasions when the total cover is exceeded they are brief and Mr O'Grady accepts it as part of the risk of the business however those occasions were infrequent which and only left the Appellant exposed to a small commercially managed risk. Insurance for transportation is a separate matter provided under mandatory policies by the transporter, Mr O'Grady provided insurance renewal schedule from Allianz to Daytona (being the insured) dated 20 June 2017 which showed that the transporter was insured as a carrier under common law.

134. Mr O'Grady explained that the deals in this appeal were no different to the Appellant's other deals. Deals 1, 2, 3 and 5 involved traders which he knew well and had previously dealt with. Deal 4 involved a company that the Appellant had had one previous transaction with six months earlier. He added that HMRC do not allege that the goods did not exist and therefore even if there was a fraud taking place he was still at risk as he is liable when the goods are in his possession. Mr O'Grady explained that he told the insurers the nature of his business and he was under the impression that his insurance policy covered the stock anywhere so long as it was in a secure yard up to £250,000 at any one time for any one machine. Mr O'Grady added that none of the goods exceeded that cover. He added that the business was growing constantly and he

had not planned for such quick growth nor was it a matter he thought about when taking the policy at the start of the year.

135. In cross examination Mr O'Grady summarised the deals under appeal in relation to his insurance as follows; some of the deals were back to back and others took place on different days. Millar paid on the same day as the deal so title immediately passed which meant that there was no need for the Appellant to insure the vehicle. The remainder were not worth more than £250,000 and would be covered by his insurance. He added that in 4 years he has never had a vehicle lost/damaged or stolen and he was satisfied that insurance was not a risk in his business. Mr O'Grady explained that when taking out insurance he had made it clear that he did not have a yard and explained his personal circumstances, as there was no point in paying for insurance if he was not covered. Mr O'Grady stated that he had provided his insurance document to HMRC and no issues had been raised; if there were queries HMRC could have requested additional information as he had always complied and provided paperwork promptly when requested.

136. Mr O'Grady accepted that the insurance policy exhibited in respect of Daytona post dated the deals in this appeal but explained that it was to show that the two transport companies used were well established in the industry. Mr O'Grady had also obtained references and would regularly see the transporters on the road with trucks of a higher value than those traded by the Appellant. Mr O'Grady agreed with the benefit of hindsight that he should have kept a better record of his checks on the companies.

Mr Frizell and Mr Singh

137. Mr Frizell is the director of RJC Regeneration Ltd, T W Frizell (Haulage and Plant Hire) Ltd and Frizell Tipping Ltd which all use vehicles and heavy plant and equipment. He explained that in addition to the core trades of road haulage, plant hire and equipment leasing and tipping of inert materials, the companies also buy and sell plant and equipment for a profit.

138. Mr Frizell has known Mr O'Grady and his company since 2015 however he first met Mr O'Grady's father who used to work with his father in the 1990s. Mr Frizell explained that he got on well with Mr O'Grady who bought a JCB from him trading as the Appellant which was the start of their working relationship which continues today.

139. Mr Frizell stated that there was nothing unusual about the deals in which he had purchased from DPD and sold to the Appellant nor was there anything to suggest that DPD was anything other than an ordinary trader. Mr Frizell had carried out due diligence on DPD and everything seemed normal. He noted that HMRC had no issue with his purchase and did not refuse his reclaim of input tax in respect of the machines.

140. Mr Sean Ansbro contacted Mr Frizell and informed him that they had some machines for sale. As they were not machines that were useful to Mr Frizell he

declined the offer to purchase them but agreed to see if he could find a buyer. DPD dropped the machines at his yard in Crewe and they were offered to a number of people including Mr O'Grady. Mr Frizell stated that Mr O'Grady was interested and that he did not provide details about the vehicles' history, the fact that they were not from his hire fleet or even that he did not own them. Mr Frizell did not tell Mr O'Grady that the vehicles had any connection with DPD.

141. Mr O'Grady made a bid which Mr Frizell took back to DPD. He agreed a deal whereby he earned a margin from the sale and negotiated the sale with Mr O'Grady; Mr Frizell explained that it is common for deals to be arranged in such a way in the industry. Mr Frizell did not ask who the Appellant sold to; in this business the source of goods and purchasers were not identified for fear of being bypassed in subsequent deals.

142. When asked about the detail contained on invoice 135 dated 23 June 2016 Mr Frizell explained that he could not recall the specific invoice but generally he would include a detail such as damage or electrical faults so that it was clear to the purchaser. He confirmed that vehicles are only registered by a trader if that trader is going to use them. He also confirmed that it was unlikely that the Appellant would have known who had supplied the goods and that this was how the industry worked. He stated that his business is plant hire and haulage supplying the construction industry, however he would buy and sell if the opportunity arose and there was a small profit to be made quickly. He explained that traders such as DPD offered him goods but they were not always useful to the company at a particular time, for example in deal 1 the vehicle was damaged and that was probably why it was not useful to him, however he took the opportunity to broker the sale of it as a lot of people come and go at his yard and there was the chance to make £2,000 or so.

143. Mr Frizell confirmed that the industry generally works without formal contracts, without insurance checks beyond his own insurance for goods at his yard and by discussions over the phone. He added that goods will be bought by descriptions given on the phone and, for instance in the case of Mr O'Grady, traders have knowledge of each other and a relationship of trust and will take each other at their word. He stated that if Mr O'Grady asked to inspect a vehicle when he was in the area he could come to the yard to do so whether or not Mr Frizell was there, although generally Mr O'Grady trusts his word.

144. Mr Frizell stated he had carried out due diligence on DPD and had dealt with them before without an issue however there was no paperwork he could provide. In relation to the company documents which contained different VAT numbers Mr Frizell explained that it was the result of a printing error; the company had a large number of invoices printed and by accident the company number instead of VRN was put on the document; there are emails to prove that Prontaprint re-printed them all free of charge to rectify their error. As to the different details on his invoices compared to the Appellants he stated that the Appellant would just be emphasising what the goods came with, i.e. a hitch and bucket as diggers can come with or without.

145. We were provided with a witness statement from Lord Dildar Singh who was not available to give evidence due to a family bereavement. We will summarise the relevant points of the statement and set out in due course our approach to the evidence.

146. Mr Singh confirmed that he is a director of KSD Commercial Services Ltd which buys and sells a wide range of goods and commodities and will trade in anything from handbags to dumper trucks if a profit can be made. Mr Singh stated that the company brokers deals by pre-selling before acquisition in back to back trades which are common in the industry. Mr Singh set out details relating to a transaction with the Appellant in which he only paid his supplier after he was paid by the Appellant and he confirmed that he never identified the source of goods to purchasers. Mr Singh confirmed that he was content to make a small profit on goods.

Submissions

HMRC's submissions

147. On behalf of HMRC Ms Newstead Taylor highlighted in closing features of the evidence given on behalf of the Appellant which, she submitted, indicated knowledge or means of knowledge on the part of Mr O'Grady.

148. As to the issue of knowledge, HMRC submitted that Mr O'Grady had limited experience as a director of a VAT registered company trading in plant and machinery and that he had a casual attitude to his duties and responsibilities of being a company officer as demonstrated by his appointment as company secretary in Vaughan Parry Associates. As Mr O'Grady's companies did not have bank accounts or VRNs, his only real experience was through KSS and his role in that company was unspecific and extremely limited. Despite his inexperience the Appellant made a substantial turnover very quickly.

149. HMRC have concerns regarding the loan which Mr O'Grady said came from Mr Sean Reilly, the father of Peterborough's director when the monies were paid by the company. Furthermore Peterborough and the Appellant traded in the same industry and would have been rivals despite Mr O'Grady's denial. The loan was not documented nor were there terms and conditions to protect the parties in the event of a breach of contract. Mr O'Grady was also uncertain as to the amount of the loan, stating £96,000 in 2015 then £100,000 in 2016; only in oral evidence did Mr O'Grady explain that he had asked for £100,000 but that £96,000 was sent.

150. Mr O'Grady was aware of MTIC fraud and its indicators from his meetings with HMRC and the written guidance with which he was provided and said he had read. Prior to April 2015 Mr O'Grady did not carry out due diligence, thereafter Mr O'Grady used HMRC's VAT Validation Unit and was therefore aware of the importance of validating VAT numbers. Mr O'Grady denied he had been told to check VRNs for every transaction despite an MTIC warning letter sent from HMRC in May 2015 advising so. In a further meeting in August 2015 Mr O'Grady was still not carrying out due diligence on all of its suppliers but was instead relying on the

appearance of companies such as whether they had a yard, vehicles, employees and whether they traded with entities such as E Stobbart. Mr O'Grady accepted that he was advised that this was insufficient as appearances can be deceptive. The Appellant's due diligence was limited to mainly Europa and Companies House checks. Even when the Appellant advised it had been placed on the MTIC monitoring programme Mr O'Grady continued to trade in the same manner. HMRC do not accept Mr O'Grady's explanation that the VAT Validation Unit was slow to respond as he had used the Unit in the past.

151. HMRC contend that knowledge of a company does not negate the need for robust due diligence and that Mr O'Grady undertook no or no adequate due diligence. Mr O'Grady did not validate the VRNs of the counterparties in deals 1 – 5 with HMRC's VAT Validation Unit. He did not validate the VRN of RJC or Frizell, Rowlands, Millar, Nezaj or Gateway Transport Ltd. Four of the Europa checks were out of date

152. Mr O'Grady's assertion in oral evidence that he had re-validated VRNs using his phone was not supported by documentary evidence nor had it been stated in either of Mr O'Grady's witness statements.

153. Mr O'Grady failed to act on the due diligence in relation to KSD which showed that it was registered as a sole proprietor whereas the invoices were from a limited company. HMRC accept that its bank details were in the format of a sole proprietor,

154. Mr O'Grady failed to investigate the financial position of Frizell, Lavin and Daytona despite the fact that accounts were available. Mr O'Grady failed to obtain credit checks which would have revealed that Daytona's liabilities exceeded its assets.

155. The deal documentation does not follow the pattern of purchase – sale, purchase – sale and the descriptions of the goods lack consistency. The invoice dates in deal 2 indicate that DPD supplied the goods after RJC had supplied them to the Appellant. In respect of deal 4 where there was a dispute over a hitch and 3 buckets the deal fitted together too easily and the customer relied on a verbal description of the goods. DPD was aware of the Appellant having sold to him in deal 4 yet deal 3 which took place on the same day involved DPD selling to Frizell who sold to the Appellant. In deal 2 DPD sold to RJC who sold to the Appellant. In deal 5 the invoice dates do not accord which, HMRC contend, can be explained by RM only being registered for VAT on 4 July 2016 and in order to claim the VAT the invoice needed to post-date registration which indicates contrivance.

156. HMRC highlight the absence of written contracts despite the combined total of the deals being £451,950. The terms and conditions on the Appellant's invoices were brief and left issues such as transfer of title, payment, delivery and returns not subject to any formal agreement. HMRC queries whether this is, as stated in evidence by Mr O'Grady, the industry norm.

157. Contrary to the Appellant's statement at a meeting with HMRC the Appellant did not take deposits in any of the deals and payment was made to its supplier when

the Appellant received payment. HMRC do not accept that this is a common method of trading and highlight that Notice 726 gives an indicator of fraud as goods that carry no commercial risk because payment was not required until payment was made by the customer.

5 158. Mr O'Grady stated that he paid against invoices but there is evidence of the Appellant making payment prior to receipt of an invoice, for instance in deal 1 payment was made the day before the date of the invoice. HMRC query the commercial reason for this and how the Appellant knew the bank details to make payment.

10 159. The Appellant's insurance covered owned plant and it was unclear when the Appellant took ownership. It would also appear that the value of the goods exceeded the level of cover. It is unclear whether stock held at a third party's premises was covered despite Mr O'Grady stating that Zurich had confirmed this in a telephone call. The insurance provided in respect of Daytona does not relate to the period in 15 question and the lack of checks made into the hauliers' insurance reflects Mr O'Grady's casual attitude.

160. The Appellant's profit exceeded Mr O'Grady's estimate given at a meeting with HMRC and he made the greatest profit in the chain. There is no evidence of negotiations or the advertising described by Mr O'Grady. Mr Frizell agreed that he 20 had many contacts for the purchase and sale of plant which contradicted Mr O'Grady's explanation that Frizell was not a specialist in the sale of plant and did not have the Appellant's contacts.

161. In relation to the evidence of Mr Frizell HMRC noted that DPD allowed Frizell to broker the deals instead of doing so themselves, Mr Frizell agreed to sell vehicles 25 that he did not consider useful, DPD transported the goods from ROI to Mr Frizell's yard without a written contract or reassurance as to insurance cover. There is no documentary evidence that the goods were offered to a number of people and Mr Frizell could not recall if Mr O'Grady had inspected the goods contrary to Mr O'Grady's assertion that he had. Mr Frizell should have been on notice that the deals 30 were possibly connected to fraud as due diligence on DPD would have revealed that its declared trade activity was civil engineering. The paperwork between DPD and Mr Frizell in deal 1contained the wrong serial number and in deal 2 the goods were sold by RJC before purchase according to the invoices.

162. HMRC contend that limited weight should be afforded to the evidence of Mr 35 Singh who was not present to give evidence and be cross-examined. In relation to his written evidence HMRC note that Mr Singh claims to be a director of KSD however he resigned his appointment on 13 May 2015. Details provided by Mr Singh regarding the sale of a Komatsu are irrelevant as it does not pertain to any of the deals in this appeal. HMRC query why RM allowed KSD to broker a deal for it and why RM were 40 content to move goods from ROI to Mr Singh's yard without a formal contract or reassurance as to insurance cover. The invoices indicate that KSD sold before purchasing the goods and no evidence that Mr Singh carried out due diligence on RM;

had it done so Mr Singh would have been aware that RM was not VAT registered until 4 July 2016 and its declared trading activity was fitting telegraph poles.

Appellant's submissions

163. As to the issue of knowledge it was submitted that HMRC had failed to understand the nature of the Appellant's business and the literature provided was neither detailed nor specific enough to assist in the particular trade.

164. The Appellant gave open and honest evidence. He explained the history of companies with which he had been involved, as he had from the outset at his meeting with HMRC in 2015.

165. The reason for the loan was explained by Mr O'Grady as the fact that he had "put over £1,000,000 worth of business Peterborough's was in the previous 11 months' when working at his father's business. As the companies were not based in the same geographical location they did not consider each other as rivals and would in fact work together. The terms were clear to the parties and the loan has since been repaid in accordance with those terms.

166. Mr O'Grady's explanation for using the Europa website instead of HMRC's VAT Validation Unit was reasonable given the short timescale in which he had to carry out transactions.

167. Mr Ginniff highlighted that at a meeting in August 2016 HMRC officers had concluded after reviewing the Appellant's transactions and due diligence that 'there was no evidence of MTIC risks'. Mr O'Grady may not have retained full evidence of the checks carried out but he confirmed that checks were carried out before transactions for the company's own protection. It was reasonable for Mr O'Grady to view the trading history of a company, its reputation and his knowledge of it as being good is not better than paper checks. Mr O'Grady's due diligence was sufficient in the circumstances given his longstanding relationship and knowledge of all suppliers save DPD. The Appellant had traded with DPD at a time when he was on HMRC's MTIC Monitoring programme and no issue had been raised. His knowledge of the hauliers came from what he saw and heard from other traders.

168. The deals in this appeal are in no way different to the many other deals carried out by the Appellant. Mr Sharrock accepted Mr O'Grady's explanation regarding the date for payment on his invoices being computer generated. Mr O'Grady provided explanations for differing details on invoices and the issue that had arisen in deal 4 regarding the hitch and buckets.

169. The issue in relation to Mr Frizell's Companies House number appearing on his invoices rather than the VRN was explained by Mr Frizell and HMRC appeared to accept the evidence of Mr O'Grady and Mr Frizell about the non-registration of vehicles by the parties with the DVLA.

170. The misunderstanding regarding inspections was explained as Mr O'Grady had referred to both suppliers and purchasers as customers when answering questions

from his accountant. Mr Frizell confirmed in evidence that traders would often use his yard to store their goods where they can be inspected; both Mr Frizell and Mr O'Grady confirmed that this was usual practice in the industry as is a purchaser accepting a description over the telephone.

171. The profits obtained by the Appellant were explained by Mr O'Grady as not unusual in comparison to his other deals and achievable because the sale of plant and equipment is his specialised area and not that of Frizell or KSD. Mr O'Grady explained how greater profit could be made for example by exporting to the USA and explained that Millar would be likely to do so but for cash flow the Appellant was not in a position to do so.

172. In relation to insurance Mr O'Grady explained why he believed the cover in place was sufficient and his commercial attitude to the risk involved.

173. Mr Singh confirmed the evidence of Mr O'Grady and Mr Frizell that traders do not reveal their suppliers and purchasers to trading partners and that KSD was content to make a small profit on such deals.

The Decision

174. Before we set out our findings on the evidence, we should note that we did not accept the criticism levelled at HMRC for failing to refer in their witness statements to the matters that were discussed during the ADR process. We accepted Mr Sharrock's explanation that it had been explained to the Appellant at the time that nothing discussed or disclosed during ADR could be used in the appeal process and that was the reason why explanations previously provided by Mr O'Grady were not explicitly set out in the witness statements on behalf of HMRC. We accepted that there was no attempt to mislead by HMRC however in considering the evidence we have had regard to the fact that explanations to queries raised by HMRC had been answered by Mr O'Grady prior to these proceedings.

175. We found all of the witnesses to be credible and cogent. We were satisfied that HMRC had raised valid concerns over a number of aspects of Mr O'Grady's trading however we found Mr O'Grady to be an honest and compelling witness and for the reasons set out below we found that the concerns were insufficient, whether viewed in isolation or as a whole, to demonstrate knowledge or means of knowledge on the part of the Appellant.

176. In relation to the evidence of Mr Singh who did not attend to give evidence, we have attached limited weight to his statement on the basis that the contents were not tested in cross-examination.

177. We were satisfied, and Mr O'Grady accepted, that prior to setting up the Appellant he had no knowledge of MTIC fraud nor carried out due diligence but following a number of visits from HMRC Mr O'Grady had been educated about the risk of MTIC fraud, the potential consequences to a claim for input tax and the importance of checking trading partners.

178. We noted that due diligence and MTIC fraud were discussed at a meeting on 15 April 2015 during which Mr O'Grady asked if he could check companies with HMRC. The record of the meeting shows that Mr O'Grady was advised by the officer that the Europa website could be used although it was stressed that the website was not operated by HMRC and is not updated as quickly as HMRC's databases. We accepted Mr O'Grady's explanation that he used the Europa site in preference over the HMRC VAT Validation Unit due to delays in the latter which caused problems given the back to back nature of his deals.

179. At the meeting on 27 August 2015 HMRC noted that Mr O'Grady had not recorded any due diligence checks prior to the pre-registration visit but at the meeting he showed HMRC a folder of the checks he was undertaking. We accepted Mr O'Grady's evidence that although he had some hard copies of due diligence documents he did not keep a full record of checks undertaken as he had not been advised that this was required. Whilst we took the view that Mr O'Grady's due diligence in terms of paperwork was certainly not robust, we were satisfied that Mr O'Grady had taken the steps he felt necessary to check his trading partners and his reassurance in relation to suppliers came principally from his longstanding knowledge of Mr Frizell and Mr Singh. We will say more about the evidence of Mr Frizell in due course, however in relation to Frizells and RJC we were satisfied that Mr O'Grady had known the company officers for a number of years through his father and that there was a relationship of trust between the two which had grown over a substantial number of years during which trading had taken place. In respect of KSD, again we were satisfied that Mr O'Grady had known the company officers for a number of years and had built up a professional trading relationship. We did not accept that the fact that Mr Singh held himself out as a director when in fact he was a sole trader could indicate knowledge or means of knowledge of fraud on the part of the Appellant; it appeared to us that Mr Singh made no distinction hence the reference in his witness statement to being a director. The question is whether the lack of thorough due diligence by the Appellant could indicate knowledge or means of knowledge of fraud and given the longstanding relationships with Mr Frizell and Mr Singh we were satisfied that despite the absence of paperwork it did not. In respect of DPD we took the view that although the due diligence could have been more thorough we accepted Mr O'Grady's explanation that he had traded with DPD on a previous occasion with no issues and that the earlier transaction had taken place at a time when Mr O'Grady was being monitored by HMRC who had raised no specific issue and given no warning in relation of DPD. We also noted that this was only one deal of many undertaken by Mr O'Grady and we were not satisfied that the issue of due diligence in respect of one trader in one deal indicated knowledge or means of knowledge on the part of the Appellant. Although a reasonable businessman aware of the prevalence of fraud may have conducted further enquiries, the question of what such a person might have done is not determinative of the issue before us particularly in circumstances where we were not satisfied that additional due diligence would have shown the existence of fraud.

180. In relation to hauliers we accepted Mr O'Grady's evidence that he used reputable firms known to him and believed, given the nature of their work, that insurance would be in place. We noted that Mr O'Grady had explained this to HMRC

at a meeting in August 2015 and no concerns had been expressed by the officer. Whilst we accepted that Mr O'Grady's approach was casual, we did not find that the reason for this was due to knowledge of fraud nor did we find the matter assisted us in determining the issue of means of knowledge.

181. There was no evidence that the Appellant's customers were linked to the fraudulent tax losses at the start of the chain of supply in this appeal. We noted that many of Mr O'Grady's customers were end users or traders exporting the goods internationally and whilst the checks undertaken were limited we were satisfied that Mr O'Grady largely conducted business with suppliers with whom there was substantial familiarity and he had, albeit varying degrees, of knowledge about his customers and the intended use of the goods, for example we accepted his evidence that some customers were in a position to export to the USA and that Mr O'Grady was aware of this when selling goods and that a higher profit could be made in doing so, however for cashflow reasons he chose a lower profit on a quick sale. We were not satisfied that the lack of paperwork when viewed against Mr O'Grady's knowledge of the trading partners indicated knowledge of fraud or means of knowledge on his part.

182. We considered the lack of formal written contracts. Both Mr O'Grady and Mr Frizell gave consistent evidence on the matter and we accepted that this was standard practice in the industry. In our view Mr O'Grady demonstrated a very good knowledge of the industry and we noted that this was supported by HMRC's note of meeting at the pre-registration visit. In those circumstances we found his evidence cogent and persuasive and we accepted Mr O'Grady's evidence that he considered his invoices were sufficient to set out the terms of his sales and purchases.

183. HMRC relied on a statement made in a meeting by Mr O'Grady regarding the taking of deposits from customers and the fact that the deals in this appeal did not support Mr O'Grady's assertion. We concluded that HMRC placed too much weight on this comment as Mr O'Grady had also stated at the pre-registration visit as recorded by HMRC "that he will receive payment from his customer before having to pay his supplier. Deposits occasionally taken." In our view there was no basis upon which HMRC could assert that the deals were inconsistent with Mr O'Grady's stated manner of trading as he had not stated that deposits were taken in every deal. Furthermore we accepted Mr O'Grady's evidence regarding the different types of deals he carried out and the circumstances in which he would decide whether or not to require a deposit from the customer. We were satisfied that Mr O'Grady had provided a wholly reasonable explanation on this issue and we were not satisfied that the lack of deposits indicated knowledge or means of knowledge of fraud.

184. We accepted Mr O'Grady's evidence that the deals in this appeal did not differ to any other deals undertaken in terms of the profits achieved; we noted that HMRC had not carried out a comparison of any other deals and that the evidence in the pre-registration visit note supported Mr O'Grady's evidence by recording that at the time of the meeting he had made a profit of £8,500 for the supply of plant machinery. In those circumstances we found – and Mr Sharrock accepted – that the levels of profit achieved were not "too good to be true" and we were satisfied that there was nothing in the profits made that indicated knowledge or means of knowledge of fraud. We

accepted the evidence of Mr O'Grady which was supported by Mr Frizell and Mr Singh that there was a distinction to be drawn in the nature of trade as between the Appellant who would source rare machines, carry out work on them and had a good knowledge of the vehicles traded and a substantial amount of contacts, and traders such as Mr Frizell and Mr Singh who would take an opportunity to make a low but quick profit without the level of effort required of Mr O'Grady. We noted that the pre-registration visit note recorded Mr O'Grady's "good knowledge of the trade sector" and the fact that he has "lots of contacts". It was clear from the evidence that Mr O'Grady was knowledgeable about his trade sector; in comparison the evidence also made clear that Mr Frizell's focus was on the hire of plant and machinery rather than the sale although he was presented with opportunities to sell due to having a storage yard where traders could keep vehicles and where he could effectively broker a deal with a visitor to the yard. We accepted Mr O'Grady's explanation that the difference between the manner of trade was the reason for different profit levels being achieved and we did not find that the difference in profits indicated knowledge or means of knowledge of fraud on the part of the Appellant.

185. We did not find that the back to back nature of the deals was an indicator of fraud and we noted that Mr Sharrock accepted this in oral evidence. Back to back trading can be a common feature in many markets and we accepted Mr O'Grady's evidence that due to fact he did not own a storage yard, many of his transactions would take place over a very short period of time and that the deals in this appeal were not unusual in that respect.

186. In respect of the anomalies on invoices highlighted by HMRC, we were satisfied that the difference in descriptions for example as between Mr Frizell and the Appellant's invoices, was no more than personal choice as to what details to include. We did not accept that the lack of consistency was a strong indication of knowledge or means of knowledge of fraud; we accepted Mr O'Grady's evidence that he included the details he felt sufficiently described the goods and relied on the fact that goods had either been inspected or an accurate oral description provided by him to the customer. We accepted that Mr Nimmo had mistakenly provided inaccurate information relating to inspections to HMRC and we accepted the oral evidence of Mr O'Grady that customers such as MPL based in the Republic of Ireland had people in the UK to carry out inspections for the company.

187. The details contained on invoices further up the chains were not matters known to the Appellant. We accepted Mr Frizell's evidence that the inclusion of the company number as the VAT number contained on his documentation was a printing error and we did not accept that Mr O'Grady's failure to notice or query this small detail indicated knowledge or means of knowledge on his part but rather was the result of his reliance on the longstanding relationship between the companies rather than paperwork. We accepted Mr O'Grady's evidence that his invoices showed prepayment and a due date as a result of being automatically generated by the computer.

188. We accepted the submission of HMRC in respect of deal 5 and RM's invoice which post-dated the sales made by the Appellant and we inferred on the balance of

probabilities that the only reasonable explanation was that the deal was contrived to fit with RM's registration for VAT on 4 July 2016. However, we were not satisfied that the Appellant knew or should have known of this fact; as set out at [45] above we found that RM was a defaulting trader and caused the relevant fraudulent tax losses. The Appellant did not trade directly with RM and we were satisfied he did not know the dates contained on the company's documentation. As Mr Singh did not attend to give evidence, we are unable to make any detailed findings regarding KSD's knowledge or lack of knowledge however we formed the view from the limited evidence of Mr Singh that he was willing to take any opportunity to make a profit without making checks to ensure the veracity of the deal. We concluded that the date of RM's invoice was a matter which any reasonable trader would have queried but the failure to do so was a matter for KSD to explain, not Mr O'Grady. We accepted Mr O'Grady's evidence that he did not know who supplied his supplier and we considered HMRC's submission regarding the fact that DPD sold to Mr Frizell in two deals (through Frizells and RCJ) rather than directly to the Appellant as it did in one of the deals. We concluded from the evidence of Mr Frizell that the due diligence of RCJ and Frizells was poor. However the issue in this appeal does not concern the knowledge or means of knowledge of Mr Frizell but rather that of the Appellant and we concluded that the choice of DPD and Mr Frizell to trade with each other was not a matter within the Appellant's knowledge nor one in respect of which he had any involvement.

189. Mr Sharrock accepted in evidence the explanation that traders would not register their ownership in order not to devalue a vehicle. We also accepted this evidence and we were satisfied that Mr O'Grady was clear in his explanation that title to goods passed upon payment. We note the potential legal issues that could arise in relation to title and the lack of commercial risk as an indicator of fraud however we accepted Mr O'Grady's evidence that he assessed the commercial risk to himself as minimal as he was paid by his customer before making payment and that if his supplier reneged he would refund his customer the payment made. Whilst the lack of commercial risk could be an indicator of fraud we were satisfied that Mr O'Grady had no reason to view it as such nor did he knowingly ignore it as an indicator.

190. We noted that Mr O'Grady had told HMRC at a meeting on 27 August 2015 that he had received a loan from Sean Riley at Peterborough Plant for £96,000 which was an informal agreement based on trust and not put in writing. He had explained that the loan would be repaid within one year with interest in the region of £20,000. HMRC noted at the meeting that the loan appeared on Mr O'Grady's bank statements in five instalments. At a meeting with HMRC on 24 March 2016 Mr O'Grady referred to the loan being in the sum of £100,000. HMRC appeared to query the different figures stated by Mr O'Grady. However, we found nothing of substance in this; we accepted Mr O'Grady's evidence that he had requested £100,000 but been given £96,000 and given the substantial amount, the reference which was inaccurate by £4,000 in his eyes was not significant. The fact remains that Mr O'Grady had been open with HMRC about the loan from the outset, the loan was shown in his bank statements and Mr O'Grady confirmed it has been repaid; for that reason, we were satisfied that Mr O'Grady was not hiding anything nor was his reference to £100,000 anything more than a casual use of language. We understood why HMRC had

concerns about the loan from a potential rival in the industry however we were satisfied that Mr O'Grady had provided a reasonable explanation, namely that he had known Mr Riley, traded with him in the past and that the companies were not rivals. We also accepted Mr O'Grady's evidence that the benefit to Mr Riley was earning £20,000 and that Mr Riley was in the financial position whereby he could afford to make the loan.

191. The evidence pertaining to insurance was unclear and we noted Mr O'Grady's acceptance that he may not have been covered for all goods at one time which was a risk he was willing to take. We found his evidence persuasive in describing the disclosure he had made to the insurance company in respect of his history and clarified that given the back to back nature of the sales he believed that he would rarely have been in possession of goods which would exceed the cover. We noted the insurance schedule exhibited from Zurich appeared to show that Mr O'Grady was covered for owned plant for £250,000 "any one occurrence". Although the guidance notes were not produced we understood the term to mean that the level of cover for any one claim was £250,000 and given the nature of trade, the back to back sales, limited number of vehicles owned at any one time and the fact that vehicles were stored at different locations we accepted Mr O'Grady's evidence that the level of risk was minimal and one which he was prepared to take.

192. In respect of Mr Frizell we found his evidence supported that of Mr O'Grady in relation to practices within the industry and the history between their families which led to a trusting trading relationship. Whether Mr O'Grady's trust is misplaced is not an issue we must decide in this appeal given our findings on the evidence as a whole and we make no further comment on it.

193. We have set out at [176] our approach to the evidence of Mr Singh; we have attached minimal weight to his evidence however the small amount of weight we did afford to simply served to reinforce our conclusions as to how the industry works and Mr Singh's personal approach to it.

Conclusion

194. We were satisfied HMRC had established fraudulent tax losses and that there was an orchestrated scheme for the fraudulent evasion of VAT connected with the transactions which form the subject of this appeal.

195. We concluded, on the balance of probabilities, that in respect of the period under appeal that the Appellant did not know that the transactions were connected with the fraudulent evasion of VAT or that he should've known. We have set out in detail our findings on the various features of the transactions highlighted by HMRC in support of its case. In reaching this conclusion we have considered the transactions and their surrounding circumstances together with all of the evidence. We should make clear that we did not find HMRC had been unreasonable in denying the Appellant's claim to input tax as they had raised a number of valid queries and concerns in relation to the Appellant's trade and we were satisfied a reasonable businessman would have known that there was a significant risk of fraud. However,

with the benefit of full evidence we were satisfied that Mr O'Grady had provided reasonable explanations for the concerns and that those which remained, such as potential issues as to title of goods, which may have been questioned by a reasonable businessman, were not sufficient in the context of the Appellant's trading generally, knowledge of the industry and longstanding contacts, to indicate knowledge or means of knowledge of fraud. We have therefore concluded that HMRC have not proved that the Appellant did or should have known that it was taking part in transactions connected to the fraudulent evasion of tax

196. The appeal is allowed.

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

JENNIFER DEAN
TRIBUNAL JUDGE

RELEASE DATE: 15 MAY 2019