[2022] UKFTT 00107 (TC)

TC 08438

VALUE ADDED TAX – input tax disallowance – Kittel – taxpayer ran "cash and carry" alcohol business – small business – sold to hundreds of retailers – input tax denied on 81 purchases of alcohol from three suppliers over eleven months – taxpayer had been told by HMRC that others of its suppliers linked to "fraudulent defaulters" – taxpayer's checks on suppliers were formalistic, "tick box" – only reasonable explanation of circumstances of purchases was that they were connected with fraudulent VAT evasion – it therefore should have known of the connection – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/07068

BETWEEN

MIDDLESEX WINES LIMITED **Appellant**

-and-

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

TRIBUNAL: JUDGE ZACHARY CITRON
MS GILL HUNTER

Sitting in public at Taylor House, London EC1 on 18-21 January 2022 (with observers from the Respondents attending remotely by CVP)

Mr R Ashiq, counsel, instructed by Rainer Hughes, for the Appellant

Mr J Carey and Mr L MacDonald, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

BACKGROUND

1. This was an appeal against HMRC's decision denying input tax of £581,104 claimed by the appellant ("**Middx"**) in the 07/16, 10/16, 01/17 and 04/17 VAT quarterly accounting periods. HMRC's grounds for the input tax denial were that the purchases (the "**purchases**") on which the input tax was incurred were connected with the fraudulent evasion of VAT and Middx either knew, or should have known, this.

2. HMRC's decision was made on 26 July 2018 and upheld by them on review on 2 October 2018. Middx notified its appeal to the Tribunal on 29 October 2018.

3. In this decision, "input tax" and "output tax" have the meanings they have in the Value Added Tax Act 1994.

EVIDENCE

4. We had an electronic hearing bundle of 4,309 pdf pages. This included witness statements of seven officers of HMRC (Mandalia, Crofts, Harris, Foster, Noble, Gardam, Bulsara and Musson) and of Mr Dalil Singh, director of Middx.

5. We heard oral evidence from Officer Mandalia (the only one of HMRC's officers that Middx wished to cross examine) and Mr Singh.

6. The burden of proof in this appeal fell on HMRC. We found their evidence as to matters of fact of which they had first-hand knowledge to be reliable (and largely unchallenged). Where their evidence (or indeed Middx's) made inferences from such facts, or expressed opinions, and those inferences or opinions were relevant to the matters before us in this appeal, we considered them carefully, but did not afford them inherent evidential value, as the making of inferences, and coming to conclusions on the matters in this appeal, was ultimately a matter for our own judgement, based on our findings of fact (which follow).

7. We treated Mr Singh's factual evidence cautiously, given the dearth of contemporaneous documentary evidence about the purchases (apart from formalities like invoices) such as emails, letters, company board minutes or notes of commercial interactions between Middx and the three suppliers involved in the purchases. In general we accepted Mr Singh's evidence where it was corroborated by contemporaneous documents or by HMRC's evidence, or expressed common-sense commercial notions from the perspective of an operator of a small business.

FINDINGS OF FACT

The purchases

8. There were 81 purchases of alcoholic goods from three suppliers over an eleven month period:

   (1) 52 purchases from Thames Wines Ltd ("**Thames Wines**") over six months, between 5 May and 2 November 2016;

   (2) 4 purchases from N&R Supplies Ltd ("**N&R**") over 24 days, between 24 November and 17 December 2016; and

   (3) 25 purchases from Safina London Ltd ("**Safina**") over two months, between 27 January and 31 March 2017

9. It was an agreed fact that all the purchases were connected to a "tax loss".

10. The purchases from N&R and Safina were Middx's first transactions with those suppliers; however, Middx had transacted with Thames Wines prior to the first purchase (Middx made payments to Thames Wines on 15 October 2015 of about £15,000).

Middx's "cash and carry" business in 2016/2017

11. Middx was a small business run by the company director and (with his wife) shareholder, Mr Singh. Mr Singh was the controlling mind of Middx. In 2016/2017 (i.e. around the time the purchases took place) the business was principally a "cash and carry" selling alcoholic goods to retail customers. Middx had operated since 2013 from an 8,500 sq ft warehouse in Hayes (West London). Middx had three vans (used for deliveries to customers) and rented forklift trucks for use in the warehouse; it had a handful of staff, mostly family members.

12. Middx had many hundreds of customers, mostly retail outlets for alcoholic goods. Middx's onward sales of the goods acquired in the purchases were commercial and arm's length.

13. A sentence in an HMRC note of a visit to Middx in 2012 said: "*Trader maintained that throughout the chain of transactions, the customer pays before the supplier purchases goods*". On our assessment of the evidence as a whole, this sentence was describing the situation in 2012, when Middx's business was "under bond" trading, rather than the "cash and carry" business which predominated in 2016/2017. We find that Middx's "cash and carry" business in 2016/2017 did not operate by, first, receiving orders from customers, and then, obtaining those precise supplies. Rather, it was a fast-moving business with hundreds of customers that, like any such business, had to estimate how much stock it needed to meet demand (and did not precisely match orders made by customers to supplies procured from suppliers).

14. Middx had about 15-20 suppliers for its "cash and carry" business in 2016/2017.

15. Middx's "cash and carry" business was conducted on the basis that Middx did not pay suppliers prior to delivery. This meant that insurance of the goods prior to delivery was not a commercial risk for Middx. It also meant that Middx had no commercial reason to insist on – and did not in fact enter into – written contracts with its suppliers. Similarly, Middx did not take credit risk on its suppliers and had no commercial reason to check their credit rating.

Middx's business turnover

16. On applying for VAT registration in 2012, Middx said the estimated value of the taxable supplies it would make in the next 12 months was £300,000. A summary of Middx's VAT returns is in the appendix to this decision.

17. The input tax denied by VAT period (and percentage of Middx's total input tax for the period) was as follows:

(1) 07/16: £270,258 (58%)

(2) 10/16: £168,197 (50%)

(3) 01/17: £65,798 (38%)

(4) 04/17: £76,851 (34%)

Interaction with HMRC

18. HMRC made six visit to Middx between 2012 and 2016.

19. On 13 January 2016 HMRC raised VAT assessments in the amount of £694,180 plus interest in relation to denied input tax in the 1/2015 and 4/2015 VAT quarterly accounting periods (on the grounds that records were not provided to support deduction of the input tax in question); the decision was upheld on statutory review by HMRC on 29 July 2016. The

Tribunal informed HMRC on 17 August 2016 that it had received an appeal against this decision by Middx.

20. HMRC requested records for VAT quarterly accounting periods 01/15, 04/15. 07/15, 10/15 and 01/16 in May 2016 – HMRC received information from Middx in response in August 2016 and, in response to further requests from them, in October 2016.

21. On 3 March 2017 Middx's application for approval under the Alcohol Wholesaler Registration Scheme (**AWRS**) was refused. Its appeal against that decision is ongoing.

Middx's awareness of VAT fraud

22. In 2016/2017, Middx was well aware that there was a serious problem with fraudulent VAT evasion in the alcohol market in which it was trading: it had received letters from HMRC telling it this in 2012 and again in May 2016; HMRC had given it a copy of, and referred it to, their Notice 726 *Joint and several liability for unpaid VAT*; HMRC had spoken of the problem on their visits to Middx. Notice 726 had a section with HMRC's recommendations as to "checks to undertake to help make sure the integrity of your supply chain."

23. Middx knew (from the letters from HMRC in 2012 and May 2016) that HMRC operated a "verification" service, under which Middx could send basic details of new suppliers and customers to HMRC, and HMRC would respond within a short time verifying the VAT registration details. HMRC made clear that this service did not serve to guarantee the status of suppliers and purchasers; nor did it "absolve" traders (like Middx) from undertaking their own enquiries in relation to proposed transactions. Middx did not take advantage of this service in relation to the suppliers involved in the purchases.

24. Middx also specifically knew, because of "tax loss" letters it received from HMRC, that certain of its suppliers were in chains that commenced with a "defaulting trader":

(1) prior to the first of the purchases, Middx had been told by HMRC (through four letters, in July and December 2015, and February 2016) that 30 of its transactions in January-June 2015, with a supplier called SS Traders Ltd (a small privately owned company with no public profile), were in a chain that commenced with a "defaulting trader", resulting in a loss to the public revenue of approximately £240,000. The gross value of the purchases in question was over £1.2 million.

(2) during the period in which the purchases took place, Middx was told by HMRC (in letters) of the following further transactions that were in a chain that commenced with a "defaulting trader", resulting in losses to the public revenue:

(a) on 21 June 2016 Middx was told about losses of approximately £90,000 arising from 13 transactions with a supplier called Neat Trading Ltd (a small privately owned company with no public profile) in February 2015 (the gross value of the purchases was over £0.5 million);

(b) on 21 December 2016 Middx was told about losses of nearly £1 million arising from 176 transactions with 12 different suppliers (one of which was Thames Wines), mostly in 2015, but including some in early 2016 and one in 2014. The gross value of the purchases was over £6.7 million. All 12 suppliers were small privately owned company with no public profile. We note that none of the purchases from Thames Wines was after the date when Middx received this information from HMRC;

(c) on 20 February 2017 Middx was told about losses of approximately £168,000 arising from 21 transactions with Thames Wines in the 10/16 VAT quarterly accounting period. The gross value of the purchases was nearly £1 million.

25. On 24 November 2016, HMRC informed Middx that eight of its suppliers (including Rubby UK James Ltd ("**Rubby**")) (all small privately owned company with no public profile) had been VAT-deregistered.

Middx's checks on suppliers

26. HMRC's note of their meeting with Middx on 12 May 2014 said this:

> "We then discuss the due diligence checks done on the supplier/ customers. Mr Singh stated, he does conduct a checks on their VAT registration on the Europa website and company house checks on the suppliers. I have educated Mr Singh for the important of due diligence to ensure the validity of the VAT numbers on the supplier as well as the customers to safeguard his business transactions"

27. The things Middx did (the "**checks**") to check whether the three suppliers in question were involved with fraudulent VAT evasion were:

(1) it checked that the suppliers were VAT registered (using the European Commission's "VIES" system);

(2) it checked the suppliers were registered at Companies House;

(3) it asked for (and received) a copy of one or more utility bills in relation to the supplier;

(4) it asked for (and received) a copy of the director's passport;

(5) it commissioned a report (dated 27 January 2016) on Thames Wines from The Due Diligence Exchange Ltd. The cover letter from The Due Diligence Exchange Ltd said that Thames Wines had "passed the vetting measures" but that the references had not been received. Behind the cover letter was:

(a) 8 page *Report on Vetting and Site Visit* – this had sections on money laundering regulations, VAT registration checks, market prices, proof of duty payment, and contracts/terms and conditions of trade;

(b) 3 page *Site Visit and MLR [money laundering regulations] Interview Report* form in tick box format (with spaces for more information);

(c) photos of Thames Wines' warehouse;

(d) 1 page *First Owner Identification Details* form in tick box format (with spaces for more information) – basic information about the director of Thames Wines;

(e) 11 page *Business Information Form Dealers in Alcoholic Goods* in tick box format (with spaces for more information) – basic information about Thames Wines. Contact details for four references were given at the end of the form: two businesses, an accountant, and a landlord.

Amongst the information given was that Thames Wines did not accept payment in cash to the equivalent of €15,000 or more; that the company director had 10 years' experience in the alcohol industry; and that Thames Wines intended to register under the AWRS, but had been unable to "due to website issues".

At the end there was a Declaration by the director of Thames Wines (in which he confirmed, inter alia, that he had "no reasonable grounds to suspect that the relevant VAT on these specific goods has not been (or will not be) paid by [Thames Wines']

supplier"; and that he had "carried out all reasonable due diligence checks into the supplier(s) of the goods [Thames Wines sells] …");

(f) 6 page *Business Verification Action Report* in tick box format (with spaces for more information)

(g) 3 page *Personal ID Verification Report First Owner and/or Cash Couriers*

(h) 1 page *Report Review Form* – unsigned.

28. In our assessment, the checks were formalistic and "tick box" in nature – and so very unlikely to detect whether or not the suppliers in question were involved with fraudulent VAT evasion. Although in his oral evidence Mr Singh indicated that he had done a few other things by way of such checks (for which we had no contemporaneous documentary evidence), such as asking the directors of the supplier companies questions orally, and taking photos of their premises, we find that such interactions, to the extent they took place, were far from "probing" and they, too, were very unlikely to detect involvement with fraudulent VAT evasion.

Middx's cash dealings

29. Mr Singh told HMRC at meetings in 2013 and 2014 that Middx was not registered as a high value dealer for money laundering purposes because it did not make cash payments over £9,000.

30. Middx made several same-day cash payments of just under £10,000 to Thames Wines:

(1) On 1 August 2016 Middx paid £9,000 and £9,500

(2) On 8 August 2016 Middx paid £9,000 and £8,500

(3) On 9 August 2016 Middx paid £9,000 and £9,500

(4) On 10 August 2016 Middx paid £9,000 and £8,500

(5) On 25 August 2016 Middx paid £9,000 and £8,500

(6) On 29 August 2016 Middx paid £9,000 and £8,500

(7) On 14 September 2016 Middx paid £9,500 and £8,500

(8) On 15 September 2016 Middx paid £9,000 and £9,500

(9) On 21 September 2016 Middx paid £9,000 and £9,500

(10) On 23 September 2016 Middx paid £8,500 and £9,500

(11) On 26 September 2016 Middx paid £9,000 and £9,500

The three suppliers

Thames Wines

31. Thames Wines was incorporated on 9 December 2014 and registered for VAT with effect from 25 March 2015. The stated business activity was "wholesaling of alcohol and other related products".

32. Thames Wines submitted VAT returns up to the 06/16 VAT quarterly accounting period. No VAT returns for the 09/16 VAT quarterly accounting period or its final period were submitted.

33. In March 2016 HMRC's Fraud Investigation Service made a seizure of cash and alcohol at Thames Wines' warehouse; the driver of a lorry there admitted to diverting goods from a bonded warehouse.

34. On 7 November 2016 HMRC sent Thames Wines a VAT-deregistration letter on the basis that it was using its VAT registration solely or principally for abusive purposes. Thames Wines' application to the High Court for permission for a judicial review of HMRC's decision was refused.

35. On 22 December 2016 HMRC raised a penalty in the sum of £1,380 for failure to comply with a Schedule 36 notice. A further penalty of £1,200 was issued on 19 January 2017. Further penalties were issued for failure to comply with the Schedule 36 notices on 22 March 2017, of £3,320 and £1,710.

36. On 6 November 2017 HMRC raised inaccuracy penalties in the sum of £157,089.33 on Thames Wines in respect of the 9/15, 12/15, 3/16 and 6/16 VAT quarterly accounting periods.

37. Thames Wines was wound up under the Insolvency Act on HMRC's petition on 17 January 2018.

N&R

38. N&R was incorporated on 18 February 2015 and registered for VAT from 20 April 2015.

39. N&R's VAT return for the 04/16 quarterly accounting period claimed a £53,888 repayment; this was withheld by HMRC and later reduced to zero due to lack of supporting evidence. N&R did not file VAT returns for the 10/16 VAT quarterly accounting period or its final period from 1 November 2016 to deregistration.

40. On 18 November 2016 HMRC officers visited N&R's warehouse in Birmingham and were told by the business manager that the business was "basically dead and that nothing is happening"; "everyone had left"; the last sale was at the end of October; "carpet people" now owned half the unit; he said the business had a second site (Coventry) but did not know if it was busy. During the visit HMRC seized 410 cases of wine.

41. On visiting the warehouse again on 5 December 2016 HMRC officers discovered that N&R was no longer at the premises. HMRC left a letter saying that N&R would be VAT-deregistered from that date unless it contacted HMRC within seven days. HMRC later amended N&R's VAT-deregistration to 19 March 2017.

42. N&R went into creditors' voluntary liquidation on 20 March 2017. The liquidator did not receive any business records or cooperation from the company director. N&R had debts to HMRC of £109,749.

43. N&R made the following sales, the output tax for which was not accounted for:

(1) to M&O Trading Ltd, from 1 September – 31 December 2016, of £719,531;

(2) to Ozdil UK Ltd, from 26-29 September 2016, of £10,006;

(3) to Middx, from 1 November 2016 to 19 March 2017, of £12,513.

44. An assessment of £691,621 was raised by HMRC in January 2018 for undeclared output tax. That reflected the above output tax minus assessments made for non-submission of returns in the 10/16 and the final VAT quarterly accounting periods. An excise assessment for the same sales in the sum of £1,138,953 was issued by HMRC on 22 December 2017.

45. The three company directors were invited to meetings with HMRC on 27 November 2017 and 5 January 2018. None attended. A 95% civil penalty assessment for £657,040 was issued by HMRC in April 2018, split across the three directors. One of the directors met HMRC on 6 June 2018. Another director emailed HMRC to say he wanted to appeal against the whole process, but did not respond to further contact.

Safina

46. Safina was incorporated on 20 November 2013 and registered for VAT from 1 December 2013. The stated business activity was buying and selling of cars and motor vehicle (used) exporter. Safina traded in wholesale alcohol supplies from 2015.

47. On 5 April 2016 HMRC officers made an unannounced visit to Safina's business address due to its failure to submit a VAT return for the 11/15 VAT quarterly accounting period. There was no indication a business was operating at the premises. HMRC deregistered Safina with effect from that date (due to the high risk that Safina was a "missing trader"), unless it contacted HMRC within seven days. Safina's registration was restored on 26 April 2016.

48. On 10 February 2017 HMRC Fraud Investigation Service wrote to Safina's tax agent saying that Safina had failed to provide information requested by HMRC on nine occasions since June 2016; had not paid a £300 penalty for failure to produce records; had failed to clarify to HMRC where Safina was operating from; had not paid the amount shown as owing on its VAT return for the 11/16 VAT quarterly accounting period (£3,915).

49. On 24 February 2017 an assessment totalling £88,336 for the 02/16 and 08/16 VAT quarterly accounting periods was issued by HMRC to Safina for undeclared sales and on 10 March 2017 an assessment totalling £1,365,967 for the 11/15, 02/16, 05/16 and 08/16 VAT quarterly accounting periods was issued by HMRC to Safina relating to input tax denials.

50. Safina was deregistered for VAT on 7 April 2017 (with effect from 4 December 2016).

51. On 5 December 2017 HMRC Fraud Investigation Service wrote to Safina saying that HMRC intended to raise an assessment for undeclared VAT in the sum of £176,970.52 for 16 sales to Middx (which corresponded to the purchases from Safina in the 1/17 VAT quarterly accounting period, and the first 8 of the 16 purchases from Safina (up to the 16 March 2017 purchase) in the 4/17 VAT quarterly accounting period), as well as five sales to another customer of Safina's. The letter noted that Safina had not delivered a VAT return in respect of its final period of trading.

52. The winding up of Safina commenced on 17 July 2018.

The supply chains behind the purchases from Thames Wines

53. Of the 52 purchases from Thames Wines:

(1) for 27, the supply chain was not identified beyond Thames Wines;

(2) for 17, the chain was: Deluxe Corporate Solutions Ltd ("**Deluxe**") to Trade Networking UK Ltd ("**Trade Networking**") to Safina to Thames Wines;

(3) For 5, the chain was: Trade Networking to Safina to Thames Wines;

(4) For 2, the chain was Saracen Sales Ltd ("**Saracen**") to Safina to Thames Wines;

(5) For 1, the chain was Rubby to Thames Wines.

54. Safina was thus the supplier to Thames Wines in 24 of 25 identified supply chains.

55. The supply chain was not identified beyond N&R and Safina in all 29 of the purchases from those companies (4 and 25 respectively).

Deluxe

56. Deluxe was incorporated, and registered for VAT, in June 2015. It did not submit VAT returns for the 02/16 and 05/16 VAT quarterly accounting periods when due. It was de-registered for VAT on 1 September 2016 as it had not submitted those VAT returns or sent the

business records and accounts requested by HMRC; nor had it informed HMRC of its current place of business.

57. On 1 November 2016 Deluxe's claim to deduct input tax in the 2/16 quarterly accounting period and the final quarterly accounting period was denied by HMRC (due to insufficient evidence provided), and HMRC issued an assessment for £257,330 in 02/16 and £967,032 in its final VAT period. The assessment was neither paid nor appealed. Deluxe was wound up on HMRC's petition in September 2017.

Trade Networking

58. Trade Networking was incorporated, and registered for VAT, on 8 February 2016. It was deregistered for VAT due to non-compliance with a "regulation 25 notice" on 22 August 2016. This decision was reconfirmed on 12 September 2016, in a letter in which HMRC said that they had concluded that Trade Networking's VAT registration was being used to abuse the VAT system.

59. On 14 February 2017 Trade Networking was refused its entitlement to deduct input tax by HMRC on the basis of the *Kittel* principle, in VAT quarterly accounting period 05/16 and its final VAT period. A corresponding assessment for £791,417 was issued by HMRC on 15 March 2017. A further assessment for output tax due was issued by HMRC on 17 January 2018, for £236,846. HMRC issued a £429,457 deliberate inaccuracy penalty assessment to Trade Networking on 20 June 2017. These assessments were neither paid nor appealed. Trade Networking was placed into liquidation on the petition of the HMRC on 28 March 2018.

Saracen

60. Saracen was incorporated on 31 March 2016 and registered for VAT from 19 April 2016.

61. Saracen made a single nil return for the 07/16 VAT quarterly accounting period. Assessments for £3,360 and £621 were made by HMRC for the 10/16 VAT quarterly accounting period and final period respectively. Saracen was deregistered for VAT on 17 November 2016.

62. No output tax was declared by Saracen for sales to two customers, Javee Trading Ltd ("**Javee**") and Safina, totalling £28,089.69 on 8 sales to Javee between September and October 2016, and £260,766.55 on 38 sales to Safina in the same time period (the purchases whose supply chains include Safina took place in the 10/16 VAT quarterly accounting period). On 9 May 2017 Saracen was assessed by HMRC for that output tax, a total of £284,874 reflecting the sales to Javee and Safina minus the previous assessments.

63. Saracen's invoices to Safina had an AWRS number of another company.

64. Saracen did not respond to correspondence from HMRC. Saracen's VAT assessments were neither paid nor appealed.

Rubby

65. Rubby was incorporated in February 2016 and registered for VAT in April 2016. Rubby never submitted VAT returns; HMRC raised assessments for under declared output tax of £272,338 and a deliberate inaccuracy penalty of £190,636. The assessments were neither paid nor appealed. Rubby did not respond to contact from HMRC.

66. Middx made a payment to Rubby on 22 April 2016 of £30,000 (per bank statements); and of £50,000 on 5 May 2016 (the purchase whose supply chain includes Rubby took place in the 7/16 VAT quarterly accounting period).

Aspects of purchases not proved to be "uncommercial"

67. We are not persuaded on the evidence that the following aspects of the purchases were "uncommercial" (as HMRC argued):

(1) the prices paid by Middx (there was no persuasive evidence that the prices paid by Middx for the purchases were other than commercial) or the margin made by Middx on onward sale of the goods. On the latter point (margin), HMRC advanced arguments based on the VAT outputs and inputs of Middx's business as a whole – but we find this tells us nothing about the margins on the purchases and onward sales, as compared with the margins on Middx's other business. The figures put forward by HMRC were as follows, covering the 6¾ year period 1 February 2012 to 31 October 2018:

(a) outputs: £38,878,698

(b) inputs: £37,924.19

(c) difference: £954,379

(d) difference / 81 months: £11,782 per month)

(2) the absence of written evidence of price-negotiation with the three suppliers – it seems to us that in a small business like Middx's, it was likely that price-negotiation was done orally; and that, given that Middx was selling the goods on in a perfectly commercial way, it needed to buy at commercial prices in order to succeed in business i.e.. there was no persuasive evidence of artificial prices or margins (see point above);

(3) the fact that the purchase contracts were not documented: as found above, Middx's commercial risks were dealt with by the fact that it paid only on delivery of goods with which it was satisfied; this seemed to us commercial in the context of a small business; for similar reasons, the fact that insurance of the goods prior to delivery was not something dealt with in written contracts, was not, in our view, proved to be "uncommercial";

(4) the "ease" with which Middx sourced the goods: it was not proved on the evidence that it was materially "easier" for Middx to source the goods acquired in the purchases, as compared with other goods in its "cash and carry" business.

68. HMRC argued that the purchases "were to occur, come what may and in circumstances where no one would ever complain because the quality of the goods was an irrelevancy". This was not proved: on the contrary, the evidence indicated, and we have found, that Middx's sales to customers were entirely commercial (and so satisfactory quality of goods was vital), and the supplies it obtained, including through the purchases, were used in that business.

69. HMRC argued that "the transaction chains were contrived and all parties, including [Middx], knew what the price that goods would be bought and sold for". There was no persuasive evidence of artificiality as regards the price for which Middx sold the goods or, indeed, the price for which Middx bought the goods.

70. HMRC argued that the growth in Middx's turnover was indicative of commercial artificiality. We find this not to be proved on the evidence: Middx acquired its warehouse in 2013: its VAT outputs for the 4 quarters ending in 2014, the next year, was about £9 million (in round figures); it was similar for the 4 quarters ending in 2015 and 2016; it dropped to just below £6 million in the 4 quarters ending in 2017; and to a little below £4 million in the 4 quarters ending in 2018. These numbers do not, on the balance of probabilities, demonstrate artificiality or uncommercially – they are consistent with the ebbs and flows of business.

RELEVANT LAW

EU VAT directive

71. Council Directive 2006/112/EC of 28th November 2006 on the common system of VAT provides as follows:

> **Article 167**
>
> A right of deduction shall arise at the time the deductible tax becomes chargeable.
>
> **Article 168**
>
> In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT, which he is liable to pay:
>
> (a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;
>
> …

Value Added Tax Act 1994

72. Section 24 (Input tax and output tax) provides:

> (1) Subject to the following provisions of this section, "input tax", in relation to a taxable person, means the following tax, that is to say-
>
> (a) VAT on the supply to him of any goods or services;…
>
> being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.
>
> (2) Subject to the following provisions of this section, "output tax", in relation to a taxable person, means VAT on supplies which he makes…

Kittel

73. The European Court of Justice (the "**CJEU**"), in its judgment dated 6 July 2006 in *Axel Kittel v Belgium State, Belgium State v Recolta Recycling SPRL* C- 439/04 & C-440/04, held that taxable persons who "knew or should have known" that the supplies in which input tax was incurred were connected with the fraudulent evasion of VAT would not be entitled to claim a credit in respect of that input tax. In particular, at [51] and [56], the CJEU, whilst reiterating that "traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it fraudulent evasion of VAT or other fraud" should not lose their right to a credit for the input tax in relation to supplies associated with fraud, stated that *"*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 [directive which has now been replaced by the 2006 Directive], be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods."

74. The rationale for the above approach was set out at [57] and [58], where the CJEU noted the following:

> [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."

75. At [59] the CJEU concluded that *"*it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person

knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity'."

76. At [61] the CJEU reiterated that, "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."

Mobilx

77. The issues to which *Kittel* gave rise were addressed in the UK context by the Court of Appeal in *Mobilx Limited (in Liquidation) v HMRC* [2010] EWCA Civ 517. At [52], Moses LJ said as follows in relation to the "should have known" part of the *Kittel* test:

> "If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in *Kittel*. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises."

78. At [53] to [60] Moses LJ addressed the extent of knowledge required. He observed that it would offend the principle of legal certainty to deny input tax credit on the grounds that the relevant taxpayer knew or should have known that it was *more likely than not* that the supplies in question were connected with fraud. Instead, such denial could be made only if the relevant taxpayer knew or should have known that the supplies in question *were* connected with fraud. At [59-60] Moses LJ observed that:

> "[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."

79. At [61] Moses LJ said the following about legal certainty:

> "A trader who decides to participate in a transaction connected to fraudulent evasion, despite knowledge of that connection, is making an informed choice; he knows where he stands and knows before he enters into the transaction that if found out, he will not be entitled to deduct input tax. The extension of that principle to a taxable person who has the means of knowledge but chooses not to deploy it, similarly, does not infringe that principle. If he has the means of knowledge available and chooses not to deploy it he knows that, if found out, he will not be entitled to deduct. If he chooses to ignore obvious inferences

> from the facts and circumstances in which he has been trading, he will not be entitled to deduct."

80. At [64] Moses LJ reiterated that, "[if] it is established that a trader should have known that by his purchase there was no reasonable explanation for the circumstances in which the transaction was undertaken other than that it was connected with fraud then such a trader was directly and knowingly involved in fraudulent evasion of VAT".

81. At [74-75] Moses LJ referred to a tribunal's "undue focus" on whether a company director had "exercised due diligence or done 'enough to protect himself'". Moses LJ then stated: "That is not the only question. The ultimate question is not whether the trader exercised due diligence but rather whether he should have known that the only reasonable explanation for the circumstances in which his transaction took place was that it was connected to fraudulent evasion of VAT."

82. At [81] and [82] Moses LJ noted that the burden of proof in such cases is on HMRC but made it clear that that "is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant …tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focussing on the question of due diligence is that it may deflect a tribunal from asking the essential question posed in *Kittel*, namely, whether the trader should have known that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was.*"*

83. At [72] Moses LJ cited "important" questions posed by the First-tier Tribunal in *Mobilx*:

> "(1) Why was [the taxpayer], a relatively small company with comparatively little history of dealing in mobile phones, approached with offers to buy and sell very substantial quantities of such phones?
>
> (2) How likely in ordinary commercial circumstances would it be for a company in [the taxpayer's] position to be requested to supply large quantities of particular types of mobile phone and to be able to find without difficulty a supplier able to provide exactly that type and quantity of phone.
>
> (3) Was [the taxpayer's supplier] already making supplies direct to other EC countries? If so, he could have asked why [the taxpayer's supplier] was not making supplies direct, rather than selling to UK traders who in turn would sell to such other countries.
>
> (4) Why are various people encouraging [the taxpayer] to become involved in these transactions? What benefit might they be deriving by persuading [the taxpayer] to do so? Why should they be inviting [the taxpayer] to join in when they could do so instead and take the profit for themselves?"

84. At [83] Moses LJ said that the above "were important questions which may often need to be asked in relation to the issue of the trader's state of knowledge" and added that he could "do no better" than repeat the words of Christopher Clarke J in *Red 12 Trading Limited v HMRC* [2010] STC 589:

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

> transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and "similar fact" evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.
>
> [110] To look only at the purchase in respect of which input tax was sought to be deducted would be wholly artificial. A sale of 1,000 mobile telephones may be entirely regular, or entirely regular so far as the taxpayer is (or ought to be) aware. If so, the fact that there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of input tax. The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately think it unlikely that the fact that all 46 of the transactions in issue can be traced to tax losses to HMRC is a result of innocent coincidence. Similarly, three suspicious involvements may pale into insignificance if the trader has been obviously honest in thousands.
>
> [111] Further in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them."

85. At [84], Moses LJ observed that circumstantial evidence of the sort described by Christopher Clarke J in *Red 12* will often indicate that "a trader has chosen to ignore the obvious explanation as to why he was presented with the opportunity to reap a large and predictable reward over a short space of time."

86. The facts of *Mobilx* itself were that

(1) every one of the chains of transactions which HMRC had been able to trace led back to a defaulter;

(2) the taxpayer had been trading for over two years, using the same fairly small circle of suppliers;

(3) the taxpayer knew that the business in which it was engaged was rife with MTIC fraud;

(4) accordingly, the taxpayer knew that those transactions which could be traced by HMRC had led back to fraud in the past in a trade where fraud was rife;

(5) the taxpayer did not change the manner in which it conducted its trade but continued to trade in the same pattern as before.

87. In Moses LJ's judgment, the true and only reasonable conclusion, was that the taxpayer ought to have known that the only realistic possibility, as it continued to trade in that manner, was that its purchases would be connected with fraudulent evasion of VAT - and not merely that all its transactions were *more likely than not* to be connected with fraud.

Other authorities on* Kittel *principles

'Should have known' test - Davis & Dann

88. In considering the "should have known" test, the Court of Appeal (Arden LJ) in *Davis & Dann Ltd & Anor v HMRC* [2016] EWCA Civ 142 said that the tribunal must guard against over compartmentalisation of the factors, rather than the consideration of the totality of the

evidence. The court said the Tribunal is not restricted from relying on any circumstance which is capable of being probative of knowledge to the no other reasonable explanation standard. It was not correct to argue that, simply because there was no allegation that X was a party to a scheme to defraud, no circumstance surrounding X could be a circumstance, which, when added together with other circumstances, should have led HMRC to conclude there was a connection with fraud. Arden J then cited the last sentence of [52] of *Mobilx* (concerning a trader who fails to deploy means of knowledge available to him) and observed that a taxpayer may have knowledge to the "only reasonable explanation" standard if he fails to make inquiries.

Proving "only reasonable explanation"

89. In *AC (Wholesale) Ltd v HMRC* [2017] UKUT 191 (TCC) the Upper Tribunal decided that the 'should have known' test did not require HMRC to eliminate all other possible reasonable explanations in order to establish, as required by *Mobilx*, that the only reasonable explanation for the transactions was that they were connected to fraud. It added (at [30]):

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

Taxpayer does not need to know specific details of the fraud

90. In *Fonecomp Ltd v HMRC* [2015] STC 2254 at [51] the Court of Appeal (Arden LJ) said this:

> "… 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 paras 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."

Relevance of whether appellant participated in an "overall scheme to defraud"

91. As was noted by Hildyard J in *Edgeskill Ltd v HMRC* [2014] STC 1174, the question whether the appellant participated in an "overall scheme to defraud" informs, but does not answer, the question whether the appellant knew or should have known that it was participating in such a scheme.

Need to consider making inferences from evidence of highly orchestrated scheme

92. In *HMRC v Pacific Computers Limited* [2016] UKUT 350 (TCC), the Upper Tribunal held the First-tier Tribunal had erred in law by not properly considering the inferences it was invited (by HMRC) to make from unchallenged evidence that (i) there was a high level of orchestration in the fraudulent scheme, including carouselling of goods, circularity of deal chains, and speed (ii) three of the companies in the deal chain had previously taken part in

MTIC fraud. On the basis of this evidence, HMRC invited the tribunal to infer that the taxpayer was instructed by the organisers of the fraud as to what to do in order to facilitate the fraud; and so the taxpayer knew of the fraud. The Upper Tribunal said:

> "[81] It is regrettable that the FTT failed to appreciate the inferences which HMRC was inviting the FTT to make from the orchestrated and contrived nature of the fraud and the presence of fraudulent companies within the deal chains at issue in the appeal ….
>
> [82] Although, as for example at [140], when describing its conclusion that [the taxpayer] had no actual knowledge of fraud in the chains, the FTT stated that it had carefully considered all the evidence before it in reaching that conclusion, and that it had done so "because there was no evidence before us to show otherwise and no evidence laying a foundation from which such an inference could be drawn", it is evident from how the FTT later addressed the question of orchestration and contrivance that it did not consider, or did not properly address, the evidence before it. Where there is evidence, and it is evidence from which the tribunal is invited to make an inference, the tribunal must address that question and explain its reasons either for drawing an inference or refusing to do so. It is not sufficient simply to say that there was no evidence. The failure by the FTT properly to address the submissions of HMRC by reference to the available evidence was an error of law."

The tribunal's task in the "should have known" limb of Kittel

93. The Upper Tribunal said this in *S&I Electronics plc v HMRC* [2015] STC 2076 (at [64]) of the tribunal's task in approaching the "should have known" limb of *Kittel*:

> "… the FTT's task was to apply the impersonal standard of the reasonable businessman to the facts which it found, on the basis of the evidence which it heard, as to the circumstances in which S&I carried out the transactions in issue. Would the reasonable businessman have concluded that S&I ought to have known that the only reasonable explanation for the transactions was that they were connected with fraud?"

94. In *HMRC v Beigebell Ltd* [2020] UKUT 176 (TCC) it was common ground that the question of 'means of knowledge' involved the application of an objective test namely whether, even if the taxpayer did not actually know that its transactions were connected with fraud, a reasonable businessperson with ordinary competence in its position would have known.

Relevance of due diligence

95. The Upper Tribunal said this of the relevance of due diligence in *CCA Distribution Ltd (in administration) v HMRC* [2015] UKUT 513 (TCC) at [52], immediately after citing *Mobilx* at [75]:

> "Nonetheless, the exercise of due diligence or the lack of due diligence can potentially be relevant. If the trader has not carried out due diligence in relation to a transaction, that might assist HMRC in showing that the trader knew or should have known that the transaction was connected with fraud. Conversely, if due diligence has been exercised by the trader, that fact might not be conclusive as to whether the trader did not know or should not have known that a transaction was connected with fraud; the due diligence might have been done as window dressing and there might be other evidence which established that the trader knew or should have known that the transaction was connected with fraud."

Information known to the taxpayer during the relevant period

96. The First-tier Tribunal said this in *Aria Technology Ltd v HMRC* [2016] UKFTT 0098 (TC) at [13]

> "In considering the issue of knowledge and means of knowledge of the Appellant we only took account of information known to him during the relevant period and we attached no weight to evidence established with the benefit of hindsight."

Authorities on credibility of evidence

97. In *Wetton v Ahmed* [2011] EWCA Civ 610 Arden LJ said at [14]:

> ''In my judgment, contemporaneous written documentation is of the very greatest importance when assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can be checked against it. It can also be significant if the written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences by its absence''.

98. Leggatt J observed as follows in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at [22]:

> "In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

99. The Court of Appeal in *Kogan v Martin* [2019] EWCA Civ 1645 made the following observations on Leggat J's statements in *Gestmin* (at [88]):

> "We start by recalling that the judge read Leggatt J's statements in *Gestmin v Credit Suisse* and *Blue v Ashley* as an "admonition" against placing any reliance at all on the recollections of witnesses. We consider that to have been a serious error in the present case for a number of reasons. First, as has very recently been noted by HHJ Gore QC in *CBX v North West Anglia NHS Trust* [2019] 7 WLUK 57, *Gestmin* is not to be taken as laying down any general principle for the assessment of evidence. It is one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed. Earlier statements of this kind are discussed by Lord Bingham in his well-known essay *The Judge as Juror: The Judicial Determination of Factual Issues* (from *The Business of Judging*, Oxford 2000). But a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all of the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence."

Authorities on standard of proof (balance of probabilities)

100. In *Ford & Owen v Financial Conduct Authority* [2018] UKUT 358 (TCC) the Upper Tribunal said this at [41-42]:

> 41. It is clear from *In re B [(Children) Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2009] AC 11] that the standard of proof of past facts is the simple balance of probabilities, no more and no less. The standard of proof does not vary with the gravity of the misconduct alleged or the seriousness of the consequences for the person concerned. As Lord Hoffman put it in *In re B*, at [13], "the time has come to say, once and for all, that there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not". We observe that this Tribunal, in *Tariq Carrimjee v Financial Conduct Authority* [2015] UKUT 79 (TCC), at [47],

has adopted the same approach in saying that "the time has come to say once and for all that the civil standard of proof applies in relation to all disciplinary and non-disciplinary references made to this Tribunal pursuant to FSMA".

42. It is nonetheless the case that regard must be had to the quality of the evidence. As the Court said in *In re S-B [(Children) (Care Proceedings: Standard of Proof)* [2010] 1 AC 678], if an event is inherently improbable, it may take better quality evidence to persuade a court or tribunal that it has happened than would be required if the event were commonplace. There is, however, as Lord Hoffman in *In re B* had pointed out, at [15], no necessary connection between seriousness and inherent probability.

101. The Court of Appeal said this in *Gray v Global Energy Horizons Corp; Global Energy Horizons Corp v Gray* [2020] EWCA Civ 1668:

293. In *Re H [and Others (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563], Lord Nicholls said at p.586:

"When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury…this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."

294. This passage does not propound a principle or a rule of law. In [*In re B]*, Lord Hoffmann, referring to this passage, said at [15]: "Lord Nicholls was not laying down any rule of law. There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, *to whatever extent appropriate* [words from Lord Nicholls' speech which Lord Hoffmann emphasised], to inherent probabilities…It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred." Lady Hale made the same point at [70]: "The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies." In [*In re S-B]*, Lady Hale, giving the judgment of the court, said at [13] that the court in Re B had rejected "the nostrum, 'the more serious the allegation, the more cogent the evidence needed to prove it'".

102. The Supreme Court said this in *Sienkiewicz v Greif (UK) Ltd* [2011] 2 AC 229 at [193]:

"In other cases, there will be continuing good sense in the House of Lords' reminder to fact-finders in *Rhesa Shipping Co SA v Edmunds (The "Popi M"*) [1985] 1WLR 948 that it is not their duty to reach conclusions of fact, one way or the other, in every case. There are cases where, as a matter of justice and policy, a court should say that the evidence adduced (whatever its type) is too weak to prove anything to an appropriate standard, so that the claim should fail."

Authorities on adverse inferences

103. Morgan J summarised the principles of "adverse inferences" in *British Airways PLC v Airways Pension Scheme Trustee Ltd* [2017] EWHC 1191 (Ch) at [141-143]:

> "141. The consideration which a court should give to the fact that a potentially relevant witness has not been called is well established. I can take the principles from the judgment of Brooke LJ in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 at P340 where, having reviewed the authorities, he said:
>
> > "From this line of authority I derive the following principles in the context of the present case:
> >
> > (1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
> >
> > (2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
> >
> > (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
> >
> > (4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."
>
> 142. This statement of principle is in accordance with the earlier decisions of the House of Lords in *R v IRC ex p. T C Coombs & Co* [1991] 2 AC 283 and *Murray v DPP* [1994] 1 WLR 1 and the comments of Lord Sumption in the Supreme Court in *Prest v Prest* [2013] 2 AC 415 at [44].
>
> 143. These principles mean that before I draw an inference and made a finding of fact adverse to a witness who was not called, I need to ask myself:
>
> - is there some evidence, however weak, to support the suggested inference or finding on the matter in issue?
>
> - has the Defendant given a reason for the witness's absence from the hearing?
>
> - if a reason for the absence is given but it is not wholly satisfactory, is that reason "some credible explanation" so that the potentially detrimental effect of the absence of the witness is reduced or nullified?
>
> - am I willing to draw an adverse inference in relation to the absent witness?
>
> - what inference should I draw?"
>
> …
>
> 146. … even if I eventually conclude that I have not been given a good reason or a credible explanation for the [party] not calling these three witnesses, it does not follow that I will automatically draw [an adverse] inference. In deciding what inferences to draw, I need to take into account not only the fact that [the individuals] were not called, when they could have been, but also other matters such as what I consider to be the most probable finding to make on the basis of all the evidence which I have received.

104. Brooke LJ also cited Lord Lowry in *R v IRC ex p T. C. Coombs & Co.* [1991] 2 A.C. 283 at p.300:

> "In our legal system generally, the silence of one party in face of the other party's evidence may convert that evidence into proof in relation to matters which are, or are likely to be, within the knowledge of the silent party and about which that party could be expected to give evidence. Thus, depending on the circumstances, a prima facie case may become a strong or even an overwhelming case. But, if the silent party's failure to give evidence (or to give the necessary

evidence) can be credibly explained, even if not entirely justified, the effect of his silence in favour of the other party may be either reduced or nullified."

Tribunal's jurisdiction

105. One of the matters with respect to which an appeal lies to the Tribunal is "the amount of any input tax which may be credited to any person": s83(1)(c) Value Added Tax 1994.

Authority on reviewing HMRC's conduct

106. The First-tier Tribunal said this in *M&M (Cambridge) LLP v HMRC* [2020] UKFTT 0107 (TC) at [284]:

> "… this Tribunal does not have jurisdiction to undertake a judicial review of HMRC's conduct; any such complaint can only be made in the High Court. As stated by Judge Mosedale when considering a disclosure application in a missing trader case in *Ronald Hull Junior Limited v HMRC* [2018] UKFTT 198 (TC) at [78]:
>
> > '…The jurisdiction of the Tribunal is plain: it must uphold the appellant's appeal unless it is satisfied that the appellant knew or ought to have known its impugned transactions were connected to fraud. It is quite irrelevant to that determination for the Tribunal to consider whether HMRC could have done more to prevent fraudulent trading'."

HMRC'S ARGUMENTS IN BRIEF

107. We have already referred to some of HMRC's submissions on the evidence at [67-70] above.

108. HMRC put their case on two alternative bases:

(1) that each supplier was itself a fraudulent defaulter; and/or

(2) that there was a fraudulent defaulter in the "identified" supply chains in respect of 25 of the purchases from Thames Wines; and with respect to the other 27 Thames Wines purchases, and all the N&R and Safina purchases, (with no "identified" supply chain), HMRC argued that it was nevertheless reasonable, based on the pattern of the transactions, to infer that there was a fraudulent defaulter in those chains, too.

109. HMRC argued the following "indicia" that the purchases were part of an "orchestrated scheme to defraud the revenue":

(1) "Length, consistency, and pattern of the transaction chains"

(a) 22 of the 25 "identified" supply chains had three or four companies before reaching Middx. HMRC asserted that there was no reasonable commercial explanation for this. They asserted that the margins available in the ordinary market could not support so many entities between manufacturer and retailer.

(b) The same counterparties appeared repeatedly in the "identified" supply chains, in the same order. That, said HMRC, suggests the supply chains were "contrived", rather than the result of ordinary commercial negotiations. HMRC submitted that once a company was prevented from trading, a new one would immediately replace it in the supply chain. For example: once Thames Wines was VAT-deregistered, Safina, which had previously supplied Thames Wines, started to supply Middx directly. HMRC asserted that in a genuine commercial relationship such an occurrence would be extremely unlikely.

(c) HMRC submitted that some of the companies were linked: the example they gave was that the same individual was a previous director of both Saracen and Deluxe.

(2) "Lack of features associated with genuine commercial dealings"

(a) The purchases were not documented with formal written contracts, with provision for transfer of title, insurance, with prices being genuinely negotiated, and transport and delivery recorded and monitored. HMRC submitted that this showed the purchases were "contrived" and that Middx knew there was "no genuine commercial risk" in entering into them.

(b) HMRC submitted that it was not credible that Middx would not be able to produce documentary evidence of pricing negotiations. The only plausible explanation, they said, is that none took place.

110. HMRC submitted that there were other factors indicating Middx's knowledge or means of knowledge:

(1) Middx was aware of MTIC fraud and had received letters from HMRC informing it that certain of its suppliers were in chains that commenced with a "defaulting trader".

(2) Middx's "significant history of trading tracing back to a fraudulent default" was further evidence that the connections to fraud was not a coincidence, and Middx knew of the connection.

(3) Middx's "due diligence" on the three suppliers consisted of information which established the legal existence of the company (e.g. Companies House materials) and little more. No credit checks were obtained. No trade references or letters of introduction were obtained.

(4) The purchases constituted 34-58% of Middx's input tax during the relevant periods. HMRC submitted that it was extremely unlikely that Middx could be caught up in so many transactions connected to fraudulent tax loss, without knowledge of such connection.

(5) HMRC submitted that a reasonably diligent trader in Middx's position would have asked itself "why it was able to make so reliable and consistent a profit, with little discernible commercial risk, in transaction chains which did not appear to serve any apparent commercial purpose?"

111. Middx did not present witness evidence from its customers or suppliers, or anyone (apart from Mr Singh) otherwise familiar with the purchases, or any manufacturers, or distributors. despite the "obvious" relevance of such evidence. HMRC submitted that adverse inferences should be drawn from this.

MIDDX'S ARGUMENTS IN BRIEF

112. Middx submitted that HMRC had failed to prove their case on the balance of probabilities; and the inferences that HMRC were asking the Tribunal to draw were untenable or weak.

113. Middx accepted that the purchases were connected with tax losses but argued that it was not proved that the tax losses were fraudulent: Middx pointed to the fact that the suppliers and others in the chain had some periods of interaction with HMRC e.g. they submitted VAT returns, and had meetings with HMRC. It was not a case where the company was set up and then went "missing" before ever filing a VAT return.

114. Middx did not accept that the purchases were part of an "*orchestrated scheme to defraud*". Middx did not accept that the "trading patterns" highlighted by HMRC could properly give rise to the inference that there was such an orchestrated scheme and, further, disputed that the "trading patterns" alleged actually arose on the evidence: there were not a number of chains that led to fraudulent tax losses, there was not a lack of commercial rationale, the chains were not surprisingly long, there was no "*consistency and pattern*" indicating fraud and there was nothing odd about the contractual arrangements entered into.

115. It was submitted that HMRC did not prove that Middx should have known that there was fraud in the supply chain. The totality of the evidence points to a company that did its best, engaged with the process and HMRC officers, and went about its ordinary course of business. Even had the due diligence been more thorough, it would not have revealed anything that would have indicated a fraud (on the assumption that there was a fraud).

116. As regards "adverse inferences", the witnesses HMRC said Middx should have called were unrelated third parties; and some were alleged by HMRC to be fraudulent defaulters. One would not expect such counterparties to give evidence. This sufficiently explains the lack of evidence from them. No adverse inferences should be drawn from their absence.

117. Middx submitted that the evidence suggested that HMRC, in their visits to Middx prior to and during the period in which the purchases took place, did not raise concerns about Middx's "due diligence"; it was therefore "not right" for HMRC to raise the inadequacy of Middx's checks as an issue in this appeal. Furthermore, HMRC knew more about the fraudulent companies in the chains of supply than Middx did – yet HMRC did not deregister the suppliers until after the purchases took place. Middx submitted that statements of the First-tier Tribunal in *M&M (Cambridge)* about reviewing HMRC's conduct (see [106] above) could be distinguished on their facts.

DISCUSSION

Whether the connected tax losses were fraudulent

118. It was an agreed fact in this appeal that all the purchases were connected with a "tax loss" (which we will refer to as a "**connected tax loss**") i.e. that somewhere in the chain of supply ending with the purchases themselves, there had been a failure by a supplier to account to HMRC for the output tax due on their supply of the goods. What was not agreed was whether the connected tax loss in respect of each purchase resulted from fraudulent evasion.

Purchases from Safina

119. As regards the purchases from Safina, we are satisfied on the evidence that, more likely than not, a connected tax loss was the failure by Safina to account for output tax due on the purchases, and that this failure was fraudulent evasion. The facts which support this conclusion are Safina's record of serious and prolonged non-compliance with its VAT obligations and related non-cooperation with HMRC (see [47-49, 51] above) including, in particular, the letter from HMRC Fraud Investigation Service of 5 December 2017 (see [51] above) referring to undeclared VAT on invoices raised by Safina, including those for the first 16 of the 24 purchases from Safina (up to the 16 March 2017 purchase), and noting no VAT return from Safina had been received in respect of its final VAT accounting period. Although this letter does not refer to the 8 purchases from Safina between 17 and 31 March 2017, we consider it likely, in the light of all the circumstances, that the agreed tax loss in respect of those purchases was also a failure by Safina to account for output tax, and that this failure was fraudulent evasion. In weighing up all the evidence, we have taken into account the facts that Safina was, in some respects, compliant, and, in some instances, co-operated with HMRC.

Purchases from N&R

120. As regards the purchases from N&R, we are satisfied on the evidence that, more likely than not, a connected tax loss was the failure by N&R to account for output tax due on the purchases, and that this failure was fraudulent evasion. The facts which support this conclusion are N&R's record of serious and prolonged non-compliance with its VAT obligations (see [39, 42-45] above) including, in particular, its failure to account for output tax on the purchases (see [43-44] above). In weighing up all the evidence, we have taken into account the facts that N&R was, in some respects, compliant, and, in some instances, co-operated with HMRC.

Purchases from Thames Wines from 1 July 2016 onwards

121. As regards the purchases from Thames Wines from 1 July 2016 onwards, we are satisfied on the evidence that, more likely than not, a connected tax loss was the failure by Thames Wines to account for output tax due on the purchases, and that this failure was fraudulent evasion. The facts which support this conclusion are Thames Wines' failure to deliver VAT returns in respect of its 9/16 and subsequent VAT quarterly accounting periods (see [32] above) as part of its record of serious and prolonged non-compliance with its VAT and other tax obligations (see [32-36] above), which included being subject to a seizure of alcoholic goods in March 2016 ([33] above) and its VAT-deregistration six months later on grounds that it was using its VAT registration for abusive purposes ([34] above). In weighing up all the evidence, we have taken into account the facts that Thames Wines was, in some respects, compliant, and, in some instances, co-operated with HMRC.

Purchases from Thames Wines before 1 July 2016 – 21 where Safina/Trade Networking in chain

122. As regards the 21 purchases from Thames Wines prior to 1 July 2016, in 17 of these Thames Wines had acquired the goods from the Safina/Trade Networking/Deluxe supply chain. In respect of these 17 purchases, we are satisfied on the evidence that, more likely than not, a connected tax loss was the failure by Safina and/or Trade Networking to account for output tax due on their supplies, and that this failure was fraudulent evasion. The facts which support this conclusion are

(1) Safina's record of serious and prolonged non-compliance with its VAT obligations and related non-cooperation with HMRC (as referred to at [119] above), including the fact that on 24 February 2017 HMRC raised an assessment on Safina for undeclared sales in its 08/16 VAT quarterly accounting period (see [49] above); and

(2) Trade Networking's VAT-deregistration less than seven months after its registration, for non-compliance and, in HMRC's view, using its registration to abuse the VAT system; and the fact that it went into liquidation without appealing or paying assessments for output tax due and a deliberate inaccuracy penalty (see [58-59] above).

In weighing up all the evidence, we have taken into account the facts that Safina and Trade Networking were, in some respects, compliant, and, in some instances, co-operated with HMRC.

Purchases from Thames Wines before 1 July 2016 – 1 where Rubby in chain

123. As regards one purchase from Thames Wines prior to 1 July 2016 – the very first purchase – Thames Wines had acquired the goods from Rubby. In respect of this purchase, we are satisfied on the evidence that, more likely than not, a connected tax loss was the failure by Rubby to account for output tax due on the supply to Thames Wines, and that this failure was fraudulent evasion. The facts which support this conclusion are the facts that Rubby never submitted VAT returns, did not respond to contact from HMRC, and neither paid nor appealed HMRC's assessments for under-declared output tax (see [65] above). In weighing up all the

evidence, we have taken into account the facts that Rubby was, in some respects, compliant, and, in some instances, co-operated with HMRC.

Purchases from Thames Wines before 1 July 2016 – 3 others

124. As regards the three remaining purchases from Thames Wines prior to 1 July 2016 – which took place on 18, 23 and 29 June 2016 – there was no information about the supply chain prior to Thames Wines. Given the pattern of Thames Wines' trading at the time, we consider it likely that Safina and/or Trade Networking were in the supply chain and that a connected tax loss was the failure by Safina and/or Trade Networking to account for output tax on its supply in that chain, and that this failure was fraudulent evasion. The facts that support this conclusion are as set out at [122] above.

Conclusion as regards whether connected tax losses were fraudulent

125. It follows from our findings above that, in relation to each of the purchases, there was a connected tax loss that resulted from fraudulent evasion. We therefore need to go on to consider whether Middx knew, or should have known, that the purchases were connected with such fraudulent VAT evasion.

Middx's state of knowledge

126. In deciding whether Middx knew or should have known that the purchases were connected with fraudulent VAT evasion, we find it efficient, in this case, to start with the question of whether Middx 'should have known'.

127. In deciding whether Middx should have known that the purchases were connected with fraudulent VAT evasion, the guidance of the higher courts is to consider whether connection with fraudulent VAT evasion was the only reasonable explanation for the circumstances in which the purchases took place.

The circumstances in which the purchases from Thames Wines took place

128. The key circumstances in which the purchases from Thames Wines took place, and of which Middx was aware at the time, were as follows:

(1) the purchases were unremarkable in terms of their price, how price was negotiated, which party insured the goods, and legal documentation: in these respects, they were perfectly commercial, from Middx's perspective;

(2) Middx knew, from interactions with HMRC over recent years, that, in general terms, the market in which its "cash and carry" business was operating had a serious problem with VAT fraud;

(3) Middx also knew that it, specifically, had done £1.2m of business in the previous year, 2015, with a supplier – SS Traders Ltd, a small, privately owned company with no public profile – that had sourced the goods in supply chains connected with VAT fraud;

(4) Thames Wines was, like SS Traders Ltd, a small, privately owned company with no public profile, formed about 18 months before the first purchase;

(5) Middx's checks on Thames Wines had been formalistic and "tick box", establishing that Thames Wines was VAT registered and properly registered at Companies House, but otherwise providing no meaningful insights into how Thames Wines did business, how it sourced its stocks, and whether it, or its suppliers, were involved in VAT fraud;

(6) HMRC had not advised Middx that its "due diligence" on suppliers was, in their view, inadequate; nor had it informed it that Thames Wines was involved in fraudulent VAT evasion.

129. In our view, it could reasonably be inferred from these circumstances – and a reasonable businessman with ordinary competence in Middx's position would have so inferred – that Middx had been identified by those engaging in VAT fraud in the alcohol market as a "soft touch" i.e. as a business that would buy goods "without asking too many questions", and sell on to its (perfectly commercial) customer base. In our view, that was the only reasonable conclusion that could be drawn from Middx's experience of having been so targeted, in the previous year, and in respect of a comparatively large slice of its business (£1.2 million). In such circumstances, the only reasonable explanation for Middx doing business, in 2016, with another small, privately owned company with no public profile, in respect of which Middx had performed "pro forma", tick box checks which told it little of substance about the bona fides of Thames Wines or its supply chain, was that Middx was again being targeted by those engaging in VAT fraud. In our view, a reasonable businessman with ordinary competence, in Middx's position, would have known that it was, again, being so targeted i.e. such a businessman would have known, from the start, that the purchases from Thames Wines were connected with fraudulent VAT evasion.

130. For completeness, our views on the relevance of circumstance (6) in [128] above are as follows:

(1) it was not HMRC's role to advise Middx on the adequacy of its "due diligence"; nor, in their dealings with Middx, did HMRC give Middx reason to think otherwise; a reasonable businessman of ordinary competence, in Middx's position, would not therefore have put any store on the fact that HMRC had not advised it that its "due diligence" was, in their view, inadequate;

(2) our conclusions at [129] above take into account that HMRC had not told Middx, at the time of its purchases from Thames Wines, that Thames Wines was involved in VAT fraud;

(3) the only question for us in this appeal is Middx's state of knowledge as regards the purchases' connection with fraudulent VAT evasion; we have no more general jurisdiction to review HMRC's conduct (and so respectfully agree with the First-tier Tribunal in *M&M (Cambridge)* as quoted at [106] above).

131. Middx's state of knowledge only became more pronounced in August and September 2016, when Middx agreed to make a number of same-day cash payments to Thames Wines, each of just under £10,000: to a reasonable businessman with ordinary competence in Middx's position, this conduct would have reinforced the inference to be drawn from the circumstances as a whole – namely, that purchases from Thames Wines were connected to VAT fraud – given that Thames Wines appeared to want to receive payments in such a way as to evade detection for receiving large payments for the purposes of money laundering regulations.

The circumstances in which the purchases from N&R took place

132. The key circumstances in which the purchases from N&R took place, and of which Middx was aware at the time, were as for the purchases from Thames Wines as set out above at [128] above, the only slight difference being that N&R had been in existence for about 21 months by the time of the first purchase from it. The same inferences could reasonably be drawn from those circumstances – and would have been drawn by a reasonable businessman with ordinary competence in Middx's position – as we describe above (at [129]) with respect to the purchases from Thames Wines. In particular, in such circumstances, the only reasonable explanation for Middx doing business, in late 2016, with another small, privately owned company with no public profile, in respect of which Middx had performed "pro forma", tick box checks which told it little of substance about the bona fides of N&R or its supply chain, was that Middx was again being targeted by those engaging in VAT fraud. In our view, a

reasonable businessman with ordinary competence, in Middx's position, would have known that it was, again, being so targeted i.e. such a businessman would have known that the purchases from N&R were connected with fraudulent VAT evasion.

The circumstances in which the purchases from Safina took place

133. The key circumstances in which the purchases from Safina took place, and of which Middx was aware at the time, were as for the purchases from Thames Wines as set out above at [128] above, with the added circumstance that, by this time, Middx knew that it, specifically, had done a further £6.7m of business, mostly in 2015, with 12 other suppliers (all small, privately owned company with no public profile) that were involved in supply chains connected with VAT fraud. A more minor difference was that Safina had been in existence for about three years by the time of the first purchase from it. The same inferences could reasonably be drawn from those circumstances – and would have been drawn by a reasonable businessman with ordinary competence in Middx's position – as we describe above (at [129]) with respect to the purchases from Thames Wines. In particular, in such circumstances, the only reasonable explanation for Middx doing business, in early 2017, with another small, privately owned company with no public profile, in respect of which Middx had performed "pro forma", tick box checks which told it little of substance about the bona fides of Safina or its supply chain, was that Middx was again being targeted by those engaging in VAT fraud. In our view, a reasonable businessman with ordinary competence, in Middx's position, would have known that it was, again, being so targeted i.e. such a business would have known that the purchases from Safina were connected with fraudulent VAT evasion.

Conclusions on state of knowledge

134. The outcome of the foregoing analysis is that, in our view, Middx should have known that all the purchases were connected with fraudulent VAT evasion. This is a case where, as in *Mobilx* itself (see [87] above), the true and only reasonable conclusion, is that Middx ought to have known that the only realistic possibility, as it set out in 2016/2017 to purchase from unknown, small privately owned companies on which it performed perfunctory checks, was that the purchases would be connected with fraudulent evasion of VAT - and not merely that they were more likely than not to be connected with fraud.

135. This conclusion means we must dismiss the appeal. For completeness, however, our view on 'actual knowledge' is that, although Middx

(1) knew there was a high risk that the purchases were connected with fraudulent VAT evasion, and

(2) was quite brazen in its response to that risk (for example, it did not seek to improve the quality of its checks on new suppliers, even after discovering that large parts of its business in 2015 had been with suppliers involved in chains with fraudulent VAT evasion),

the evidence is not sufficiently persuasive that Middx subjectively knew of the connection at the time of the purchases.

136. We note the following as aspects of the evidence which contribute to our finding on 'actual knowledge':

(1) the evidence did not indicate, on the balance of probabilities, that the fraudulent VAT evasion with which the purchases were connected, was part of an overall scheme of such high orchestration that Middx must have known of the connection (because, for example, those organising the scheme must have told Middx what goods to buy, at what price, and from whom);

(2) the fact that none of the purchases from Thames Wines post-dated Thames Wines' VAT-deregistration – this does not seem to us to support a conclusion that Middx had subjective knowledge of those purchases' connection with fraudulent VAT evasion – rather, it more likely indicates that Middx sought to avoid buying from non-VAT registered traders (indeed, this was something Middx sought information about in its checks on suppliers);

(3) the fact that Middx made the last two purchases from N&R days after N&R was deregistered – again, this does not seem to us to support a conclusion that Middx had subjective knowledge of those purchases' connection with fraudulent VAT evasion – rather, it more likely indicates that Middx was not aware of N&R's deregistration for a short period of time – and when it became so aware, it avoided buying from it;

(4) the fact that the first purchase from N&R was (only) 22 days after the last purchase from Thames Wines – given the commercial nature of Middx's business with customers, it does not seem "uncommercial" that new suppliers approached Middx from time to time; HMRC's arguments spoke of one supplier "replacing" another – in our view, it was not proved that this was Middx's perspective (although it might have been the perspective of Thames Wines and/or N&R);

(5) the fact that the first purchase from Safina was (only) 41 days after the last purchase from N&R – for the same reasons as above, we do not find this to be "uncommercial" or probative of actual knowledge on Middx's part;

(6) the fact that Middx appears to have bought from Rubby in April and May 2016 (see [66] above) – and Rubby was the supplier to Thames Wines in the very first purchase – HMRC argued that this indicated "uncommerciality" on Middx's part, as it should have dealt directly with Rubby (as regards that single purchase) instead of buying from Thames Wines. We find it not proved on the evidence that Middx was aware that Rubby was the supplier to Thames Wines with regard to that single purchase.

137. We have declined to make adverse inferences from the fact that Middx did not call as witnesses

(1) any of its customers in respect of the goods acquired in the purchases;

(2) any manufacturers of those goods; or

(3) any of the suppliers involved in the purchases, since

(a) as regards customers or manufacturers, there was no suggestion that either was involved in, or had knowledge of, the fraudulent VAT evasion with which the purchases were connected; and

(b) as regards the suppliers, we accept that Middx has a credible explanation for not calling them as witnesses, namely the very low probability that they would co-operate, given that they are all either dissolved or in liquidation and have been accused by HMRC of involvement in fraudulent VAT evasion.

DISPOSITION

138. Following our conclusion set out at [134] above, the appeal must be dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

139. 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.

ZACHARY CITRON
TRIBUNAL JUDGE

Release date: 24 MARCH 2022

APPENDIX: SUMMARY OF MIDDX'S VAT RETURNS

VAT period	Net Outputs	Net Inputs	Output Tax	Input Tax	Net Tax
04/12	£0.00	£0.00	£0.00	£0.00	£0.00
07/12	£0.00	£0.00	£0.00	£0.00	£0.00
10/12	£636,682.00	£424,874.00	£82,256.33	£84,913.89	£2,657.56
01/13	£227,603.00	£138,593.00	£48,405.53	£27,478.11	£20,927.42
04/13	£84,435.00	£86,365.00	£18,544.82	£17,273.07	£1,271.75
07/13	£530,307.00	£588,766.00	£111,196.13	£108,344.97	£2,851.16
10/13	£646,666.00	£625,208.00	£129,317.68	£124,791.05	£4,526.63
01/14	£1,836,034.00	£1,989,323.00	£394,976.70	£392,681.76	£2,294.94
04/14	£2,814,611.00	£2,261,647.00	£411,657.72	£409,189.17	£2,468.55
07/14	£1,879,166.00	£1,948,483.00	£369,018.99	£355,187.59	£13,831.40
10/14	£2,528,941.00	£2,115,691.00	£394.336.07	£383,493.65	£10,842.42
01/15	£2,394,514.00	£2,241,108.00	£475,823.93	£422,522.47	£53,301.46
04/15	£1,471,593.00	£1,391,434.00	£301,736.91	£271,658.59	£30,078.32
07/15	£2,760,116.00	£2,922,203.00	£550,680.20	£531,040.35	£19,639.85
10/15	£3,062,933.00	£2,848,904.00	£383,158.45	£373,987.10	£9,171.35
01/16	£2,306,510.00	£2,459,390.00	£433,377.95	£412,601.76	£20,776.19
04/16	£1,804,284.00	£2,047,894.00	£360,595.00	£342,674.70	£17,920.30
07/16	£3,014,044.00	£2,825,081.00	£466,142.24	£462,925.97	£3,216.27
10/16	£1,727,561.00	£1,825,494.00	£343,049.22	£333,512.65	£9,536.57
01/17	£2,130,407.00	£1,529,550.00	£197,036.02	£168,617.98	£28,418.04
04/17	£1,119,122.00	£1,116,331.00	£223,540.36	£221,731.88	£1,808.48
07/17	£1,451,399.00	£1,522,663.00	£241,813.28	£208,215.68	£33,597.60
10/17	£1,091,447.00	£1,016,052.00	£184,802.06	£167,560.25	£17,241.81
01/18	£934,572.00	£863,794.00	£182,263.63	£157,013.81	£25,249.82
04/18	£946,351.00	£853,913.00	£184,512.02	£159,690.16	£24,821.86
07/18	£754,869.00	£948,766.00	£153,632.01	£120,306.55	£33,325.46
10/18	£723,531.00	£769,325.00	£143,208.23	£116,992.13	£26,216.10