Neutral Citation: [2022] UKFTT 00365 (TC)

Case Numbers:TC08615

FIRST-TIER TRIBUNAL
TAX CHAMBER

[Taylor House, London]

Appeal reference: TC/2015/04972
TC/2015/04975
TC/2015/04978
TC/2017/00711
TC/2018/01710
TC/2018/08345

VAT - Excise Duties – Penalties – Whether second appellant 'controlling mind' of first appellant and another company – Whether alcohol diverted into and sold in the United Kingdom – Quantum of penalties and personal/directors liability notices – Appeals allowed

Heard on: 4 – 8, 20, 25 – 28 April, 3 – 6, 9 – 13, 17 – 20, 24 – 26 and 31 May, 6 – 10, 14 – 16, 27 and 28 June 2022
Judgment date: 05 October 2022

Before

TRIBUNAL JUDGE JOHN BROOKS
GILL HUNTER

Between

(1) SINTRA GLOBAL INC
(2) PARUL MALDE

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Alistair Webster KC and Simon Gurney, instructed by Freeths LLP

For the Respondents: John McGuinness KC, Ben Hayhurst and Gerwyn Wise, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. These are the appeals of the first appellant, Sintra Global Inc ("Global") a Panamanian registered company, and the second appellant, Parul Malde ("Mr Malde"), against decisions of HM Revenue and Customs ("HMRC") relating to non-payment of VAT, excise duty and associated penalties, including personal liability notices ("PLNs") and a director's liability notice ("DLN"), which HMRC contend, and the appellants dispute, have arisen as a result of inward diversion fraud, ie the fraudulent diversion of alcohol into the United Kingdom from the European Union and its subsequent sale in the United Kingdom, by Global and a company which was incorporated in Belize, Sintra SA ("SA"), both of which, HMRC say, were controlled by Mr Malde.

2. In particular, Global appeals against:

   (1) a decision of HMRC, contained in a letter dated 16 July 2015, that it was liable to be registered for VAT between 1 April 2012 and 30 June 2015 under s 3 and schedule 1 of the Value Added Tax Act 1994 ("VATA"), which is the appeal under reference TC/2015/04975; and

   (2) a penalty assessment issued on 16 July 2015, under s 123 and schedule 41 of the Finance Act 2008 in the sum of £8,698,035.42 (the "Company Penalty") in relation to the failure of Global to notify HMRC of its liability to register for VAT for the period from 1 April 2012 to 30 June 2014, the appeal under reference TC/2015/04972.

3. Mr Malde appeals against

   (1) a Personal Liability Notice ("PLN") issued on 16 July 2015 in respect of the Company Penalty, pursuant to schedule 41 of the Finance Act 2008, making Mr Malde 100% liable for the Company Penalty, the appeal under reference TC/2015/04978;

   (2) a PLN issued on 11 October 2017, pursuant to schedule 24 of the Finance Act 2007, in the alternative to the Company Penalty, for an inaccuracy in Global's VAT return submitted on 12 October 2016, the appeal under reference TC/2017/08345;

   (3) a PLN issued on 21 December 2017, pursuant to schedule 41 of the Finance Act 2008, making Mr Malde 100% liable for a company penalty issued against Global on 21 December 2017 in the sum of £13,830,324 for the handling of goods subject to unpaid excise duty, the appeal under reference TC/2018/01710; and

   (4) a DLN, dated 8 December 2016, issued pursuant to s 61 VATA, making Mr Malde 100% liable for the payment of a civil evasion penalty under s 60 VATA, in the sum of £11,162,1801, charged against Sintra SA ("SA") as a result of its dishonest failure to notify HMRC of its liability to register for VAT and submit returns, the appeal under reference TC/2017/0711.

4. It is agreed that the following issues arise in these appeals:

   (1) Whether Mr Malde was the controlling mind behind SA and Global;

   (2) Whether SA and Global diverted alcohol into the United Kingdom and sold the stock in the United Kingdom thereby giving rise to VAT and excise liabilities (it is not disputed that SA and Global were not VAT registered in the United Kingdom and did not account for any VAT or any excise duty);

   (3) The quantum of the assessments, the Company penalty, the PLNs and DLN; and

(4) Whether the PLN in respect of excise duty (see paragraph 3(3), above) was issued in time.

5. Alistair Webster KC and Simon Gurney appeared for the Appellants. HMRC were represented by John McGuinness KC, Ben Hayhurst and Gerwyn Wise.

6. While we are grateful for, and have carefully considered, their very thorough written and oral submissions we have not found it necessary to refer to each and every argument advanced in reaching our conclusions.

INWARD DIVERSION FRAUD

7. Before considering the evidence, and to better understand our findings of fact, it is convenient at this stage to describe the fraud that HMRC contend has occurred in this case, inward diversion fraud. In doing so we gratefully adopt the succinct and helpful description of the Tribunal (Judge Falk, as she then was, and Mr Simon) in *Dale Global Ltd v HMRC* [2018] UKFTT 363 (TC):

> "50. In outline, alcohol diversion fraud is used to evade excise duty and VAT through abuse of the Excise Movement and Control System ("EMCS"), which permits authorised warehouse keepers to move excise goods from warehouse to warehouse within the EU on behalf of account holders, in duty suspense. Any movement requires the generation of an Administrative Reference Code ("ARC") within the EMCS, which must travel with the goods. The system has operated in electronic form since January 2011. An ARC number will typically last for a few days, and expires when the load is recorded on the system by the receiving warehouse as having been being delivered.
>
> 51. Inward diversion fraud, which is the type of fraud potentially relevant in this case, operates as follows. Alcohol originating in the UK is supplied under duty suspension to tax warehouses on the near continent, principally in France, the Netherlands and Belgium (what follows uses the example of France). Once in the tax warehouse they will usually change hands a number of times and will often be divided up before being reconstituted. A supply chain is set up with a purported end customer based in France. Some of the goods will be consigned back to the UK in duty suspense using an ARC number. This is the "cover load". Within the lifetime of the ARC number further consignments of goods of the same description will purportedly be released for consumption in France, attracting duty at low French rates, but will in fact be smuggled to the UK using the same ARC number. These are the "mirror" loads, and this will carry on until the ARC number expires or one of the loads is intercepted by Customs, following which a new ARC number will be generated in a similar manner.
>
> 52. Mirror loads are typically sold immediately following their arrival in the UK for cash. This process is known as "slaughtering". The UK customers may create false paper trails to generate the impression that the goods were supplied to them legitimately."

EVIDENCE

8. We were provided with 11 electronic bundles of documentary evidence comprising (including statements from 49 witnesses) over 180,000 pages.

9. In *Swift & others v Fred Olsen Cruise Lines* [2016] EWCA Civ 785 at [15] Gross LJ (with whom the Master of the Rolls and Christopher Clarke LJ agreed), dismissing an appeal in which the judge was said to have ignored "vast tranches" of evidence contained in 25 lever arch files which had not been put to the witnesses or referred to in closing submissions, said:

> "The notion that the 25 files should simply be left available for the Judge to 'dip into' (untutored) is fanciful."

10. In *Adelekun v HMRC* [2020] UKUT 244 (TCC) the Upper Tribunal (Judges Raghavan and Brannan) said, at [29]:

> "… It cannot be assumed that just because a document appears in a hearing bundle that the tribunal panel will take account of it; if a party wants the tribunal to consider a document then the party should specifically refer the tribunal to it in the course of the hearing (see *Swift & others v Fred Olsen Cruise Lines* [2016] EWCA Civ 785 at [15]). This is not least to give the tribunal adequate opportunity to consider and evaluate the document in the light of the reliance a party seeks to place on it, but also to give the other party the opportunity to make their representations on the document. That is particularly so where, as here, there were several hearing bundles before the FTT relating to the various previous proceedings and the one containing the relevant additional documents was voluminous comprising 434 pages."

11. In the light of these observations by the Court of Appeal and Upper Tribunal, our approach was not to "dip into" the voluminous evidence in the present case but to read all of the witness statements (which were "taken as read" as the evidence in chief of that witness) and consider those documents exhibited to the statements to which we were referred in submissions or which had been put to the 28 witnesses from whom we heard, either in person or remotely, between April and June 2022. In addition to the "live" witnesses, the unchallenged statements of a further 21 witnesses were admitted into evidence as was the challenged statement of a witness for the appellants who, as explained below, was neither able to attend the hearing in-person nor give his evidence remotely.

12. Also, although considered, it has not been possible in this decision for us to refer to every piece of evidence we heard or read or every document to which we were taken. As Lewison LJ (with whom Males and Snowden LJJ agreed), observed at [2(iii)], when considering an appeal against a "pure question of fact" in *Volpi & another v Volpi* [2022] EWCA Civ 464, the

> "… mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it."

Lewison LJ also noted, at [2(vi)], that although reasons for judgment "will always be capable of having been better expressed" (which is no doubt true of the present case) a judgment should not be subjected to a "narrow textual analysis" or "picked over or construed as though it was a piece of legislation or a contract."

13. Finally, and most regrettably, we find it necessary to mention that the parties have failed to take account of the clear view of the Tribunal, as expressed in many cases eg *CF Booth Limited v HMRC* [2017] UKFTT 813 (TC) at [10] and *Elbrook Cash and Carry Limited v HMRC* [2018] UKFTT 252 (TC) at [24] and *Vale Europe Limited v HMRC* [2018] UKFTT 62 at [23], that observations, expressions of opinion, submissions and comment have no place in the statements of witnesses of fact. It was hoped, perhaps naïvely on our part, that before making their statements the witnesses would have been reminded of this. But, given the sheer quantity of comment, opinion and submission included in the witness statements in the present case – indeed much of HMRC Officer Dean Foster's second witness statement and the second witness statement of Mr Steven Simmonite who gave evidence for the appellants consist of little else – this was clearly not so.

14. It is possible, although not apparent to us, that the parties might have had a reason for retaining such content in the witness statements. It also is possible that there is a lack of understanding or a misconception as to what should be included in a witness statement and that

it is different to a report, in that a witness statement (with the exception of that of an expert witness) should only include facts and not arguments, expressions of opinion and conclusions.

15. However, if the submissions, opinions and conclusions were retained in the witness statements in the present case in the misconceived hope that if enough mud was thrown some would stick, it will not. We agree with the Tribunal (Judges Berner and Walters QC) in *Megantic Services Ltd v HMRC* [2013] UKFTT 492 (TC), at [15] that, at this late stage in the proceedings:

> "… we would not see it as necessary, or indeed proportionate, for a forensic exercise to be undertaken, either by the parties or by the tribunal, to identify any such matters in each witness statement and for the tribunal formally to direct that they be excluded. Generally speaking, we think that the parties can rely upon the good sense of the tribunal to disregard purported evidence that represents conclusions that the tribunal itself must reach. That can usually conveniently be the matter of submission at the substantive hearing, rather than a formal application to exclude."

We have therefore, adopted such an approach in this case and, like Proudman J in *HMRC v Sunico A/S* [2013] EWHC 941 (Ch) at [29] (and the Tribunal in the cases cited above), ignored each and every expression of opinion, comment and submission by all witnesses of fact.

16. To paraphrase the Senior President of Tribunals in *BPP Holdings v HMRC* [2016] STC 841 at [37], it should not need to be said that submissions should be left for counsel and conclusions for the Tribunal. If it needs to be said, we have now said it.

Witnesses

17. We now turn to the evidence of the witnesses, in the order in which they gave evidence.

Guy Bailey

18. Guy Bailey, who gave evidence remotely, is an officer of HMRC who, from 2002, has been responsible for investigating the fraudulent movement of alcohol between member states of the European Union, in particular alcohol duty fraud and the evasion of excise duty by Europe-wide organised criminal groups ("OCG"). He is also a liaison officer between HMRC and customs authorities in EU member states. Mr Bailey's evidence in chief, as contained in his witness statement, consisted of an explanation and "overview" of diversion fraud which, he confirmed, was materially the same as the evidence he had given in several other cases including *Dale Global Ltd v HMRC* which, as is clear from [49] of the decision in that case, had formed the basis of the Tribunal's description of inward diversion fraud which we have adopted in the present case (see paragraph 7, above).

19. Mr Bailey accepted that, from the point of view of the fraudster, for an outward diversion fraud to work it would be necessary to disguise what actually happens to the goods in order for them to get to the point of slaughter and that there would be a "paper trail" leading up to that point if only to produce to HMRC during a control visit.

20. He also agreed that for both inward and outward diversion fraud a "complicit" continental warehouse was "pretty much a central requirement." Such a warehouse would, for outward diversion fraud, falsely represent the loads received and, for inward diversion fraud, be involved in multiple despatches. Where these were underbond from the EU they had to be sent to a registered consignee. Mr Bailey also confirmed the registration requirements to be registered as a consignee in the United Kingdom, what should be recorded on a CMR when such a load was transported, what should be entered on the EMCS and the process generally adopted when such a load was stopped at the border by the United Kingdom Border Force ("UKBF").

21. Mr Bailey confirmed that where goods have been mis-manifested, often as foodstuff instead of alcohol, the explanation ordinarily provided by drivers was that this was because of the risk of the load being stolen, either in France or the United Kingdom. He confirmed that thefts of alcohol was a known problem with loads having been taken when a driver had parked in a lay-by overnight.

22. Another aspect of Mr Bailey's evidence was that each load of alcohol consigned internationally underbond should have a unique numbered seal, securing the outside of the container, which number should be recorded on the CMR sent with the load. He said the absence of a seal on a load would certainly attract the attention of the UKBF. He agreed that if the UKBF intercepted and examined a vehicle it would be necessary to break the seal and that a new seal should be applied before the load would be permitted to leave. Also, once a load has arrived, the consignee is required to notify HMRC and allow a standing time for inspection at its premises and is obliged to ensure the seals are in place and appropriate.

23. Mr Bailey also said that during July and August 2013, when he was investigating a case which involved cash and carries in the Calais area, he went to inspect specific addresses that "were mentioned in that particular case" and agreed that it was important to visit them to see what was there rather than make assumptions about them. While he was unable to say how many cash and carries operated in the area in 2004 to 2005 he thought that their sales at that time were "probably sizeable". He explained that by 2013:

> "There were two types of cash and carry, and certainly some of the larger cash and carries such as operated by some of the UK supermarkets had certainly gone. There were still quite a number of much smaller operations of the type that I visited, but the general scale of that cash and carry activity in Calais and the surrounding area had started to die off by the end of the - the early part of the 2000s."

He recalled that there had been a slow decline which had been widely reported in the press at the time.

24. We found Mr Bailey to be a fair minded, credible witness who sought to assist the Tribunal at all times and whose evidence, which was not materially challenged, can be relied upon.

James Dibb

25. James Dibb, an officer with HMRC's Fraud Investigation Service, Organised Crime – Civil MTIC/Alcohol Team gave evidence in person over four days. Although Mr Dibb accepted that he had replicated material contained in the affidavit of HMRC Officer Dean Foster (see below) he was "satisfied" that, as he had undertaken much of the underlying analysis of how SA and Global operated the alleged fraud between October and November 2013, he was best placed to give evidence in relation to it. Mr Dibb's evidence also sought to respond to the witness statement and report of Steven Simmonite a director of SKS (GB) Limited ("SKS"), the tax adviser to Mr Malde. However, it was not obviously apparent from his oral evidence what, if any, action Mr Dibb had taken following receipt of that report.

26. Although, Mr Dibb was initially clearly trying to assist the Tribunal and fairly accepted points put to him, during the course of his evidence he became more defensive and evasive in his answers. This was especially the case when asked questions in relation to the exhibits to his witness statement (with which he did not seem particularly au fait) which were critical of either him in particular or of HMRC in general.

27. Also, in places his evidence was inconsistent to the extent of being misleading. By way of example, at paragraph 29.2 of his first witness statement Mr Dibb had said, of a particular

trader, that the Polish tax authorities had concluded he "was participating in fraudulent transactions and VAT fraud". However, the document provided by the Polish authorities actually stated, that there "was a suspicion" that the trader "might participate in transactions aiming at VAT fraud."

28. Another example of his inconsistency was Mr Dibb's reference, at paragraph 8 of his second witness statement, to the approval for the Registered Consignee status of Corkteck Limited ("Corkteck") as having been "rescinded" which gave the impression "of a period of uncertainty following Corkteck's **removal** as authorised recipient" (emphasis added) whereas, as he confirmed when giving evidence, and as he had stated at paragraph 65 of his first witness statement, Corkteck had actually given up its Registered Consignee approval with effect from 15 January 2014 at its own request.

29. In a further example, at paragraph 82 of his first witness statement, Mr Dibb referred to a calculation by HMRC on the basis of French Duty paid by Global. This, he said, indicated that 1328 full lorry loads of wine had been transported overall and, in a sample period from October to November 2013, some 506 lorry loads of wine being transported. However, when questioned about the accuracy of that calculation Mr Dibb said it was "rough and ready" and that he did not "attribute an awful lot to those findings in terms of the analysis."

30. We were also somewhat concerned by Mr Dibb's inability to distinguish between a company and its shareholders. When asked if he understood the difference Mr Dibb said:

> "I perhaps don't fully".

Also, when it was put to Mr Dibb that in his witness statement he was describing Mr Malde's trading relationship rather than that of Park Royal Wholesale Limited ("Park Royal") Mr Dibb said:

> "Yes, but his [Mr Malde's] company was Park Royal Wholesale."

31. Accordingly we have not been able to place much, if any, reliance on Mr Dibb's evidence.

Parminder Birdi

32. Parminder Birdi, who, at the time he made his witness statements, was a Higher Officer in HMRC's Small and Medium Enterprise Alcohol Team based in Leeds. He was the "authorised officer" for the Public Notice 160 ("PN160") process under which Mr Malde was interviewed on 4 December 2015 (see below) and, as he had no previous involvement in the investigation, his evidence was primarily in relation to that interview. When giving evidence (which he did remotely) he considered each question before responding and was careful in his answers. However, he was reluctant to accept anything put to him that did not appear to reflect well on HMRC in general or Mr Foster in particular.

Susan Gibson

33. Susan Gibson is a Senior Officer of HMRC having previously been a Higher Officer on HMRC's Customs International Trade and Excise ("CITEX") Team. In that capacity she was responsible for the assurance of high risk businesses through investigations into their supply chains to establish United Kingdom excise duty had been brought into account and, if it had not, to issue excise assessments and penalties. She was the officer responsible for issuing excise assessments against SA and Global, a penalty against Global and Mr Malde with PLNs and a DLN.

34. Although she was a straightforward witness (who gave her evidence remotely) and helpfully answered questions put to her, we were unable to derive much, if any, assistance from her evidence. This was because, contrary to her general practice, she had made the "best

judgment" excise assessments and associated penalties solely on the basis of the VAT assessment made by the VAT investigation team of Mr Foster and had not taken any part in the investigation into Global and/or Mr Malde on which she could reach her own conclusions.

Ian Foote

35. Ian Foote, a senior officer of HMRC's Fraud Investigation Service, Individuals and Small Business Team, also gave his evidence remotely. This concerned Operation Epsom, a criminal investigation by HMRC into VAT fraud predicated on the supply of illicit alcohol. Mr Foote was the "case manager" of Operation Epsom from September 2012 until 2 November 2015 when he moved to another role within HMRC's Fraud Investigation Service. We found Mr Foote to be a credible and helpful witness.

Janni Lipka

36. Janni Lipka, a Higher Officer of HMRC, who gave evidence remotely, adopted the witness statement and evidence of the late Thomas Burns regarding Mint Drinks Limited ("Mint"). Mr Burns who had been employed in HMRC's Manchester Alcohol Team first became aware of Mint when he identified that it had been issued with zero rated sales invoices by Best Buys Supplies Limited ("Best Buys").

37. However, as is so often the case when an officer of HMRC adopts the witness statement of another officer who is no longer available, because Mr Lipka had virtually no previous involvement in the case, he was unable to provide any assistance or take matters further than would have been the case if the witness statement of Mr Burns had, rather than being adopted, just been admitted in evidence and submissions made as to the weight to be given to it.

Piers Ginn

38. Piers Ginn, now a Senior Officer of HMRC who, from December 2013 has been a member of HMRC's Large Case Alcohol Team, gave evidence, in-person, in relation to Elbrook (Cash and Carry) Limited ("Elbrook") and Gooch Technology Limited ("Gooch"). Mr Ginn's witness statements in the present case were, in effect, those he had made for the ongoing (at the time of this decision) appeal of Elbrook and that of Gooch which was determined by the Tribunal on 10 May 2021 (see *Gooch Technology Limited v HMRC* [2021] UKFTT 149 (TC)).

39. We found him to be a credible and fair minded witness who sought to assist the Tribunal at all times.

Kelly Myers

40. Kelly Myers, a Higher Officer in HMRC's Fraud Investigation Service. Her, in-person, evidence concerned "Operation Banjax", a criminal investigation by HMRC into individuals and companies, which did not include Mr Malde or Global, during the period from 1 January 2013 to 31 January 2015 for which she was the "Lead Disclosure Officer". In that role, Ms Myers was required to consider all of the material created or obtained during an investigation that was not served on the defence as evidence ("unused material") and record this unused material on the appropriate Disclosure Schedules. At the request of the prosecutor she was required to disclose to the defendants such material that was capable of undermining the prosecution case or assisting the defence. She also provided support to the Prosecution Team during the proceedings.

41. Ms Myers was a credible and helpful witness who gave straightforward answers to the questions put to her.

James Turner

42. James Turner, who gave his evidence remotely, is the director and founder of Turner Little Limited ("Turner Little") which he described as an "administrative organisation forming"

business that introduces its clients to banks both within the United Kingdom and overseas and which performs an administrative function rather than giving advice to its clients. Mr Turner explained that consulting was not part of the day-to-day service provided by Turner Little which had been instructed by Mr Malde in relation to the formation of SA, Global and Amirantes International Trading Inc. ("Amirantes") and in assisting these companies in opening overseas bank accounts.

43. In evidence Mr Turner explained that until around 2011-12 Turner Little formed a number of Belize companies each year and the advantage of a Belize registered company then was that it was:

> "… confidential so there were no shareholder and director registers that were publicly available. It was a confidential jurisdiction."

He agreed that at that time Belize would have been a good place to form a company if someone wanted to minimise the risk of being associated with it. However, he said from around 2011-12 it had become

> "… more and more onerous in terms of paperwork and maintaining the company, keeping records and Belize have developed their anti-money laundering processes more in line with the UK. So they also require documentation like we would require in the UK nowadays. … around that time I would say things became, you know, became more and more difficult to manage and own a company in Belize."

44. Mr Turner was contacted by HMRC by letter of 24 April 2015 in relation to enquiries about various companies connected to Mr Malde. He subsequently met with HMRC officers Dean Foster and Helen Hill at Turner Little's office in York on 15 May 2015 when he provided HMRC with the Turner Little files that related to their enquiries.

45. We considered Mr Turner to be a credible and helpful witness in giving evidence in relation to these matters.

James Woods

46. James Woods is the Project Lead for HMRC's Individuals and Small Business Compliance, Taskforce and Specialist Team. His evidence, which he gave remotely, concerned his VAT enquiries into Alexsis Limited ("Alexsis"), Sea Inn Foods Limited ("Sea Inn Foods") and Saad Victoria Food and Wine Limited ("Saad"). He was a fair minded and credible witness who answered questions put to him in a straightforward and clear manner.

David McIntyre

47. David McIntyre is an employee of Turner Little. His role in the company requires dealing with clients and facilitating the opening of offshore banking facilities. He gave evidence remotely in relation his role in the company's involvement with Mr Malde and in its anti-money laundering processes.

48. We found him to be a helpful witness, albeit somewhat limited due to his lack of recollection of events that had occurred years previously, for example he did not remember having a face to face meeting with Mr Malde in 2014 but fairly accepted that he might have done and would not argue with Mr Malde's recollection that such a meeting had taken place.

Dean Foster

49. Dean Foster was, until 2018, a member of HMRC's Fraud Investigation Service, Organised Crime – Civil MTIC/Alcohol Team. He has been employed by HMRC and its predecessor HM Customs and Excise for over 30 years.

50. Other than the excise assessments, which as Ms Gibson explained in her evidence (see above) were based on the VAT assessments and information provided to her by him, Mr Foster was the officer responsible for HMRC's decisions which are the subject matter of these appeals. He gave evidence, in-person, and was cross-examined over five days.

51. Unfortunately, given Mr Foster's decision making role, we were unable to derive much, if any, assistance from his evidence.

52. Mr Foster was unable to answer questions in relation to many of the topics he had addressed in his four witness statements saying that another officer rather than him had been responsible for what had been done and that he was "unsighted" on the matter. An illustration of this can be seen in the following exchange regarding a matter for which Mr Foster said Mr Dibb was responsible:

> Judge Brooks: Sorry to interrupt but can I just ask, Mr Foster: why did you include things in your witness statements that you were not responsible for?
>
> Mr Foster: Well, because the investigation was such a large investigation, there were different aspects of the investigation that were dealt with by different people in the team. When it came to the production of the affidavit, it was decided that, rather than having multiple affidavits from multiple officers, that we would just produce the one affidavit, and one affidavit was produced against which somebody would adopt, and then subsequently in the witness statements that followed it was decided, because of the level of complexity within the case, that certain aspects, particularly the parts that James [Dibb] was responsible for, he would produce a separate witness statement for that.
>
> Judge Brooks: Not so much with the affidavit, but the witness statements now for this case ...
>
> Mr Foster: Yes.
>
> Judge Brooks ... because, clearly, we are going to have difficulties if there is a lot of evidence you just cannot comment on because you had nothing to do with it ...
>
> Mr Foster: Yes, well, I mean, in terms of this particular aspect, I didn't – I only kind of touched upon it within my witness statement because I knew that officer Dibb was going to be the officer that would be putting forward evidence with regard to the movements [of goods] and that kind of thing.
>
> Judge Brooks: But if officer Dibb was giving evidence, as he has done, then why did you think it was necessary for you to comment on something that you were not involved with?
>
> Mr Foster: Well, I suppose mainly because it formed an underlying part of the investigation and, obviously, subsequently the assessment, so I felt obliged to touch upon it."

53. When he was able to respond Mr Foster's answers were frequently evasive, often obstructive and on occasions inconsistent, contradictory and misleading. By way of example, on the second day of giving evidence, Mr Foster stated that he did not understand a question relating to what enquiries had been made regarding the lifting the veil of incorporation in relation to overseas companies saying:

> "Sorry, I don't understand the question. Lifting the veil of incorporation? What do you mean by that?"

However, the next day, when asked about what options had been considered in relation to possible action by HMRC against either Mr Malde, SA or Global, the following exchange took place:

> Mr Foster: It was something to do with piercing the corporate veil, but it was all – we took some advice from a legal QC in respect of that. …
>
> Mr Webster: So, when I asked you yesterday or the day before about piercing the corporate veil, you had actually taken advice on that, or examined it as a possibility?
>
> Mr Foster: It was, yes, I think it was – I don't actually recall you mentioning piercing the corporate veil, but ...
>
> Judge Brooks: If I can just remind you – I have got a note of it – that, that was mentioned?
>
> Mr Foster: Okay, yes.
>
> Mr Webster: So, you were essentially asking whether you could assess Mr Malde – there is no purpose piercing the corporate veil otherwise: you are after the people behind the company, are you not?
>
> Mr Foster: Well, as I say, we were looking at various options.

54. To be fair to Mr Foster, it is possible that his evidence in this regard was not misleading but, as the following exchange appears to indicate, he, like Mr Dibb, did not appreciate that a company has its own legal personality separate from its shareholders and directors and, as such, he considered Mr Malde and SA to be one and the same. To put the exchange in context Mr Foster had been referred to a document which was the basis of the assessment against SA in which the heading on one column was "Gross value of sales, VAT inclusive, between York Wines and Sintra SA":

> Mr Webster: Why was it VAT inclusive sales between York Wines and Sintra SA?
>
> Mr Foster: I think I was trying to calculate the quantum by giving some advantage to Mr Malde.
>
> Mr Webster: To Mr Malde?
>
> Mr Foster: Yes, or to Sintra SA.
>
> Mr Webster: Well, which one?
>
> Mr Foster: Well, Sintra SA controlled by Mr Malde

55. However, if this was the case and, rather than giving a misleading answer in relation to being asked about lifting the corporate veil, the response was an illustration of Mr Foster's understanding, or lack of it, in regard to corporate personality there can, in our view, be no doubt that his evidence in relation to the assessments he made (which were based on a mark up to purchases identified from bank records) was clearly misleading.

56. In response to a question by the Tribunal, Mr Foster agreed that, in the absence of the underlying records being provided by either SA or Global, he included every debit from the bank accounts other than bank charges in the assessment:

> "…unless I had some information to the contrary and some information has come to light since the original – which would possibly lend themselves to some kind of an adjustment to be made"

57. Mr Foster had exhibited his analysis of a bank account identifying debits (including intra-bank transfers and payments for legal advice) which he considered did not "on a balance of probabilities relate to a commercial transaction involving goods". In evidence he agreed that although these debits had been included in the calculation of the assessment they should not have been, having said the same in his first witness statement. However, notwithstanding his conclusions, Mr Foster, in his second witness statement, having referred to the "main principles" for making a "best of judgement" assessment[1], said:

> "I have revisited my calculations and the circumstances leading up to the best judgment assessment raised and am satisfied that it meets the above requirements" [ie the "main principles" to which he had referred].

Other than saying it was an "oversight" on his part, Mr Foster could not explain why, despite identifying the non-commercial items and agreeing that these should not have formed part of the calculation of the assessment, he had failed to refer to this in any of his subsequent witness statements or bring it to the attention of the Tribunal.

58. Mr Foster was also somewhat selective in the documents exhibited to his witness statements. For example, in annexe H to his first witness statement, a summary of SA's and Global's bank accounts and assets, Mr Foster, in a section concerning investments in Goldsteel Limited "(Goldsteel") and Hermitage Design Limited ("Hermitage") by Global, stated:

> "The Investment document **was signed by Parul Malde** on behalf of Sintra Global and is dated 20 January 2012." (emphasis added)

59. Although an "Investment Agreement dated 20 January 2012", was exhibited to his first witness statement, Mr Foster did not explain that it had been provided in response to his letter, dated 7 March 2016, to Goldsteel's representatives, Grant Thornton UK LLP ("Grant Thornton"). Neither did it exhibit the letter, dated 4 May 2016, from Grant Thornton in reply which stated that:

> "… it is our client's understanding that it [the Investment Agreement] was signed by Mr Arnaud Carre on behalf of Sintra Global Inc, while being present in the BVI. The contract was also signed by Mr Arjun Babber of Goldsteel Ltd, in Dubai."

That letter continued:

> "Our client confirms that the entity has not undertaken any transactions with Parul Malde."

60. Mr Foster's best explanation for failing to exhibit the two page Grant Thornton letter, was that it "wasn't especially something that HMRC were relying upon" and that:

> "… in order to limit the volume of material before the tribunal it must have been omitted."

[1] Which he identified as being: HMRC should not be required to do the work of the taxpayer; HMRC must perform their function honestly and above board; HMRC should fairly consider **all** the material before them and on that material, come to a decision which is reasonable and not arbitrary; there must be some material before the HMRC on which they can base their judgment; the facts should be objectively gathered and intelligently interpreted; the calculations should be arithmetically sound; and any sampling technique should be representative.(emphasis added)

He also said that when he looked at the material that was provided by Grant Thornton in respect of Goldsteel and Hermitage he considered that "a lot of it lacked credibility."

61. Mr Foster also disregarded, out of hand, material that had been provided by or on behalf of Mr Malde and was unable offer any credible explanation for why he had done so. For example, in evidence he said that he was not aware that the reliability and accuracy of the records of York Wines Limited ("York Wines") had been in issue for a "long time". However, when taken to the transcript of the PN160 interview with Mr Malde in December 2015 (in relation to which Mr Birdi had given evidence, see paragraph 32, above), where such issues had been raised by Mr Simmonite, the following exchange occurred:

> Mr Webster: … it was made clear to you during the course of that interview that the authenticity and reliability of York Wines' records was being called into question, was it not?
>
> Mr Foster: By Mr Simmonite, yes.
>
> Mr Webster: Yes. So you knew that it was being called into question since 2015, if not earlier. Yes?
>
> Mr Foster: By Mr Simmonite, yes.
>
> Mr Webster: Well, does Mr Simmonite not count?
>
> Mr Foster: Well, it's Mr Simmonite's opinion, isn't it?
>
> Mr Webster: Yes. And the question I asked you was were you aware they [the records of York Wines] were being called into question. You said no.
>
> Mr Foster: Well, they were being called into question by Mr Simmonite during the PN160 meeting, yes.
>
> Mr Webster: Well, why did you answer the question no?
>
> Mr Foster: Well, I didn't realise you were making reference to Mr Simmonite.

62. A further illustration of Mr Foster's approach towards such material is evident in his response, in his second witness statement, to observations in a report by Mr Simmonite in relation to SA and York Wines in which Mr Simmonite had questioned the provenance and authenticity of a "typed document with a Golden Apple SARL letterhead … dated 31 March 2008" which had no addressee and stated that "a third party payment by transfer will be arriving with you today with a payment on our account of £151,551.95".

63. Having first observed that "throughout that section [of the report] Mr Simmonite seeks to cloud the picture and misrepresent HMRC's case", Mr Foster said:

> "Unless I am misunderstanding Mr Simmonite, it seems by questioning whether documents are genuine Mr Simmonite may be implying that HMRC may be manufacturing evidence."

64. However, when cross-examined on this, other than say that he thought that by questioning the veracity of the documents there was an "implied criticism" of HMRC, Mr Foster was unable to explain why he had responded as he did.

Michael Newman

65. Michael Newman, a Higher Officer of HMRC whose duties include visiting alcohol traders, interviewing, obtaining records and verifying transactions, gave evidence, remotely, in relation to Hobbs Close Limited ("Hobbs"). On 29 November 2016 he became the allocated case officer for Hobbs having replaced the previous case officer, Salim Mohidin, who had left

HMRC. Mr Mohidin had, on 7 August 2013, himself replaced Sundip Bulsara who, before leaving HMRC, had been case officer for Hobbs between 20 June and 7 August 2013.

66. Mr Newman was a straightforward and credible witness whose evidence was not seriously challenged.

David McMaster

67. HMRC officer David McMaster, who gave evidence remotely, has been involved in investigating missing trader intra-community (MTIC) VAT fraud since 2006. He adopted the witness statements of Neil Henderson and Tracey Thame, who were unavailable to give evidence. Mr Henderson regarding Gujarr Limited ("Gujarr"), Logical Retail Limited ("Logical") and UK Beer & Wines Limited ("UK Beer") and Ms Thame regarding Universe Drinks Limited ("Universe").

68. Mr McMaster was a member of HMRC's Lanyard Team which visited Gujarr on 16 September 2014. He was also a member of the Lanyard Team that had been unable to make contact with anyone connected with Logical when visiting three addresses for the company held by HMRC and was the officer responsible for de-registering Logical for VAT purposes on 6 August 2014. Mr McMaster was also part of the Lanyard Team that was unsuccessful in making contact with any person involved in UK Beer having visited three addresses understood to be connected to the company. In addition he was one of the officers of the Lanyard Team that visited Universe on 22 March 2012 and 4 April 2012 with Officer Alison Goulding and was the officer that had cancelled the VAT registration of Universe with effect from 2 March 2012 and, on 28 June 2012, wrote to the directors of Universe confirming the cancellation of its VAT registration with effect from 28 June 2012. However, Mr McMaster played no part in the issue of assessments/penalties in relation to Gujarr, Logical, UK Beer and Universe.

69. Although he did his best to assist, due to his limited involvement in the work described above carried out by the officers whose statements he had adopted, we were unable to derive much assistance from Mr McMaster's evidence.

David Page

70. David Page, a Higher Officer of HMRC, Officer David Page gave evidence remotely in relation to excise duty and penalty assessments issued to Corkteck on 5 December 2014 and 5 January 2015 respectively. Unfortunately due to the "passage of time" Mr Page was unable to "recall" very much about the events described in his witness statement and, as such, was of extremely limited value as a witness.

Mickey (Shahid) Rajput

71. At the time of his first witness statement (30 October 2018) Shahid Rajput had been employed by HMRC and its predecessor HM Customs and Excise for 49 years. He was the officer responsible for checking the VAT returns of Corkteck from January to June 2014 and April to December 2015 and of Park Royal between January 2014 to October 2015. His evidence, which he gave in-person, was in regard to these companies.

72. We were unable to derive much, if any, assistance from Mr Rajput's evidence. His witness statements referred to many irrelevant matters and his answers in cross-examination were obstructive. In essence his evidence was that he had extracted documents (some of which were incomplete) from HMRC's Electronic Folder and he was unable to add anything further than that.

Ruth Strauss

73. Ruth Strauss, a HMRC Higher Officer, gave evidence in-person, in regard to the seizure, on 20 May 2014, by her and officer Stuart Snazel (see below) of 103 pallets of mixed beer,

wine and cider from UKK Wines Limited ("UKK") which had been identified as being supplied by Eurochoice Limited ("Eurochoice") and the seizure, on 4 November 2014, by Officer Pushpakathan of alcohol from Dev and Tej Limited that had also been supplied by Eurochoice. We found Ms Strauss to be a helpful and credible witnesses who did what she could to assist the Tribunal.

Reema Qaisrani

74. Unfortunately the same cannot be said of Reema Qaisrani from HMRC's Holding and Movement (Excise) Team. She gave evidence remotely in relation to Brunel Freight Forwarding Limited ("Brunel") which she visited on 30 October 2014. She was also the officer who carried out a visit to Corkteck (with Helen Hill of HMRC's Leeds Special Investigation Team) following its application to give up its Registered Consignee licence.

75. Ms Qaisrani was an unhelpful witness whose stock answer to almost every question was that she "cannot recall at this time".

Jane Humphrey

76. Jane Humphrey, a Senior Officer in HMRC's Fraud Investigation Service ("FIS") who, as a Higher Officer Investigator had been responsible for investigating MTIC fraud, gave evidence remotely in relation to Elbrook and, as the officer responsible for the revocation of its registration as an owner of duty suspended goods under the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 ("WOWGR") – a decision which, at the time of this hearing, was under appeal to the Tribunal (and due to be heard in November 2022). We found Ms Humphrey to be a fair witness who sought to assist the Tribunal.

Paul Cole

77. Paul Cole, a Higher Officer of HMRC, who was responsible for visiting traders at their business premises to identify and act upon MTIC fraud gave evidence, in-person, in relation to Horizon Traders Limited ("Horizon") a trader in Park Royal's supply chains. We found Mr Cole to be a helpful witness who gave clear answers to questions.

Stuart Snazel

78. Stuart Snazel, a Senior Officer of HMRC, gave evidence, in-person/remotely regarding Eurochoice, Sea Inn Foods and Alexis and adopted the witness statement of the unavailable Sundip Bulsara in relation to Eurochoice. He was also the officer who along with Ruth Struss (see above) attended UKK and made a seizure of alcohol on 20 May 2014. Mr Snazel was, on the whole, an obliging witness who sought to assist the Tribunal although, on occasions, he did resort to what appears to be HMRC's mantra that he "cannot recall at this time."

Andrew Waller

79. Andrew Waller, who since 2005 has worked solely within an HMRC MTIC team, gave evidence remotely regarding Blueray Enterprises Limited ("Blueray") a missing trader operating in the European Union which was at the beginning of the Operation Banjax supply chains. We found him to be a reliable and fair minded witness.

Lee Nevin

80. Lee Nevin, an officer of HMRC and previously HM Customs and Excise, gave evidence remotely regarding Barrel Booze Limited ("BBL") which had been denied recovery of input tax in respect of purchases it had made from Corkteck during 2014. Mr Nevin also adopted the witness statement of George Beaddie who, before he retired from HMRC, was the allocated officer for Best Buys. He fairly accepted the limitations of his evidence especially regarding Mr Beaddie's witness statement and the exhibits to it but nevertheless clearly sought to assist the Tribunal.

Ian Dibley

81. Ian Dibley, who gave evidence, remotely, in relation to Drinks Stop Cash and Carry Limited ("Drinks Stop"). He is an officer of HMRC whose duties include the assurance of businesses/traders in alcohol supply chains. Although Mr Dibley's former colleague Declan Brolly, who is no longer employed by HMRC, was the primary decision maker and had, in 2016, issued an excise assessment and wrongdoing penalty against Drinks Stop, Mr Dibley explained that he had "some involvement" in the decision and had accompanied Mr Brolly on visits to Drinks Stop on 21 September and 2 November 2015. Before making his witness statement Mr Dibley had also considered Mr Brolly's draft witness statement together with all documents and electronic records that had been available to Mr Brolly and had spoken with him about these matters before.

82. When cross-examined Mr Dibley gave clear and concise answers. We found him to be a fair minded and helpful witness.

Parul Malde

83. Mr Malde, the second appellant in these proceedings, gave evidence in person and was cross-examined over nine days. When questioned he was frequently unable to "recall" matters, particularly if these related to a matter that was potentially adverse to his case. However, he was able to recollect, often in granular detail, other events that had taken place around the same time. Much of his evidence, especially in relation to SA, Global, Pat Sounumpol and Arnaud Carre, was inconsistent with statements he had previously made in interviews and/or correspondence and, as such, casts serious doubt as to its veracity.

84. By way of example, despite, on his evidence, instructing Turner Little on behalf of Pat Sounumpol in regard to its incorporation in Belize and being appointed its sole director, secretary, 100% shareholder and sole signatory on its Federal Bank of the Middle East Limited ("FBME") bank account (see below) Mr Malde told the police during an interview under caution on 10 June 2008 (see below) that SA was a Polish company and that his contact there was a "Polish man by the name of Novac".

85. In his affidavit in support of a judicial review application by Corkteck to quash an assessment for VAT in the sum of £315,504 Mr Malde gave the impression that SA was an arm's length supplier. In his judgment in that application, reported as *Corkteck Limited v HMRC* [2009] STC 1681, Sales J (as he then was) said:

> "5. One of the suppliers to Corkteck was a company called Sintra SA ("Sintra"), which was based in Belize (ie outside the EU) and which had a European office in Poland. It was not a trader registered for VAT purposes in the EU.
>
> 6. Sintra approached Corkteck in early 2005 to ask if Corkteck could sell cans of Red Bull soft drinks to Sintra (invoicing Sintra for them), but deliver them to Sintra's own customer in Poland, Konto. Konto was a trader registered for VAT purposes in the EU. Corkteck, through Mr Malde, was happy to assist Sintra. However, he was aware that there was a problem in relation to the VAT position regarding the proposed transaction, which differed from the type of transaction which he was familiar with, involving sale of goods by Corkteck to VAT registered traders in other EU countries.
>
> …
>
> 8. Mr Malde's evidence was that he was aware that if he just invoiced Sintra as his customer he would have to charge it UK VAT, while Sintra would still have to pay Polish VAT on its onward sales of the drinks to Konto. He was concerned to avoid this situation, if he could, since this might make the pricing

> of the transaction unattractive to Sintra, with the result that Corkteck might lose the business. If Corkteck supplied direct to Konto, the supply would be zero rated. However, Mr Malde was not prepared to try to deal direct with Konto, since Corkteck had an ongoing business relationship with Sintra which he did not wish to jeopardise by cutting Sintra out of the transaction. Mr Malde was aware that in the transaction which was contemplated Sintra, not Konto, was to be Corkteck's customer."

86. Also, in an interview with HMRC, on 10 December 2013, Mr Malde again stated that SA was a Polish company. He said that he had "no idea" who its director was and that his (Mr Malde's) contact at SA was someone with the first name of "Lismore" who, he said, was Polish but that he did not know his, Lismore's, surname. Mr Malde, who was the sole authorised signatory on SA's bank account, said that he did not "believe" SA's bank account to be in Poland but that he had the details "somewhere in the files".

87. Following the 10 December 2013 interview HMRC, having recently obtained evidence confirming Mr Malde to be the sole authorised signatory on SA's bank account and, having discovered a link between that account and his home address, wrote to Mr Malde on 29 January 2014 requesting further information (see below). On 5 March 2014 HMRC were provided with a report by Mr Simmonite of SKS, Mr Malde's tax adviser, dated 5 March 2014 (the "2014 Report") which, after referring to HMRC's letter of 29 January 2014, states at paragraph 2.14:

> "The purpose of this report is to respond to HMRC. This report has been read, agreed and approved as true and complete, to the best of his recollections, by PM [Mr Malde]."

88. The 2014 Report states, incorrectly, that Mr Malde is not a director of SA. It continues by confirming that he opened an account for SA in 2004 at the FBME Bank in Cyprus at "the request of a number of former business associates". However, when questioned, Mr Malde said that the "business associates" to which the 2014 Report referred were Pat Sounumpol and her associates who Mr Malde described as "a guy called Mohammed" who he said was a French citizen and "a Turkish guy" whose name he could not initially recall but later said it was also Mohammed. The 2014 Report was the first time that there had been any reference to Pat Sounumpol. She is described in the 2014 Report as being a Thai national living in Bangkok and as "one of the directors" of SA, a company registered in Belize. The "General Manager" of SA was, the 2014 Report states, "understood" to be Arnaud Carre.

89. Although in his evidence Mr Malde referred to his involvement in establishing SA and Global through Turner Little there is no mention of this in the 2014 Report. Neither is there any reference in the 2014 Report to Mr Malde handing over of control of SA or Global to Ms Sounumpol despite his evidence that he did so.

90. Also, notwithstanding the reference to Pat Sounumpol in the 2014 Report, during a PN160 interview in December 2015 (see below) when questioned about SA, Mr Malde confirmed that he had "set the company up on behalf of some friends and arranged a bank account for them and that was it." However, in cross-examination he confirmed that by "friends" he meant only Ms Sounumpol. When it was pointed out to him that Ms Sounumpol was "one person" Mr Malde's response was, "it's grammar, basically it's a friend. He went on to say that Ms Sounumpol was the only person he spoke to but that there was a "larger group" and while Ms Sounumpol talked "about the Turk" and he had assumed that "Mohammed was with her", he did not "think" he ever had details of any of the others.

91. Mr Malde was unable to explain why he failed to mention, at the PN160 interview, that he had been asked by Ms Sounumpol to open an FBME bank account for SA, saying when questioned about this:

> "I haven't stated it is Pat, but I haven't stated it wasn't. So, I can't understand – there is no particular reason that I can think of why it's not said."

92. Mr Malde's evidence regarding the formation of Global, which he described as the "same company" as SA, was that it arose following a telephone call from Turner Little in 2012 advising him that due to legislative changes in Belize the business activities of SA should be transferred to a new company incorporated in a different jurisdiction. He said that Turner Littler recommended that the new company, which became Global, should be established in Panama and a trust foundation be set up and that he reported this to Ms Sounumpol who gave him instructions to follow Turner Little's advice. However, this version of events is not supported by any Turner Little document. Rather a chain of emails between 26 January 2011 and 17 March 2011 (see below) indicates that it was Mr Malde who approached Turner Little with the necessary instructions.

93. In addition to an FBME account Global had an account with CIM Banque ("CIM") in Switzerland. Mr Malde when asked why a second account was required said:

> "I can't recall. I'm assuming Pat must have asked for a second bank account. I can't recall why the second account was opened."

However, when giving evidence to the Tribunal in support of Global's unsuccessful application to be able to appeal against assessments, issued under s 73 VATA and s 16(3) of the Finance Act 1994, without payment or deposit of the amount determined by HMRC to be due on the grounds that it would suffer hardship if a payment or deposit were made (see *Sintra Global Inc v HMRC* [2016] UKFTT 726 (TC) – the "Hardship Hearing"), Mr Malde had said that it was Robert Nicholson of Turner Little who had decided that Global should have an account at CIM. However, in evidence he could not recall why Mr Nicholson would want Global to have a CIM account but suggested, without there being any evidence in support, that it could possibly:

> "… have been something along the lines of referrals … to get commissions."

94. Mr Malde also said in evidence that, having been instructed by Ms Sounumpol to do so, he contacted Turner Little to close the CIM account. However, there was no corroborating documentary evidence from Turner Little to support Mr Malde's version of events. In addition, his evidence regarding the formation of Amirantes on the instruction of Ms Sounumpol (see below) is, given his failure to tell his advisers or HMRC of his involvement in this, simply not credible.

95. With regard to Ms Sounumpol, with whom he said he had had an intimate relationship "from the late 1990s until the mid to late 2000s", Mr Malde confirmed in evidence that he had not seen any document from Turner Little in which she is mentioned or that he ever referred to her in his dealings with Turner Little. This is despite his evidence that he was instructed by Ms Sounumpol to use Turner Little for the formation of SA having been told by her that:

> "… it will be a Belize set up and a Cyprus bank account"

He also said that Mr Nicholson of Turner Little "knew straightaway what he was there about" when he attended their office in York.

96. Additionally, Mr Malde has made no attempt to contact Ms Sounumpol for the purpose of these appeals since June 2018. The only number on which he had, unsuccessfully, attempted to contact her between 2014 and 2018 was that number which appeared on the bottom of an email from Global, dated 17 February 2014, to Mr Malde, a copy of which was attached to the 2014 Report.

97. In his fist witness statement Mr Malde said that he had made "numerous attempts" to contact Arnaud Carre, of whom he said he was not aware until he received the 17 February

2014 email. However, in evidence at first he said that this was solely by email as he did not have a telephone number for him but later said that although he had tried, unsuccessfully, to telephone Mr Carre on a Malaysian telephone number he had not attempted to call a telephone number that appears, on the 17 February 2014 email from Global, to be Mr Carre's saying:

> "I've never called that number … I've never tried to contact him by phone."

Andrew Quay

98. Andrew Quay, who gave evidence, in person, in respect of an unsecured personal loan in the sum of £102,000 from Pat Sounumpol, his dealings with Mr Malde who, in 2014, had lent Mr Quay €350,000 to purchase a property in Tenerife and his company Roadlink Express.

99. Mr Quay described how he had met Ms Sounumpol in the Netherlands close to Schiphol Airport and how he had subsequently received a loan agreement, dated 18 September 2013 which he duly signed, Ms Sounumpol's details being by way of a stamp recording her name and address in Bangkok with "PS" written in manuscript alongside. Funds were transferred into Mr Quay's bank account from the account of Global on 25 September 2013. Under the terms of the loan agreement repayment was delayed for five years. Although Mr Quay made a request, by email dated 31 October 2018, for the terms of the loan to be extended he did not receive a reply. To date the loan remains outstanding with no re-payments having been made by Mr Quay.

100. We found Mr Quay to be a rather defensive witness who was frequently unable to remember what had been said and done in relation to matters that had occurred some time ago but, like Mr Malde, was able to provide more detailed answers when it suited him to do so notwithstanding the passage of time since those events. That said, he did respond to questions in a straightforward manner and appeared to be doing what he could to assist the Tribunal.

Steven Simmonite

101. Steven Simmonite, who as noted above (at paragraph 25) is a director of SKS which he formed with his co-directors in 2007 having previously been a director at KPMG LLP, a partner at Grant Thornton LLP and before that employed by HMRC and its predecessor HM Customs and Excise in various roles from 1975. He is Mr Malde's tax adviser.

102. Mr Simmonite's evidence concerned his analysis of the SAGE records of York Wines that had been uplifted from York Wines' accountants by HMRC on 20 November 2008 as part of the Operation Rust investigation, and his explanation of the spreadsheets he had created in that process. Although Mr Simmonite was quite combative and argumentative when giving evidence he was clearly trying to assist the Tribunal despite on occasions slipping into the role of advocate in support of his client's case rather than a witness of fact. That said, he fairly accepted errors pointed out to him in his calculations.

Eric van de Vondel

103. It had been intended that Eric van de Vondel would give evidence for the appellants in person. However, on 31 May 2022 he notified HMRC's solicitors that he was unable to travel to the United Kingdom as he did not have a passport, something of which the appellants' solicitors were completely unaware. Accordingly, on 6 June 2022, an application was made by the appellants for him to give evidence remotely from Belgium where he lives. However, it transpired that the application had not been made in accordance with the *Guidance on Taking Oral Evidence from Abroad* (the "Guidance") that had been issued by the President of the Tax Chamber of the First-Tier Tribunal on 12 April 2022.

104. The purpose of the Guidance was to draw attention of judges and parties in proceedings in the Tax Chamber to the decision of the Upper Tribunal in *Agbabiaka (evidence from abroad; Nare guidance)* [2021] UKUT 286 (IAC) concerning the procedure to be followed when a

party to a case wishes to rely upon oral evidence given by video or telephone by a person (including the party themselves) who is in the territory of a Nation State other than the United Kingdom. It states:

> "2. The decision in *Agbabiaka* includes the following:
>
> > "There has long been an understanding among Nation States that one State should not seek to exercise the powers of its courts within the territory of another, without having the permission of that other State to do so. Any breach of that understanding by a court or tribunal in the United Kingdom risks damaging this country's diplomatic relations with other States and is, thus, contrary to the public interest."
> >
> > "Whenever the issue arises in a tribunal about the taking of evidence from outside the United Kingdom […] what the Tribunal needs to know is whether it may take such evidence without damaging the United Kingdom's diplomatic relationship with the other country. […] it is not for this (or any other) tribunal to form its own view of what may, or may not, damage the United Kingdom's relations with a foreign State."
>
> 3. The decision records – and treats as determinative – the stance of the Foreign, Commonwealth and Development Office (FCDO) that only the giving of oral evidence from a Nation State requires the permission of that State. Permission is not needed for written evidence, or for submissions (whether oral or written).

The Guidance (which was re-issued on 28 July 2022 to clarify that permission is not required where individuals wish to give video and telephone evidence from within the United Kingdom, the Crown Dependencies[2], or British Overseas Territories[3]) continues by describing the process by which permission may be obtained from the FCDO Taking of Evidence Unit, the decision of which regarding the stance of a particular overseas government will be determinative, and the assistance provided by HM Courts and Tribunals Service warning that the process "can take months".

105. Although the application for Mr Van de Vondel was not opposed, permission for him to give evidence from Belgium had not been obtained and, as there was not sufficient time for an application to be made, it was agreed that his witnesses statements would be admitted as hearsay evidence (ie a statement made otherwise than by a person giving evidence, which is tendered as the matters stated).

106. His evidence concerned the business activities and trading relationships of Adrena SP Zoo ("Adrena"), a company that he said he established in Szczecin, Poland, particularly its business relationships with SA and Global. Mr Van de Vondel said he met the director/representatives of SA at a hotel in Szczecin who he described as "a woman who introduced herself as Pat who was from Thailand and a man who introduced himself as Arnaud who was a French citizen." Although Mr Van de Vondel's impression was that Pat was actively involved in the company the decision maker was in fact Arnaud.

[2] Jersey, Guernsey or the Isle of Man

[3] Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, The Sovereign Base Areas of Akrotiri and Dhekelia, Turks and Caicos Islands and Virgin Islands

107. Although potentially of assistance we have attached less weight to Mr Van de Vondel's evidence than might have been the case had he given oral evidence which could have been tested under cross-examination.

Unchallenged witness evidence

108. In addition to the witnesses who gave live evidence, whether in-person or remotely, the evidence of the following HMRC officers, which was not challenged, was admitted into evidence:

(1) Michael Davey in relation to York Wines' backup of its SAGE records;

(2) Stephen Doyle in relation to two excise assessments raised against Park Royal totalling approximately £23,000 and £74,000;

(3) Areghan Obawaeki in regard to Ramstrad Limited ("Ramstrad"), a trader that was supplied by and paid Global £1.245m;

(4) Joanne Jones regarding:

(a) Best Buys, and

(b) ALT Supplies Limited;

(5) Robin Kendall in relation to Elbrook;

(6) Adeola Otinwa in regard to B&R Wholesalers Limited ("B&R"), a supplier to Global. Between October and December 2013, Global paid B&R over £311,000 by way of four payments;

(7) Sundeep Bulsara whose evidence, concerning Ashneet Limited ("Ashneet") a missing trader in Operation Banjax, was adopted by Esther Jelenke;

(8) Michael Pye in respect of Bargain Cash and Carry Limited, a defaulter in the supply chains of Best Buys and which also appears in the supply chains of Park Royal;

(9) Bridget Douglas regarding:

(a) Barrel Booze a trader in Park Royal/Corkteck's supply chains,

(b) Flaxley Limited, Corkteck's customer, and

(c) Goldbeach Trading Limited, a trader linked to Elbrook and customer of Corkteck

(10) Vincent D'Rozario in regard to Beetrade Limited ("Beetrade") which traded as M62 Cash and Carry;

(11) Nicholas Hampson also in relation to Beetrade, Global's customer's customer in the supply of non-alcoholic products via Best Buys;

(12) Geoffrey Germeney in respect of Edwards Beer and Minerals Limited ("Edwards") a bonded warehouse from which goods were dispatched from Elbrook (via Izabella Hryhorowicz) to Global;

(13) Conor Maguire, a replacement officer for Ann Goy, regarding Europa Cash and Carry Limited ("Europa") which was the defaulter to Sea Inn Foods which itself (Sea Inn Foods) paid money to Global.

(14) Peter Dean in relation to Golden Harvest Wholesale Limited (Golden Harvest"), a company that featured in Operation Banjax as a 'buffer' company within VAT fraud transaction chains having purchased from other 'buffer' type businesses;

(15) David Smith, also in relation to Golden Harvest;

(16) David Reynolds in respect of Corkteck's customers Gempost Limited ("Gempost") and Just Beer Limited ("Just Beer").

(17) Parminder Birdi (who had also given live evidence in regard to the December 2015 PN160 interview with Mr Malde) regarding Lions Soft Drinks Limited ("Lions);

(18) Richard Howe also regarding Lions;

(19) Gavin Stock in respect of Mr Cash & Carry Limited ("Mr Cash & Carry"), a "missing trader" in Operation Banjax;

(20) Jane Lawson in respect of Supersale Wholesale Limited a defaulter in the supply chain of Best Buys and Park Royal; and

(21) Jason Harris who adopted the witness statement of Mahenddra Gajjar in relation to Wakehams Green Limited a missing trader in Park Royal and Corkteck's supply chains.

Application to exclude hearsay evidence

109. Prior to the commencement of the hearing it became apparent, from their opening written submissions, that the appellants sought the exclusion of certain evidence. Although it had been made clear at an interlocutory hearing in this matter that we would ignore the opinions, comments and submission from any witnesses of fact it was not clear exactly what evidence the appellants sought to exclude. Therefore, the Tribunal wrote to the parties on 29 March 2022 to direct that if either maintained that evidence should be excluded, a written application (to be determined at the start of the hearing) was required to clarify the particular evidence concerned and the grounds on which its exclusion was sought.

110. An application was duly made by the appellants on 31 March 2022 for a direction that the following matters, on which HMRC relied, be excluded on the grounds of it being hearsay:

(1) evidence from any non-United Kingdom sources as had been set out in the appellants' opening submissions;

(2) information obtained by HMRC respondents from the Cypriot tax authorities following a request by HMRC under Council Directive 2011/16/EU and Article 26 of the UK/Cyprus Double Taxation Treaty in respect of Mr Malde requesting details of the bank accounts of SA and Global;

(3) the judgments of Judge Falk and Sales J (as they then were) and references to those judgments in the evidence;

(4) the analysis of data and commentary upon that analysis held within the SAGE computer software seized from York Wines' accountants on 20 November 2008 as part of the Operation Rust investigation; and

(5) the reported statement from a member of staff at Euro Pacific Bank ("EPB") that was recounted by Mr McIntyre in his evidence and his witness statements.

Having identified particular evidence by reference to the hearing bundle, the application also sought the deletion of any reference in the statement of case and opening submissions by HMRC to any evidence that was then excluded.

111. It was clear that, under Rule 15(2) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, the Tribunal may admit evidence, including hearsay evidence, whether or not it would be admissible in a civil trial in the United Kingdom, it may also to exclude evidence that would otherwise be admissible, where it would otherwise be unfair to admit the evidence.

112. As Nugee J (as he then was) said in *HMRC v IA Associates* in [2013] EWHC 4832 (Ch) at [35]:

> "… one starts with asking a question whether the evidence is admissible. It is admissible if it is relevant. It is relevant if it is potentially probative of one of the issues in the case. One then asks, notwithstanding that it is admissible evidence, whether there are good reasons why the court, or tribunal in this case, should nevertheless direct it be excluded."

113. We therefore considered, having regard to the overriding objective to deal with cases fairly and justly under Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, whether the evidence that the appellants sought to exclude was relevant and if it was, it was admissible and, unless there was a good reason to exclude it, that evidence should be admitted.

114. It appeared to be common ground that we should adopt the definition contained in s 1(1) of the Civil Evidence Act 1995 which provides that "hearsay" is:

> … a statement made otherwise than by a person while giving oral evidence of proceedings which is tendered as evidence of the matter stated.

115. Taking each of the categories in turn, although in relation to the first of these, hearsay evidence, the application set out specific sources of evidence which it sought to exclude, having considered each of these we came to the conclusion that all the evidence appeared to be relevant and prima facie admissible. Therefore, for present purposes we considered this category of the application as a whole, rather than each element individually, and asked ourselves the question: was there a good reason why the evidence should be excluded?

116. Mr Webster for the appellants argued that as the evidence identified was hearsay, having regard to the European Convention on Human Rights ("ECHR"), *Al-Khawaja v UK* (2012) 54 EHRR 23, *R v Ibrahim* [2012] 4 All ER 225, *R v Riat and other appeals* [2013] 1 All ER 349 and *R (on the application of Bonhoeffer) v General Medical Council* [2011] EWHC 1585 (Admin) (L/49), none of it should be admitted due to its cumulative effect especially as that some of the witnesses giving that evidence may not be truthful (and have reasons not to be truthful) and others were not available for cross-examination. However, we considered this evidence to be clearly admissible under Rule 15(2)(a) of the Tribunal Procedure Rules. So the question was: should it be admitted?

117. On balance, and it was more difficult in the case of some parts of the evidence identified than others, we came to the conclusion that it should be admitted subject to the question of weight to be attributed to it.

118. The second category concerned information obtained by HMRC following an exchange information request to the Cypriot tax authorities in respect of Mr Malde in which details of the bank accounts of SA and Global had been sought.

119. Mr Webster contended that the request by HMRC was made on a false basis as it was not made in relation to direct taxes. The purpose of the request, he said, was to investigate liability to VAT and customs duty. He therefore submitted that it should be excluded, not only as a matter of fairness but also because it was obtained in breach of the secrecy obligations and Article 26 of the UK/Cyprus Double Tax Treaty. Mr McGuinness, for HMRC, argued that that this evidence should be admitted.

120. It was common ground that HMRC's request to the Cypriot tax authorities was made under the Council Directive 2011/16/EU (the "Directive") and Article 26 of the Double Tax Convention between the UK and Cyprus (the "Convention"). Although in the skeleton argument produced for the application HMRC had argued that the reference to prevention of

fiscal evasion in Article 26(1) of the Convention was sufficient to allow the use of the material, Mr McGuinness in his oral submissions relied principally on the Directive.

121. Although Article 2(2) of the Directive clearly provides that it "shall not apply to Value Added Tax and customs duties", Article 6, which relates to the disclosure information, provides in relation to the information obtained under the Directive, such information may also be used for the assessment and enforcement of other taxes and duties covered by Article 2 of the Council Directive 2010/24/EU of 16 March 2010 (the "2010 Directive") concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

122. In so far as material to the application, paragraph 1 of Article 2 of the 2010 Directive provides:

> This Directive shall apply to claims relating to the following:
>
> > (a) all taxes and duties of any kind levied by or on behalf of a Member State or its territorial or administrative subdivisions, including the local authorities, or on behalf of the Union.

Paragraph 2(a) of Article 2 of the 2010 Directive provides:

> The scope of the this Directive shall include:
>
> (a) administrative penalties, fines, fees and surcharges relating to the claims for which mutual assistance may be requested in accordance with paragraph 1, imposed by the administrative authorities that are competent to levy the taxes or duties concerned or carry out administrative enquiries with regard to them, or confirmed by administrative or judicial bodies at the request of those administrative authorities

123. In our judgment, this was clearly sufficient to include HMRC as the administrative authority that is competent to levy all taxes and duties in the United Kingdom. For that reason we did not consider paragraph 3(d) of Article 2, which applies to other criminal penalties not covered by paragraph 2(a) to be applicable. Accordingly, we came to the conclusion that the request for information was properly made within the terms of the Directive and that the material obtained as a result of that request could be admitted. However, the question of weight to be attributed to that evidence remained open and a matter to be addressed at the conclusion of the substantive hearing.

124. The third element was the judgments of Judge Falk following the Hardship Hearing and Sales J in the judicial review, and references to those judgments in the evidence.

125. It was accepted that the submissions and summary of evidence in both cases was admissible and that this should be admitted. However, as Christopher Clarke LJ (with whom Arden and Treacy LJJ agreed) said in *Hoyle v Rogers and another (Secretary of State for Transport and another intervening)* [2015] 1 QB 265 at [39]:

> "… findings of fact made by another decision maker are not to be admitted in a subsequent trial because the decision at that trial is to be made by the judge appointed to hear it ("the trial judge"), and not another. The trial judge must decide the case for himself on the evidence that he receives, and in the light of the submissions on that evidence made to him. To admit evidence of the findings of fact of another person, however distinguished, and however thorough and competent his examination of the issues may have been, risks the decision being made, at least in part, on evidence other than that which the trial judge has heard and in reliance on the opinion of someone who is neither the relevant decision maker nor an expert in any relevant discipline, of which decision making is not one. The opinion of someone who is not the trial judge

is, therefore, as a matter of law, irrelevant and not one to which he ought to have regard."

126. As the factual decisions in the present case were a matter for us we have placed no weight and ignored any findings of fact made in previous proceedings by any judges, no matter how distinguished.

127. We then considered the next category, analysis of data within the SAGE computer system of York Wines and the comments on it. Mr Webster essentially contended that this evidence was artificial – described in the appellant's opening written submissions as a "fraudulent construct designed to cover up as opposed to record that which was actually going on". However, it appeared that this evidence was relevant and in reality it was a question of what weight should be attributed to that evidence rather than whether it should be admitted.

128. We took a similar view with regard to hearsay from a member of staff at the EPB Bank concluding that it was question of weight rather than admissibility as that evidence also appeared to be relevant.

129. The application was therefore dismissed and the evidence admitted, subject to the question of weight to be attributed to it.

Approach to the evidence

130. In *Kimathi & Others v The Foreign and Commonwealth Office* [2018] EWHC 2066 (QB) Stewart J observed, at [95], that:

> "95. In recent years there have been a number of first instance judgments which have helpfully crystallised and advanced learning in respect of the approach to evidence. Three decisions in particular require citation. These are:
>
> - *Gestmin SGPS SA v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm) – Leggatt J (as he then was)
> - *Lachaux v Lachaux* [2017] EWHC (Fam) – Mostyn J
> - *Carmarthenshire County Council v Y* [2017] EWFC 36 – Mostyn J"

He continued:

> "96. Rather than cite the relevant paragraphs from these judgments in full, I shall attempt to summarise the most important points:
>
> i) Gestmin:
>
> - We believe memories to be more faithful than they are. Two common errors are to suppose (1) that the stronger and more vivid the recollection, the more likely it is to be accurate; (2) the more confident another person is in their recollection, the more likely it is to be accurate.
> - Memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is even true of "flash bulb" memories (a misleading term), ie memories of experiencing or learning of a particularly shocking or traumatic event.
> - Events can come to be recalled as memories which did not happen at all or which happened to somebody else.
> - The process of civil litigation itself subjects the memories of witnesses to powerful biases.
> - Considerable interference with memory is introduced in civil litigation by the procedure of preparing for trial. Statements are often

taken a long time after relevant events and drafted by a lawyer who is conscious of the significance for the issues in the case of what the witness does or does not say.

- The best approach from a judge is to base factual findings on inferences drawn from documentary evidence and known or probable facts. "This does not mean that oral testimony serves no useful purpose… But its value lies largely… 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".

ii) Lachaux:

- Mostyn J cited extensively from *Gestmin* and referred to two passages in earlier authorities (The dissenting speech of Lord Pearce in Onassis and *Calogeropoulos v Vergottis* [1968] 2 Lloyd's Rep 403, 431; Robert Goff LJ in *Armagas Ltd v Mundogas SA* [1985] 1 Lloyd's Rep 1, 57). I extract from those citations, and from Mostyn J's judgment, the following:

- "Witnesses, especially those who are emotional, who think they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason, a witness, however honest, rarely persuades a judge that his present recollection is preferable to that which was taken down in writing immediately after the incident occurred. Therefore, contemporary documents are always of the utmost importance…"

- "…I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective fact proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities…"

- Mostyn J said of the latter quotation, "these wise words are surely of general application and are not confined to fraud cases… it is certainly often difficult to tell whether a witness is telling the truth and I agree with the view of Bingham J that the demeanour of a witness is not a reliable pointer to his or her honesty."

iii) Carmarthenshire County Council:

- The general rule is that oral evidence given under cross-examination is the gold standard because it reflects the long-established common law consensus that the best way of assessing the reliability of evidence is by confronting the witness.

- However, oral evidence under cross-examination is far from the be all and end all of forensic proof. Referring to paragraph 22 of *Gestmin*, Mostyn J said:

  "…this approach applies equally to all fact-finding exercises, especially where the facts in issue are in the distant past. This

> approach does not dilute the importance that the law places on cross-examination as a vital component of due process, but it does place it in its correct context."
>
> 97. Of course, each case must depend on its facts … as well as the manner of the happening of an event and all the other material matters. Nevertheless, they are important as a helpful general guide to evaluating oral evidence and the accuracy/reliability of memory."

131. Mindful of such considerations we now turn to our findings of fact.

FACTS

Statement of Agreed Facts

132. The parties provided the following statement of agreed facts:

Parul Malde

(1) Parul Malde was born on 20 September 1971.

(2) Mr Malde's home address is in Barnet, London.

SA

(3) SA was incorporated in Belize on 10 June 2004.

(4) SA was incorporated with one common share with a nominal value of $1. The registered proprietor of that common share on the date of incorporation was Mr Malde.

(5) At incorporation, Mr Malde was appointed 'Director' and 'Secretary'. His address was recorded as the business address of Mr Malde's company Corkteck.

(6) On 29 July 2004, an account was opened with FBME in the name of SA. On the application to open a corporate account Mr Malde was named as director of SA. The nature of the business and principal activities were identified as 'import/export/beverages/foodstuff' and the expected annual turnover was set at $5 million. The business address was initially written as an address in Belize City, before being crossed out and amended to and address in Weimar, Germany' with a telephone number ending ...2888 The mailing address was identified as the address of Turner Little, a company formation agency based in York. The registered office address was in Belize City, Belize. The application form confirmed that the company had an existing account with Barclays Bank in Chingford Essex. The signatory on the bank mandate was Mr Malde. The country of residence for SA was initially written as "UK" before being crossed out and amended to "Germany".

Global

(7) Global was incorporated in Panama on 16 February 2011.

(8) Global was incorporated with one hundred common shares each with a nominal value of $100. The registered address was identified as being in Panama City, Republic of Panama. Tatiana Itzel Saldana Escobar, Humberto Gregorio Barrera Mojica and Fernando Enrique Montero De Gracia, directors of Panamanian law firm Cambra La Duke & Co, were nominated as directors of Global.

(9) On 17 February 2011, a single share certificate for Global was issued to The Allardice Foundation, a foundation that had been incorporated on 10 February 2011. Mr Malde was appointed sole beneficiary and protector of The Allardice Foundation and granted power of attorney over the activities of Global.

(10) On 17 March 2011, Turner Little started the process of setting up a bank account for Global with CIM in Switzerland, completing a pre-application questionnaire. The

application form, signed and dated 19 July 2011, identified Parul Malde as the authorised signatory for the account. Under the heading 'Instructions to avoid that assets become dormant' Mr Malde was named as the person who the bank should contact if they were unable to contact the Client [Global]. On 20 July 2011, Turner Little sent a letter to CIM confirming that Parul Malde had arranged for a £3,000 deposit to be made from the 'Sintra Global SA' FBME account into the CIM account. On 8 August 2011, Turner Little sent the application for the bank account to CIM together with supporting documentation, which included certified copies of Parul Malde's passport and one of his utility bills. On 28 December 2012, a sum of £212,796.58 was credited into the Global FBME account from the CIM bank account.

(11) On or around 17 August 2011, an application was made to open an account at FBME's Cyprus branch in the name of Global. The application form stated that Global was a Panama registered company although its business address was given as Mr Malde's home address. The form was signed by Tatiana Itzel Saldana Escobar although the authorised signatory on the account was identified as Mr Malde.

(12) On 23 September 2011, a 'Letter of Confirmation of Company's Good-Standing by the Directors' was sent to FBME regarding the opening of the bank account in the name of Global. The letter was signed by the directors, Tatiana Itzel Saldana Escobar, Humberto Gregorio Barrera Mojica and Fernando Enrique Montero de Gracia. The registered shareholder of the company was identified as The Allardice Foundation. Global was identified as a Panama-registered company although its business address was given as Mr Malde's home address.

(13) The entire credit balance of SA's FBME bank account was transferred to Global's FBME bank account on 4 May 2012.

(14) On 2 August 2013 Mr Malde completed and signed a contact details update form with FBME on behalf of Global. The telephone number identified, ending …9837, was subsequently confirmed to be Mr Malde's personal mobile telephone number.

Amirantes

(15) On 11 February 2014 Turner Little started the process to set up Amirantes which was incorporated on 24 February 2014. The Allardice Foundation was named 100% shareholder of Amirantes. By way of resolution dated the same day it was resolved the minutes of the meetings of directors and shareholders would be kept at Mr Malde's home address. On 28 February 2014 Genevieve Yolanda Pennill, the Director of Amirantes, granted Parul Malde power of attorney over Amirantes.

(16) On 6 May 2014 Parul Malde arranged for Turner Little to set up a bank account for Amirantes, the EPB, which has offices in the Caribbean islands of St. Vincent and Grenadines. The bank account application identified Parul Malde as the beneficial owner of Amirantes and was signed by him on 13 February 2014. Parul Malde was intended to be the authorised signatory.

(17) On 13 May 2014, Mr Malde wrote to FBME in Cyprus on behalf of Global, using Global headed paper, to request the immediate closure of the bank account and asked any balances to be forwarded to the account in the name of Amirantes at the EPB.

(18) On or around 9 June 2014 Turner Little set up a bank account for Amirantes with BMI Bank in Seychelles. The application form identified the trading address of Amirantes as Mr Malde's home address. It was signed by Parul Malde and dated 26 June 2014. On 31 October 2014, BMI Bank notified Turner Little that the application would not be proceeded with due to technical issues at the bank.

(19) On or around 23 December 2014, Turner Little set up a bank account for Amirantes with Med Bank in Malta. The application form listed Parul Malde as the director of Amirantes and intended authorised signatory for the account. Parul Malde paid Turner Little to notarise the relevant documents in support of the application. The application was refused.

(20) On 2 June 2015, Turner Little set up a bank account for Amirantes with Baltikums Bank in Latvia.

Other United Kingdom based companies

(21) Mr Malde was director of United Kingdom registered alcohol traders Corkteck and Park Royal and freight forwarder Brunel.

Seized cash

(22) On 29 January 2008, Kevin Burrage was stopped and searched by Essex Police because they believed that he was in possession of a large quantity of bank notes. Mr Burrage indicated that he was in possession of £105,000 in cash and indicated to a carrier bag behind the driver's seat. He intimated to the Officers that he was a registered 'High Value Dealer' and was authorised by HMRC to deal in such quantities of cash. Mr Burrage was arrested on suspicion of money laundering and was formally interviewed. On the advice of his solicitor, he responded no comment to questions. The cash was wrapped in plastic bag bundles, with the multiple bundles wrapped in an outer larger plastic carrier bag. Fingerprint samples were taken from the various plastic bags. Mr Malde's fingerprints were found on the outer plastic carrier bag and on two other plastic bags located inside. The two smaller plastic bags each contained £2,500 in £50 notes.

(23) On 12 February 2008, Darren Curtis, an employee of Corkteck, was stopped and searched by Essex Police as he approached Royce House on London Road, Southend on Sea, Essex (an address used by York Wines). He was found in possession of £105,000 cash. Darren Curtis informed the police that he had been given the cash by an individual called 'Bruno' at 'Park Royal, Cumberland Avenue'. He said he was taking it into the office to Lynne (looking towards Royce House).

Operation Rust

(24) Operation Rust was a Criminal Prosecution for cheating the public revenue arising out of inward and outward diversion fraud. The prosecution centred around the trader called York Wines owned by Kevin Burrage and a warehouse he also owned with Gary Clarke called Prompstock. Both Kevin Barrage and Gary Clarke as well as other individuals were convicted.

(25) York Wines sold alcohol to SA, albeit the quantum is in dispute.

Further Findings of Fact

133. Although the parties were able to produce the above statement of agreed facts it was clear that it was necessary for us to make further findings of fact on the basis of the evidence, particularly with reference to contemporaneous documents, in order to determine these appeals. In doing so we have generally followed the headings used by the parties in the statement of agreed facts but have dealt with the companies with which Mr Malde was involved under the heading "Parul Malde" rather than "Other United Kingdom Companies".

Parul Malde

134. Mr Malde has, from 1997, gained much business experience through his involvement with the various companies described below. He is also known as "Bruno", a nickname, which he explained in evidence he uses:

> "… because a lot of the time when I call someone and they say, "who is speaking?" and I say, "Parul", I get, "Carol" or, "Daryl" at the other end of it, and Bruno is easier because when you hear it you know it's Bruno. When you say Parul, people don't know the word and they get confused."

Background

135. Mr Malde left school in 1988 and although he attended a College of Further Education he did not sit any examinations but commenced employment as a sales assistant in a west London store selling luggage and shoes. He also worked in the evening for Kridip Transport, a business owned by his uncle, as a driver's mate. In 1993 his uncle purchased a warehouse as a distribution point for Kridip Transport and Mr Malde went to work for him there helping to run the warehouse which operated as a distribution centre as well as offering a freight forwarding service.

136. By 1994 Mr Malde had acquired an HGV licence and had begun driving for Kridip Transport making mainly grocery deliveries in the United Kingdom. Around that time Mr Malde's uncle entered into business in partnership with a Mr Harjeet Singh who Mr Malde knew (and we shall without any disrespect intended subsequently refer to) as "Jeet" who was an alcohol trader. Following the dissolution of that partnership, in or about 1995, Mr Malde worked for Jeet as a driver. This mainly involved transporting beer throughout the United Kingdom. Mr Malde continued driving for Jeet until the business was closed for personal reasons in 1996/1997.

137. However, whilst working for Jeet, Mr Malde had met Kiran Varsani who was establishing a business and invited Mr Malde to work with him. That business became Earlglade Trading Limited ("Earlglade") which was based in Leyton, London. Initially Mr Malde worked as a salesman and was appointed as its company secretary. Earlglade's business was the sale of beer and wine to cash and carries and wholesalers in the United Kingdom. Although Mr Malde's involvement in running Earlglade gradually increased Mr Varsani decided to return to university and decided it should cease trading with the company being struck of the register and dissolved on 9 December 1997.

Star Cash & Carry

138. While Mr Malde was looking for new employment he was contacted by Jeet who told him that he was considering entering into partnership with a Mr CK Patel in a cash and carry in Calais and asked if Mr Malde would be interested in working there and keeping an eye on his investment in France. Mr Malde accepted the offer seeing it as an opportunity with the potential to run the business which was then known as Star 2000.

139. In his role as a warehouseman Mr Malde was able to observe the goods entering and leaving the premises thereby gaining an overview of the business. However, he did not have access to the business records as Mr Patel remained the main decision maker with his two brothers who were also involved in businesses day-to-day operations. As requested, Mr Malde kept Jeet apprised of the business and they would discuss this on Jeet's frequent visits to Calais. During one of these visits Mr Malde told Jeet that he did not think that Mr Patel's brothers were taking full advantage of the business.

140. In 1997, as the business was not growing as quickly as he had hoped and to concentrate on other ventures, Jeet transferred his share of the partnership as a gift to Mr Malde. Mr Malde thought that this share equated to a "about a fifth or just over" of the business.

141. Following his acquisition of an interest in the business Mr Malde agreed with Mr Patel that the business name should be changed from Star 2000 to Star Cash & Carry with Mr Malde becoming a *Gérant* – which he described, having consulted a French company formation website, as the "legal representative and chief executive officer of a French company". Mr

Malde explained that he was appointed as a Gérant because he was the person who as at the premises on a daily basis. The business, which was registered for TVA (VAT) in France, proved to be very successful, primarily due to the booming "Booze Cruise" market that existed in Calais at that time.

142. Mr Malde explained that, in around 1997 or 1998, he had met Pat Sounumpol as her company was one of the suppliers of beer and wine to Star Cash & Carry. He subsequently (as we have noted above (at paragraph 95) formed an intimate relationship with her which had continued until the mid to late 2000s. She was also, Mr Malde said, one of a group of people who were Mr Patel's investors in and owners of Star Cash and Carry. However, he did not know the extent of her interest in the business but that he thought that all of the investors were suppliers who all had their own companies. He explained that even though he was a Gérant he was not aware of the "financial stuff" for which Mr Patel was responsible, rather his role was to deal with the customers and run the cash and carry.

143. An additional investor, who took no part in operation, was introduced to the business by Mr Patel during 1998. Also in that year Mr Patel became incapacitated and his involvement in the business ceased, effectively leaving Mr Malde in full control. However, within a year the business was closed. Mr Malde explained that this was because he was getting married and had decided to "come back home". Although he had agreed with a friend, Michael Scorey, who he described as an "Englishman with a business in Belgium", Apollo, which supplied Star Cash & Carry, that his, Mr Scorey's son, would run the business. However, due to inexperience, disputes with staff and "exorbitant" increases in rent proposed by the landlord, the decision was taken to close Star Cash & Carry.

Corkteck International Limited ("Corkteck International")

144. Following Mr Malde's return to the United Kingdom in 1998, he and Mr Scorey established Corkteck International, a Gibraltar based company with each having an equal shareholding. It was operated as a holding company and was the sole share holder of Corkteck, a United Kingdom company of which Mr Malde was the sole director, and Liquorland, a French company, which had been established by Mr Scorey and had assumed the business previously undertaken by Star Cash & Carry operating from the same premises until it closed in or around March 2000.

145. Although Corkteck International traded in its own right it did not trade in the United Kingdom. It did, however, charge Corkteck management charges and interest on loans it, Corkteck International, had made to Corkteck. By agreement between Mr Malde and Mr Scorey, Corkteck International was dissolved around 1998 with the entire shareholding of Corkteck being transferred to Mr Malde.

Corkteck

146. Corkteck was established in 1998 and was registered for VAT with effect from 3 December that year. Its business concerned the purchase of alcohol in the United Kingdom for sale to cash and carries in Calais and also to exploit Mr Scorey's connections with European Union suppliers to import and wholesale alcohol to customers in the United Kingdom. Mr Malde said that by 1999 he "had come to know the alcohol wholesale market very well" and that Corkteck's supplies were based on his analysis of market requirements and availability of stock rather than pre-existing orders.

147. Corkteck's trade expanded and in 2002, in addition to alcohol and soft drinks, included other goods including chocolate, washing powder and hand rolling cigarette papers. Mr Malde said that between 2003 and 2009 it traded in alcoholic products and soft drinks. In 2010 it traded in alcoholic products, soft drinks and shrink wrap. In 2011 it traded in alcoholic products, soft drinks, adhesive tape and black refuse bags. In 2012 alcoholic products, soft

drinks, shrink wrap, chocolate and refuse sacks. In 2013 alcoholic products, soft drinks and chocolate. In 2014 alcoholic products, soft drinks and chocolate. Its turnover also increased, from £2.3 million in 1999 to £113.4 million in 2014.

148. Following a request from HMRC Corkteck applied for a Registered Excise Dealers and Shippers (REDS) registration which was granted in mid 2000. Under that registration Corkteck was required to provide a guarantee based on two months excise duty liability. This was approximately £200,000 which was held in an account at Barclays Bank.

149. Around January 2002 Corkteck acquired a lease of a 10,200 square feet warehouse at Commercial Way, London for storage and distribution of its stock. At that time it was acquiring duty suspended alcohol from suppliers in various European Union Member States. It declared the duty on its arrival, in accordance with the conditions of its REDS registration, before selling the alcohol to its customers in the United Kingdom. On the cessation of the REDS system Corkteck became a Registered Consignee. This entitled the company to import alcohol, with duty suspended and declare and pay the excise duty on receipt by way of a monthly return. HMRC still required a financial guarantee to be in place with only trusted and regularly inspected businesses being granted approval to Registered Consignee status.

150. When, in April 2010, the European Union changed the control of alcohol movement from a document based system to online electronic based system, duty suspended goods could only be moved within the EMCS. Corkteck was granted use of the EMCS. Mr Malde explained how he would log on and operate the EMCS system at Corkteck. He said that before any movement a supplier would raise an electronic Administrative Document ("eAD") on EMCS. The data would include the details of the supplier, the acquirer (Corkteck), the goods being shipped and transport details. This data was then transmitted to the Customs authorities in all of the relevant jurisdictions and allocated a uniform resource name.

151. The information was then passed to HMRC and if he wished Mr Malde could see on the EMCS when the goods left the warehouse although he explained that he only went onto the EMCS on receipt of the goods. Under the EMCS conditions the goods had to arrive at Corkteck within a specified time period, with the estimated journey time being recorded on the EMCS.

152. Mr Malde would inform HMRC by fax when a consignment arrived and the vehicle would stand untouched for an agreed amount of time to allow HMRC to attend and inspect both the vehicle and its contents if they so wished. Mr Malde explained that the time receipted on the EMCS was not the time of its arrival as, under the EMCS, up to five days is allowed following their arrival to receipt the goods.

153. The EMCS also allowed the user to notify HMRC of any discrepancies in the goods as recorded with the goods received which allows for any errors that may have occurred in the completion of the documents. The receipt on the EMCS notifies the sender and the customs authorities in both states that the movement has been completed.

154. Between September 2004 and August 2011 Corkteck purchased alcohol from SA. However, as we explain below, SA ceased to trade and its business was assumed by Global. Corkteck did not purchase alcohol directly from Global. Mr Malde said that he was told by Global that it would not supply Corkteck with alcohol and that Corkteck would have to purchase its alcohol from Adrena, a company supplied by Global. When asked who had told him this, Mr Malde said that it had been Ms Sounumpol and that he had not asked why this was the case but had assumed that "it was all to do with the new setup."

155. During the period between 2011 and 2013 there were 214 ECMS movements consigned to Corkteck. Of these 85 were intercepted at the border but were subsequently delivered. Within the 129 other movements to Corkteck there were a number of ARCs, which Mr Dibb

highlighted as being open "for sufficiently long periods of time to allow for potentially multiple loads to utilise them for cover purposes".

156. Mr Dibb gave several examples of these, one of which concerned a load going from Adrena at the Belgian Beverages Company ("BBC") warehouse to Corkteck with an ARC that was opened at 17:35 on 22 October 2013 and closed for use on the EMCS seven days later with receipt for the load recorded at 13:51 on 28 October 2013. However, in selecting his examples Mr Dibb had not taken account of weekends that came between the dates of despatch and receipt. There were also some 15 instances where a load was despatched to Corkteck and delivered within two days or less when the ARC had a five day lifetime.

157. The majority of despatches from the BBC warehouse, between 2012 and 2014, were to Corkteck in the United Kingdom. Many of these loads would have had a seal with a unique number as described by Mr Bailey in his evidence (see above at paragraph 22)

158. EMCS records show that, between June 2011 and January 2014, 195 loads of mixed beer and wine were despatched from BBC. Of these loads 172 were classed as delivered, six as diverted, one as refused, three as cancelled and 13 as accepted. Mr Dibb explained that:

> "An accepted status generally means that the loads were seized and a diverted status can often be because the load has been stopped, problems have been identified and the goods have been diverted back to the warehouse to prevent seizure."

In all 74 of loads were stopped at the border, with 34 of these having been targeted.

159. Examples of seizures of goods, despatched from BBC to Corkteck, are set out in the table below:

	Date of Seizure	**Reason for Seizure**
1	01/07/11	• The vehicle had previously travelled from the continent to the United Kingdom within the lifetime of the existing ARC indicating eAD had been used before, specifically dispatch at 19:30 on 30 May 2021 and entering at 05:35 on 31 May 2011; • trailer swap in Dunkirk according to the driver; • tachograph evidence not consistent with journey on the eAD; • evidence of numerous trailer numbers; discrepancy of goods compared to the eAD.
2	01/09/11	• the ARC stated, incorrectly, that the goods had been dispatched from BBC for delivery to BBC when according to the CMR the delivery address was Corkteck; • paperwork incorrectly completed eg trailer manifested the same as the trailer number (paperwork and CMR only shows the trailer number, therefore it is impossible to tie the trailer to the correct paperwork/goods that were dispatched from the consignor); • alcohol mis-manifested as foodstuffs; • haulier (Duffy Transport) had been involved in two recent seizures; • consignor (BBC) and vehicle involved in recent seizures where it was suspected paperwork had been used more than once.
3	15/09/11	• the vehicle had previously travelled from the France to the United Kingdom within the lifetime of the existing ARC,

		specifically at 03:20 on 17 August 2011, indicating the eAD had been used previously; • evidence the trailer number plate was vinyl and easily removed; • goods mis-manifested as foodstuffs with those on the trailer different from those shown on the CMR/EMCS; • driver refused to be interviewed following a conversation with his boss; • driver, haulier, importer, supplier, consignor and registered consignee had all been involved in previous seizures; • onward customer UKK shown as dormant/last return was nil, and therefore do not appear to be trading.
4	20/12/11	• the vehicle had previously travelled from the continent to the United Kingdom within the lifetime of the existing ARC indicating the eAD had been used before; • lack of evidence about the previous journey; • the driver refused to be interviewed; • evidence the trailer number plate had been tampered with; • delayed dispatch.
5	09/03/12	• the quantity of beer tallied different from that declared on both the ARC and CMR; • one of the brands of beer found on vehicle not shown on any accompanying paperwork.
6	28/06/12	• the trailer numbers had been tampered with; • the trailer had entered the United Kingdom on previous occasions within the lifetime of the ARC.
7	15/06/12	• trailer had previously travelled to the United Kingdom on 13 June 2012, 14 June 2012 and 14 June 2012, all within the lifetime of the ARC.
8	03/07/12	• vehicle had previously travelled to the United Kingdom on 21 June; • trailer had previously travelled within the lifetime of the ARC, specifically on both 20 and 21 June 2012 and CMRs for the earlier trips were found to be 'discredited'; • the driver refused to remain for the interview; • various sticky coloured trailer plates found during a search of the cab.
9	07/12/12	• trailer number plate had been tampered with and a number was missing which the driver claimed must have fallen off the vehicle; • the vehicle had travelled on two previous occasions during the lifetime of the ARC on 7 December 2012 and 4 December 2012; • the trailer had previously travelled on 5 December 2012 within the lifetime of the ARC.
10	25/07/13	• vehicle and trailer had previously travelled to the United Kingdom during the life of the ARC; • goods mis-manifested as foodstuffs.

11	12/08/13	• vehicle had previously travelled from France to the United Kingdom within the lifetime of the existing ARC. • goods mis-manifested as foodstuffs.
12	05/11/13	• Mis-manifested goods (the goods tallied did not conform to the goods shown on the ECMS and CMR).

160. Several of these seizures were challenged and claims for restoration of the goods seized were made. In some case where the decision not to restore goods was upheld following a review there were appeals to the Tribunal. These included a successful appeal by Adrena in relation to the fifth of the seizures in the above table in which the Tribunal (Judge Poole and Mr Stafford) directed there be a further review of the decision not to restore the goods on the basis that on the evidence (or absence of it) before the Tribunal "this particular importation was not in any way associated with any fraudulent attempt to evade excise duty" (see *Adrena v Director of Border Revenue* [2013] UKFTT 735 (TC) at [53(3)]).

161. In relation to the goods seized on 1 July 2011, the first seizure in the above table, Corkteck was identified as the consignee. The Conclusion of Review letter, dated 14 June 2012, from UKBF to Altion Limited ("Altion") SA's representatives, which upheld the decision not to restore the goods, states that "there was a seal on the load" and "prior to examination" by UKBF officers "the seal number A4309381 was removed from the tilt cord at the rear of the trailer." The letter continued by referring to the CMR which detailed the load as mixed beer but notes that the haulier, Duffy Transport, stated that the trip manifested as "foodstuffs" was a "legitimate movement of vegetables."

162. The Seizure Notice, dated 8 July 2011, identified SA as the account holder with the consigning warehouse being BBC. On 21 July 2011, JM Services, acting on behalf of SA, requested release of the goods. An email dated 13 September 2011, from Altion to UKBF explained that they acted on behalf of SA which is "*the owner of the goods*". Attached to that email was a letter dated 7 September 2011 addressed to UKBF on SA headed paper signed by an "L Williams" stating:

> "This letter is confirmation that Altion Limited are now dealing with all issues concerning the above on our behalf, as we are the owners of the goods and can you please deal with them directly until further notice."

163. UKBF wrote to Altion on 6 October 2011 pointing out that there had been no reply to previous correspondence requiring SA to provide proof of ownership of the goods seized and warning that if this was not provided within 21 days the case would be closed and goods considered for disposal. Altion responded by letter, dated 27 October 2011:

> "We write further to your letter dated 6 October 2011 and the previous correspondence of our Richard Galvin. In that letter you required proof of ownership of the seized goods pursuant to a letter sent to our client's previous representatives. We note from the eAD enclosed herewith that the ownership of the goods is not immediately clear from the parties set out therein. We have corresponded with both JM Services and Belgian Beverages Company bvba and have asked them to clearly set out the relationship and ownership of the goods in this matter.
>
> As you will see from the enclosed correspondence submitted directly to us, JM Services have confirmed that they are representatives for Sintra SA's business activities in Europe and have confirmed that all stock in relation to Belgian Beverages Company does not belong to JM Services and is instead owned by Sintra SA. We have also enclosed a letter from Belgian Beverages Company clearly confirming what has been stated by JM Services and

> confirming that the goods that are the subject of the seizure, and as particularised on the eAD enclosed herewith, were held in the account of JM Services which as has already been explained in the other letter means they are the property of Sintra [SA].
>
> In light of the enclosed we trust that the identity and relevance of the entities set out in the eAD has now been clarified. It is absolutely clear that our client is the owner of the goods in question. We therefore await restoration of the goods."

164. By letter dated 21 December 2011, following requests to do so by UKBF (on 2 November 2011 and 13 December 2011), Altion provided UKBF with "proof of payment" for the goods attaching the original invoice issued to SA in Belize by its supplier Corpas GmbH and a "signed and stamped" copy of that invoice "confirming payment." UKBF acknowledged receipt of that letter on 4 January 2012 and requested details of the system used to identify the goods such as lot numbers, rotation numbers or pallet numbers. However, in the absence of any response, by letter of 31 January 2012, UKBF notified Altion that it was "unable to give your client a restoration decision" and "as a result the case is closed." Further correspondence followed including a decision refusing restoration, on 17 April 2012 and review conclusion letter, dated 14 June 2012, upholding the decision not to restore the goods.

165. An appeal was made to the Tribunal but was struck out by Judge Mosedale on 26 June 2013 because of non-compliance with directions.

166. On 30 September 2011 Altion wrote to UKBF on behalf of SA, in relation to the second of the seizures in the above table. The purpose of the letter was to complain that SA had not been notified that the goods had been seized; to request the commencement of condemnation proceedings to challenge the seizure; and request restoration of the goods seized. UKBF replied, in relation to the restoration request on 14 October 2011 stating that unless proof of ownership of the goods was provided within 30 days the case would be closed. By letter, dated 27 October 2011Altion confirmed that SA was the owner of the goods and enclosed letters from BBC and JM Services in support. UKBF rejected the restoration request by letter of 11 May 2012, a decision confirmed on 21 June 2012 following a review. On 20 July 2012 Altion submitted a Notice of Appeal to the appeal to the Tribunal, on behalf of SA, against that decision.

167. However, the restoration proceedings were struck out by the Tribunal (Judge Mosedale) on 26 June 2013 due to SA's non-compliance with directions.

168. On 15 September 2011 UKBF issued a Seizure Notice to SA in respect of the third of the above seizures, which had taken place that day. SA was identified in that Notice as the account holder in the consigning warehouse (BBC) with regard to the third of the above seizures. By letter, dated 12 October 2011, Altion challenged the seizure and sought restoration of the goods. In its letters, of 21 October 2011 and 15 November 2011, in response UKBF stated that the restoration claim could not proceed without proof of ownership of the goods. This was sent by Altion, as an enclosure to its letter of 17 November 2011, in the form of a letter, dated 12 September 2011 on "SA" headed paper under the heading "Re Sintra SA (Detained Goods) which was signed "L Williams" stating:

> "This letter is confirmation that Altion Limited are now dealing with all issues concerning the above on our behalf, as we are the owners of the goods and can you please deal with them directly until further notice."

Also enclosed was a letter, dated 29 September 2011, from JM Services of Szczecin, Poland confirming that they:

> "… act as representative" for SA in Europe and that "all stock that is put in, held, and/or taken out of our account at bonded warehouse [BBC] – Zaventem – Belgium, does not belong to us, but is owned by [SA] Belize."

169. As with the first and second seizures, there was a decision not to restore the goods. This was upheld following a review and although an appeal was made to the Tribunal this was struck out due to a failure to comply with directions.

170. With regard to the fourth of the above seizures, a HMRC Intelligence Operational Alert document dated 21 December 2011, states that the goods were supplied by Adrena. The Alert also notes that "Corkteck advise they have changed their previous supplier [SA] to Adrena".

171. In a Seizure Notice, dated 9 March 2012, Adrena was identified as the transport arranger in relation to the fifth seizure, above. On 19 March 2012 the UKBF responding to a letter from Altion, dated 13 March 2012, wrote:

> "… you have requested the return of your goods, namely 17,222.4 litres of beer which was seized by UK Border Agency at Dover on 9 March 2012".

A further letter from Altion, dated 2 May 2012, stated that the goods belonged to Adrena. Enclosed with the letter from Altion was a letter from Adrena, signed by Jan Chilkiewicz, dated 20 April 2012, confirming ownership of the goods. Invoices for the goods and an invoice from SA to Adrena were attached to a subsequent letter, dated 31 July 2012, from Altion to UKBF.

172. A settlement was reached between UKBF and Adrena following its successful appeal (see paragraph 160, above) in the sum of £11,640 for the goods. This was confirmed by a letter from Altion dated 11 March 2015 with an acceptance note signed on behalf of Adrena by Eric Van de Vondel on 5 March 2015.

173. By a letter, dated 5 July 2012, to UKBF Singleton Saunders Flood solicitors ("SSF") confirmed that they acted on behalf of Cargo 69 in relation to the request for reconsideration of seizures for goods intercepted on 11 June 2012, 15 June 2012 and 21 June 2012 the sixth, seventh and eighth seizures in the above table. However, in relation to the eighth seizure, on 21 June 2012, a restoration request for the goods was received from Adrena on 6 October 2012.

174. Other than note that the 12 August 2013 seizure (the eleventh in the above table) was successfully challenged in condemnation proceedings in the Magistrates Court and an appeal to the Crown Court by HMRC was dismissed, it is not necessary, for present purposes, for us to consider the other seizures in further detail other than to note that the "owner" of the goods seized is, in each of these, identified as Adrena and the consignee, Corkteck which, as noted above, was an HMRC approved Registered Consignee.

175. This is consistent with the evidence of HMRC officer Guy Bailey who, when asked whether it would be the consignor who has the locus standi to appeal against any confiscation order, said:

> "I would expect the owner of the goods actually to be involved in the condemnation proceedings, but certainly the consignor or consignee could initially ask for further details about any seizure or interception advised to it by Border Force. When it comes to actual proceedings in relation to the condemnation of any goods or vehicle seized, then I would expect the owners to have sent goods or vehicles to the people taking that litigation forward."

176. Corkteck, as noted above, was an HMRC approved Registered Consignee. The guarantee required by HMRC as a condition of its Registered Consignee approval increased with the level of its trade and by 2008 it was set at £600,000. The guarantee was transferred to the Clydesdale Bank in 2009 following a transfer by Corkteck from Barclays.

177. The security was also changed from being a cash deposit to being secured against a property owned by Mr Malde. However, in 2013 due to internal procedural changes Mr Malde was notified by the Clydesdale Bank that it would no longer accept the property as security and that a return to the full cash deposit was required. In January 2014, as Corkteck was unable to provide the necessary cash and did not wish to be put in a position where it could not comply should the bank cancel the guarantee, Mr Malde requested HMRC to cancel its Registered Consignee Approval.

178. Following this request, on 26 February 2014, HMRC Officers Helen Hill, from HMRC's Special Investigation ("SI") Unit in Leeds and Reema Qaisrani, who Mr Malde described as Corkteck's "regular visiting officer", made a pre-arranged visit to Corkteck to meet with Mr Malde, ostensibly to discuss the cancellation of its Registered Consignee approval. However, an extract from a CITEX Case Progress Sheet prepared by Ms Qaisrani on 18 February 2014 states:

> "Telephone call received yesterday – 17 February 2014 from Senior Officer – Y Sanger regarding cross tax working and he has been given my name as CITEX officer, and to attend a case conference. They have alcohol monitoring cases for Corkteck Ltd and for assoc business Park Royal Wholesale Ltd. I was advised by Y Sanger that Mr Malde has been interviewed by SI Leeds office and a Letter issued to him requesting full disclosure on questions raised during the interview. I explained that at present I am not dealing with any references for the 2 traders as SI Leeds-Excise have an ongoing case. Spoke to SO John Malarkey about this and he was not aware of any monitoring cases for Corkteck or PRW. He has one case for cancellation of the Reg Consignee Approval.
>
> …
>
> Agreed to attend on Monday 24th Feb 2014 for the case conference."

On 19 February 2014 Ms Qaisrani recorded:

> "Case received on Caseflow Cancellation of Reg Consignee. Discussed with John Malarkey SO, on why the cancellation needs to be progressed. Trader has requested it on the basis that the bank is looking to cancel the guarantee that is in place."

179. Ms Qaisrani was unable to explain why no note had been taken of the case conference on 24 February 2014 but did confirm that Helen Hill had attended the meeting on 26 February 2014 at Corkteck's premises because she was the person in charge of the investigation and not, as Helen Hill had told Mr Malde during the meeting (which had been recorded by Mr Malde), that she was there "purely to help Reema" and for "visiting experience".

180. Corkteck's Registered Consignee Approval was cancelled at its own request with effect from 15 January 2014 following which it ceased to trade in alcohol. This resulted in a significant reduction in its business. Mr Malde explained that with overheads such as rent and rates being over £140,000 per Anum and difficulties in recovering debts from customers there was a "likelihood" that it may have been trading while insolvent. Having taken professional advice the decision was taken in October 2014 to put Corkteck into liquidation.

Anpa Limited ("Anpa")

181. Anpa was incorporated in 2000 initially with Mr Malde as its sole director and shareholder but subsequently joined as a director by his wife. It is VAT registered and its business concerns vehicle sales, vehicle hire, repair & maintenance, chauffer/wedding hire and experience packages where event tickets and prestige cars are provided. The company has no employees and Mr Malde runs the business and carries out some of the repair work himself.

Park Royal

182. Park Royal was established in 2001 with Mr Malde as its sole director and shareholder. Its business is the purchase and sale of alcohol within the United Kingdom with Corkteck being one of its suppliers and customers. Mr Malde explained that he had agreed with Mr Scorey that he, Mr Malde, would establish Park Royal so that he could also benefit from the profits of supplies to Corkteck as Mr Scorey had been able to through Apollo a company in which Mr Malde did not have an interest.

TPM Investments Limited ("TPM")

183. TPM was incorporated in Gibraltar in 2002. Although not a director, the company has nominee directors, Mr Malde was beneficial owner of TPM. Its business is the acquisition of investment property in the United Kingdom.

Brunel

184. Mr Malde is the sole director and shareholder of Brunel, a freight forwarder company. Originally established by Mr Malde to handle all of Corkteck's transport requirements it rented wagons and trailers from Apna.

Police Interview 10 June 2008

185. On 10 June 2008 Mr Malde, accompanied by a solicitor, attended Colindale Police Station in North London for a pre-arranged voluntary interview under caution by DC Mike Prior of the Kent Police Money Laundering Team and PSE Graham Rogers, a Fraud Investigator with the Serious Economic Crime Unit at Kent Police. The police investigation concerned the seizure of money from Kevin Burrage which, as the statement of agreed facts records (see paragraph 132(22), above), had been wrapped in plastic bag bundles, with the multiple bundles wrapped in an outer larger plastic carrier bag. Mr Malde's fingerprints had been found on the outer carrier bag and two of the smaller plastic bags.

186. The references to Sintra in the interview, which pre-dates the formation of Global in 2011, are to SA.

187. The interview commenced with Mr Malde being asked about his businesses. He explained that he (Corkteck) was a REDS trader with a £600,000 deferment guarantee from his bank under which he was able to import beers, wines and spirits with duty payable and at the end of the month give HMRC a total of the duty payable which is taken direct from his bank. Mr Malde was then asked about Corkteck's suppliers leading to the following exchanges:

DC Prior:	OK, so who, who are your suppliers? Have you got many suppliers? Do you know?
Mr Malde:	We've got one major one at the moment.
DC Prior:	Who's you major one?
Mr Malde:	She's a company called Sintra.
DC Prior:	Sintra, where are they based?
Mr Malde:	In Poland.
…	
DC Prior:	What would you, what do you pay Sintra?
Mr Malde:	Right OK, so, anywhere between eleven thousand to probably fourteen, fifteen thousand.
DC Prior:	Depending on the type.
Mr Malde:	Depend on the type.

DC Prior: Type of load.

Mr Malde: Yeah.

…

DC Prior: And then on top of that you have to pay duty.

Mr Malde: Duty, Yes.

Mr Malde was then asked how many loads are received each month to which he replied that it could vary between one or two loads up to "ten, fifteen twenty" it being "totally seasonal". Mr Malde went on to say that Corkteck had one employee, Darren Curtis.

188. During the interview Mr Malde explained that in the alcohol business, certainly in 2008, there was a mixture of payments being made in cash, by bank transfer and some by cheque. In evidence he said that he did not recall Corkteck ever paid SA by cheque but used either bank transfer or possibly cash and that there might also have been some contra stock.

189. He agreed that sometimes Corkteck paid its suppliers in cash and similarly would have received cash payments from its customers. In the interview Mr Malde described how he would draw funds from the bank in cash – he clarified in evidence that he had an arrangement with the bank that he would collect the cash from G4S and Loomis (following the change of name by G4S to Loomis) – and that he would draw funds in amounts of £100,000, £150,000, £200,000 and £250,000 at a time.

190. Mr Malde was also asked questions about Mr Burrage explaining that he first got to know him as a supplier to Star Cash & Carry in Calais in 1997 and had known him ever since. However, at the time of the interview he only saw Mr Burrage "every few months" with Corkteck supplying Mr Burrage's company, Drinks Direct Limited ("Drinks Direct") saying:

> "... I do him favours in as much as if, if he's got samples coming in he sometimes leaves them at my place to be picked up to go with his stuff."

191. The samples to which Mr Malde referred were, he explained, sample bottles of wine and beers and could also have included soft drinks. These were, Mr Malde clarified, samples for Drinks Direct rather than for Corkteck.

192. The interview continued:

Mr Malde: … if he's picking up five or six pallets from me and he sorts a part or two pallets for somebody else for other stuff he'll sometimes ask if he can drop it off at my place and then he'll get away and come and pick up a whole lot in one go, and he drops boxes off to me which I get delivered to him sometimes.

DC Prior: What do you mean drops boxes off to you?

Mr Malde: If he's meeting someone and he can't make it in time for whatever reason sometimes he drops a box off, he'll come and pick it up if he's stuck in traffic or than it on occasions I've had time to drop it off to him that's what I thought this [interview] was about.

DC Prior: Right okay.

Mr Malde: Because a seizure was made in February, one of my guys dropped something off to him and that was collected from ...

DC Prior: Right

193. DC Prior then returned to the boxes being dropped off and asked whether this was at Corkteck or at Park Royal. Mr Malde told him "both really" as it depended where he was although he was "normally at Corkteck." DC Prior then asked about what was in the boxes and Mr Malde said that it was boxes of samples such as wines and beers and that there were "a few boxes of stuff the obviously isn't wines from the way it's sealed and taped. When asked what he would suggest it was, Mr Malde said he presumed it was money.

194. This led to the following exchange:

DC Prior:	So who would drop those off at your, at your place?
Mr Malde:	It would be one of his [Mr Burrage's] customers if he, he would, on occasions he's rang me he's said, look I've got to meet someone but I'm running really late, I'm stuck in traffic.
DC Prior:	Right.
Mr Malde:	And they've got to go. Do you mind just, if they leave a box with you I'll be with you as quick as I can.

Mr Malde had agreed saying "it's not a problem, they can drop it off or pick it up, it's not an issue."

195. DC Prior then returned to what Mr Malde had said about "something happening in February". Mr Malde explained that Mr Burrage had called him to say he was stuck in traffic and asked if "they" could come to him, Mr Malde agreed and a box was left with him. However, when Mr Burrage asked if he could collect the box the next day Mr Malde told him he did not want it overnight and arranged for his "guy", Darren Curtis, to drop it off at Mr Burrage's business, York Wines.

196. However, just before he got there Darren Curtis was stopped by HMRC and the box, which was opened, was found to contain money. Although Mr Malde thought that he was being interviewed about this incident DC Prior told him that it was not this but another incident in which his, Mr Malde's, fingerprints had had been found on the outer carrier bag and two of the inner bank-type cash bags that Mr Burrage had been carrying when he was stopped on 29 January 2008.

197. Mr Malde explained that he did not know why Mr Burrage had that money but that he, Mr Malde, handled "a lot of money day-to- day" and it was more than likely that he would have drawn that money out of the bank. He told DC Prior that he had "obviously" paid someone for stock

> "… so it's someone within our trade, our industry, so whether they deal with Kevin or they deal with someone who deals with Kevin that I don't know."

Mr Malde also offered to provide a list of who he paid and when such payments were made. In evidence Mr Malde said that he re-used carrier bags and money bags which would explain why his fingerprints were on some of those found in the possession of Mr Burrage.

198. When asked, Mr Malde told the police that he was also known as Bruno saying:

> "… my father calls me Bruno, customers call me Bruno sometimes when they come down … I've got paperwork in my offices where invoices are made but they're made to Bruno Malde at Corkteck not Parul Malde at Corkteck. It's just a name everybody uses."

199. Having been questioned about Corkteck's business with Keytrades Limited ("Keytrades), Michael Turner and Prompstock Limited ("Prompstock") the interview returned to SA, referring to it as Sintra:

DC Prior:	And Sintra out in Poland how long have you been trading with them.
Mr Malde:	Three or four years probably.
DC Prior:	Oh right so are they your sole supplier?
Mr Malde:	Yeah they I get very good prices with them and I've got good credits (*inaudible*).
…	
PSE Rogers:	Just Sintra is that a Polish own[ed] company?
Mr Malde:	I have no idea.
PSE Rogers:	Are they Polish people that you deal with there?
Mr Malde:	Yes yes.
PSE Rogers:	It's not an English company that trades in [Poland]
Mr Malde:	No no no I deal with a Polish man by the name of Novac, at least I think he's Polish because I speak to him in English, his English is quite bad but it sounds like he's Polish.
PSE Rogers:	As far as you can ascertain from your invoices or whatever that it's
Mr Malde:	It's a Polish company.

200. The interview concluded at 17:26 after Mr Malde had agreed to be contacted in writing by the police in respect of paperwork relating to the £105,000 found with Mr Burrage. Mr Malde was given a copy of a notice, which he signed, confirming that he had attended a voluntary interview.

Telephone numbers

201. Mr Malde accepted that a mobile telephone with a number ending 9837 was his and that he has used it for some time. This is the telephone number that was recorded by Turner Little and was used on their on internal forms for Mr Malde's contact details (with an email address of sintraglobalsa@gmail.com). This number was also inserted, in the Global CIM "Account Opening Agreement" (see below). The number ending 9837 was also stored under the name "Bruno" in the "phonebook" of a mobile telephone belonging to Mr Burrage that was seized as part of Operation Rust (see below) as was a handwritten note, retrieved from Mr Burrage's home, as part of that operation, which recorded the 9837 number alongside the name "Bruno".

202. A telephone number ending 2888 was given as a contact telephone number for Mr Malde in an internal Turner Little email dated 8 June 2004 and was also included as the contact number on the "Company Incorporation Application Form" in relation to the formation of SA and the application by SA to open an account at FBME (see below). Although Mr Malde did not recognise the number, which was not written in his handwriting, he explained in evidence, that:

> "The only thing I can imagine is, back in 2000, cars had their own mobile phones, so if it's a SIM card in one of my cars, possibly, but it's not my mobile phone. I carry a mobile phone, it's not my mobile phone, but it could be a car phone in a car that I was driving, but I don't know."

203. A different contact telephone number, ending 9604, was recorded for Mr Malde by Turner Little in the documentation concerning the formation of Global and Amirantes (see below). Mr Malde said that although he thought that he had seen this telephone number on

Turner Little documents it was not his number but that it might have been a number "from the car" phone.

204. The telephone number ending 3289 is a landline registered at BT with Corkteck. The number was saved, as "Bruno", in a phonebook of a mobile telephone retrieved from Stephen Debruin, one of the Operation Rust defendants.

205. In addition to these numbers there are various other mobile telephone numbers, which despite his denials of any knowledge or use, HMRC contend should be attributed to Mr Malde.

206. The first of these numbers ends 8800. This number was saved in the mobile telephone of Mr Burrage (with number ending 3813) under "Bro". Between 21 January and 10 July 2008, 164 calls were made to the 8800 number with the vast majority of these made by Mr Burrage, although a few were made by Gary Clarke who, like Mr Burrage, was convicted as a result of Operation Rust. There were also a number of SMS messages sent from 8800 to 3813 (Mr Burrage's number) in relation to the purchase of alcohol (see below) and can be linked to alcohol sold by Mr Burrage to Galac.

207. An SMS message sent on 21 October 2008 from a telephone with a number ending 2868, another number HMRC contend should be attributed to Mr Malde, stated:

> "Bruno new number"

This message was retrieved on 20 November 2008 from a handset belonging to a William McGhee. Also stored on Mr McGhee's handset were numbers ending 6965 under "Bruno" and 9837, the telephone number Mr Malde accepts is his, under "Bruno B". The 2868 number was also saved as "Bro 1" in a handset taken from Mr Burrage on 20 November 2008. In the same handset there were several SMS messages from the "Bruno" number ending 6965 relating to the alcohol trade. There are also missed calls from 2868 to Mr Burrage on 20 November 2008.

208. Another telephone number HMRC contend should be attributed to Mr Malde is a French telephone number ending 8115. This number was stored as "Bruno OBA" on a mobile telephone seized in Operation Rust belonging to Stephen Debruin of Stag Freight, an Operation Rust defendant.

209. The telephone number ending 0954 was saved as "Brn" in Mr Burrage's mobile telephone. That number (ending 0954) was also saved, with a speed dial number, as "Brun" on a mobile telephone also retrieved from a BMW linked to Gary Clarke who was convicted as a result of Operation Rust. The subscriber checks undertaken showed that the number ending 0954 was registered to a company, Symphony Telecom Limited, in Ipswich, Suffolk.

210. HMRC also contend that the following telephone numbers, which Mr Malde denies are his, should be attributed to Mr Malde are those ending:

(1) 4964 – this number was saved as "Burno N" in a handset retrieved from Jayesh Shah's pocket when he was arrested on 29 January 2015 as part of Operation Banjax. The number was also saved as "Park Oroyal" in a mobile phone linked to Divyesh Karsan who was also arrested in Operation Banjax;

(2) 1608 – an SMS message was sent from this telephone number on 15 March 2012 stating, "Bruno new number", to a handset that was retrieved from the place of business of Golden Harvest in London as part of Operation Banjax on 28 January 2015; and

(3) 5318 – an SMS message from this number stating, "Bruno new Number" was sent on 22 November 2012 to a handset also retrieved from a the business premises of Golden Harvest on 28 January 2015.

211. We now turn to the companies through which Mr Malde is said by HMRC to have traded, first SA and then Global which, as is common ground, assumed the trade and business previously undertaken by SA.

SA

Formation

212. Mr Malde explained that he had been contacted by Pat Sounumpol in early 2003 to tell him that she wished to form a new company "with her associates" to supply household goods and alcohol throughout Europe. He said that as some of her associates were from countries where alcohol is forbidden she asked had him to establish an offshore company outside the European Union on their behalf as they did not wish to be seen to be associated with such a company.

213. Mr Malde also said that he did not know, and did not ask, why a non-European Union location was required but that, because of his relationship with Ms Sounumpol and, to a lesser degree, the possibility of trading with the new company and being able to earn commissions, he agreed to assist. There is, however, the following further explanation in the 2014 Report:

> "We understand from [Mr Malde] that he undertook this favour to the directors of the company for two reasons. The first as they were reluctant, for religious reasons, to be associated with a business that traded in alcohol. The second was that one of the directors was a Turkish National who was not able to open a bank account in the Republic of Cyprus"

214. Mr Malde's evidence was that he had made enquiries and found a number of company formation agents who could assist. He then gave Ms Sounumpol a list of these and she instructed him to use Turner Little to form the company and arrange for it to have a bank account. In evidence Mr Malde said that he thought that she said to him, "It will be a Belize set up and a Cyprus bank account" and that she told him to arrange for the offshore company to be established and that she would nominate the directors or "whoever needs to be nominated at a later stage."

215. Mr Malde did contact Turner Little and subsequently attended their offices in York on 9 June 2004 and met with their Robert Nicholson. A Turner Little document, a "Company Incorporation Application Form" which was completed in manuscript records that the proposed country of incorporation as "Belize".

216. It also records, under the heading "Details of beneficial owners (shareholders)", Mr Malde as the 100% beneficial owner and sets out his correct contact details. It also records, under "Directors Details", as shareholder 1, ie Mr Malde. An internal Turner Little email notes that Mr Malde's nickname is "Bruno" and that he made a cash payment of £1,468 on 9 June 2004.

217. SA's certificate of incorporation states that it was incorporated in Belize on 10 June 2004 with a share being issued to Mr Malde. He confirmed that no other shares were issued at that time. The SA corporate documents included its Memorandum and Articles of Association and the minutes of a meeting of its Board of Directors held in Belize City on 10 June 2004 at which it was resolved to appoint Mr Malde as the company's director and secretary.

218. In evidence, despite previously saying in his first witness statement that he had "never been a director, shadow director or company secretary" of SA, Mr Malde accepted that he had been appointed as such but said that it was not his intention to be a director of SA. He continued:

> "It was a matter of getting the company formed, getting the documents and giving them over. Like I have said what I have done there is what Turner Little has told me to fill out and sign. … if they said to me "it is required of you to

> do this, this, this", that is what I would have done on the information I gave him at the time. But the intention always was as soon as this company's bank account was set up, was to give all the information, all the documents over to Pat for her to run their companies, they had nothing to do with me after that point."

219. Having been provided with all of the paperwork by Turner Little, which he described as "a pack" which included:

> "… the company certificate, the Mem and Arts, all the standard stuff that you get given, and transfer forms and stuff like that…"

Mr Malde said that he physically handed it all to Ms Sounumpol and that he had not looked at it after leaving Turner Little's office. He said that at this point, as he had signed a document (which was not included in the hearing bundles) which he described as being like, but not a share transfer document, he had assumed that Ms Sounumpol was the director of SA and that he had relinquished his directorship of the company.

220. In evidence he said:

> "My understanding was it was her company, it had nothing to do with me after that point; I just transferred it over to her that was my understanding;"

When it was put to Mr Malde that this was an "important document", he said:

> "I didn't think of it at the time as being overly important, as far as I was concerned Turner Little had filled the forms out, made me fill the documents out, gave me the documentation and that was a transfer of a company that was already established a set up from the previous owners transferred to me, and I did the same I didn't think twice of it."

However, other than his assertion that he done so, there is no corroborative evidence that Mr Malde did in fact ever cease to be a director and shareholder of SA and, as we shall come to, he continued to be described as such for the purposes of an application to open a bank account and was involved in the subsequent operation of that account.

221. SA was struck off the Belize International Companies Business Register on 1 January 2013.

Bank Account

222. On 29 July 2004 an application was made, via Turner Little, by SA to open an account with FBME. The application form, some of which was in Mr Malde's handwriting, provides details of SA, such as the nature of its business for which Mr Malde had written "Import/Export" and the actual/expected annual turnover for which he had written $5 million. In evidence Mr Malde initially said that he had written that figure because Mr Nicholson of Turner Little had told him to write that amount although he subsequently said that it might have come from Ms Sounumpol and that he could not recall which.

223. Although Mr Malde thought that he had written the Belize City business address on the form, as this has been crossed out and replaced with an address in Weimar, Germany, which was written in a different hand he could not sure.

224. However, he was able to confirm all the specimen signatures provided were his and that he had signed a "Letter of Undertaking by Beneficial Owners of Bearer Shares" to the FBME which stated:

> "I/We the undersigned being the beneficial owners of all the issued shares of the company hereby undertake to deliver to yourselves for safe custody all present original bearer share certificates and/or any additional ones which may

> be issued or converted from registered to bearer shares, as permitted by the Company's Memorandum and Articles of Association, at any future time.
>
> Furthermore I/we undertake to inform you of any changes in the present company's share holding and to provide passport copies, the home address and evidence of home address of any additional beneficial owners."

Mr Malde agreed that, as stated in that undertaking, as at 29 July 2004 he was the beneficial owner of all of the issued shares in SA and said that, to the best of his recollection, he had not ever notified FBME of any change in the beneficial ownership of SA.

225. The application by SA was approved and an account with FBME was opened from 19 August 2004. The first credit into the account was a deposit of £2,000 from Corkteck International.

226. Following the December 2015 PN160 interview (see below), on 28 January 2016 HMRC (Mr Birdi) wrote to Mr Malde with two questions. The first, asking Mr Malde to confirm that between the opening of the account in 2004 and the date of closure in 2012 he had never controlled the bank account of SA or had any control over the bank account of SA; the second question was whether between the same dates Mr Malde had ever been involved in a transfer of monies either in or out of that account.

227. Mr Simmonite replied, on 18 February 2016, in the following terms:

> "As explained on a number of occasions Mr Malde opened the bank account on behalf of third parties. He immediately transferred the control of that account to those parties and was not involved in any trading that might be reflected in that account.
>
> However, Mr Malde does recall that, at the request of the third parties, he did occasionally instruct FBME Bank to transfer funds from the Sintra SA account. This was usually done by sending a fax to the bank instructing it to pay the relevant party.
>
> Mr Malde has not retained copies of these instructions and cannot now recall which payments were made on this basis. None of these debits were for the benefit of Mr Malde or his businesses. Mr Malde did instruct the bank to move funds to the Sintra Global account when the Sintra SA account was closed.
>
> Mr Malde was only involved in crediting funds into the Sintra SA account when he first opened the account. He deposited a cheque from Corkteck in the sum of £2,000.00 which was reimbursed to him."

228. In evidence Mr Malde said that, as far as he was concerned, the bank account had nothing to do with him. SA was not his company because he had signed everything over to Ms Sounumpol. He said that:

> "… the company's assets – the company's bank account is the company, so that would be Pat's".

229. However, although during the PN160 interview with HMRC Mr Malde had said that he was not aware of Ms Sounumpol becoming a signatory to the bank account when he passed control of SA to her, he explained that he realised that this was the case by the time of the interview but had not realised at the time when he thought he was giving "everything over to her". "Everything", he said included the access key/details for internet banking which Mr Malde explained had come in an envelope from the bank which he had passed unopened to Ms Sounumpol having assumed what was contained in it. He had made that assumption, he said, because he had been told by Turner Little that the bank would send these to him.

230. Notwithstanding his assertion that he had nothing to do with SA's bank account Mr Malde confirmed in evidence that he did, in fact, have some involvement with the moving of money for SA. He said that he only did so because he had been asked by Ms Sounumpol who faxed him instructions or telephoned him when "her internet banking was down or she couldn't get on to the key" asking him to sign an instruction and fax it to the bank. Mr Malde said that, at the time, he did not think that, while he was a signatory of the bank account, Ms Sounumpol was not, but with hindsight accepted that this must have been the case. He explained that at the time he did not "really think about it saying:

> "I had a request from Pat, I have always trusted her, she said "do me a favour, can you do this", I did it and sent it off. It wasn't a conscious thought in my head why she asked me, why this, it was just "yeah, okay"."

231. Mr Malde sought to explain that he was required to give instructions to the bank because Ms Sounumpol is a Muslim and had told him that for four weeks of Ramadan each year she would not be able to sign documents as she "couldn't be doing anything that was to do with the alcohol trade". He explained that it was not that she was unable to sign documents but that she was not able to touch alcohol or have any dealing with alcohol during Ramadan. Mr Malde said that he did not know whether any Ms Sounumpol's associates were able to sign documents during this period. However, Mr Malde was unable to say whether he had signed documents for SA during Ramadan because he did not "keep track of when Ramadan is" as he is not a Muslim.

232. With regard to receiving commissions, which Mr Malde gave as a reason for assisting Ms Sounumpol in the formation of SA, he said that these had been received from both SA and Global. We deal with these commissions under a separate sub-heading below.

Global

Formation

233. Although not recorded anywhere by Turner Little, Mr Malde said that in 2012 he had received a call from Rob Nicholson of Turner Little who said that there were "some structural changes" and because Belize companies were no longer "practical" it was necessary to change the structure and transfer the company to Panama and for a trust foundation to be set up.

234. Mr Malde said that he did not ask what the issue was or why a change from Belize to Panama was required. He said that he was told that under the new arrangement a "protector" for the trust foundation was required under Panamanian law. Mr Malde said that he reported this to Ms Sounumpol by telephone and that she instructed him to follow Turner Little's advice. Accordingly, he said, Turner Little established the Allardice Foundation as the principal shareholder in Global so that beneficiaries to the trust could be appointed by him as and when needed.

235. However, a chain of emails between Mr Nicholson of Turner Little and "Ricardo" of Cambra La Duke and Company, a Panamanian law firm, commences with a request, dated 26 January 2011, for a quote for:

(1) a "Panama foundation with Nominee Founder and Nominee Council" explaining that the "Foundation will be established with our client as Protector and Beneficiary;

(2) a Panama Company with Nominee Director with the shares to be held "100% be the above Foundation; and

(3) two apostille copies of passport and utility bill for each nominee featured on the above Foundation or Trust.

236. The email explained that "we [Turner Little] also need one reference, a bank or firm of lawyers for each nominee, and will require nominee signatures on three sets of bank account forms (one for the foundation, and two for the trusts). We will be opening the bank accounts and will courier their completed forms to you for signing once ready. The accounts will be opened in Cyprus and Switzerland." Mr Nicholson concluded by stating that he was expecting payment from the client, Mr Malde, "tomorrow" and needed to know that the costs are acceptable.

237. It is clear from Mr Nicholson's email of 27 January 2011 that the costs were acceptable as he confirmed that Turner Little had taken payment from "our client and will definitely be progressing in the service with you." Ricardo responded later that day explain that:

> "To incorporate the entities we need the names for the entities (we recommend sending two or three in order of priority to check the availability) name and address for the power of attorney, name and address of shareholder, name and address of the protector of the foundation (if any), name and address of the beneficiary(ies), passport copy of the beneficial owner, power of attorney etc."

238. Mr Nicolson replied on 1 February 2011 requesting Ricardo to begin to progress the company structure as follows:

> "Name of Foundation: The Allardice Foundation.
> Founder: Cambra La Duke and Co to appoint Founder
> Council: Cambra La Duke and Co to appoint Council
> Beneficiary Name: Parul Keshavlal Malde
> Beneficiary Address: [Mr Malde's home address]
> Date of Birth: 20/09/71
> Name of Subsidiary Company: Sintra SA
> Shareholder: (above foundation)
> Director: Cambra La Duke and Co to appoint Director
> Power of Attorney in favour of: Same as Beneficiary of the Founder."

In the 'Notes' to the email Mr Nicolson stated that a copy of Mr Malde's passport would follow. This was sent to Cambra La Duke on 4 February 2011.

239. On 4 February 2011 Cambra La Duke forwarded a copy of the foundation charter template to Turner Little for their client's perusal. Although Mr Malde did not recall receiving this, in an email of 15 February 2011, Mr Nicholson advised Ricardo that the document was "acceptable and asked him to progress the incorporation. Scanned copies of the corporate documents were sent to Turner Little on 3 March 2011.

240. The translated version of the Foundation document states that it was certified that the Allardice Foundation was:

> "Registered to The Record … Since February Seventeenth of Two Thousand And Eleven in The Section of Private Interest Foundations.
>
> That the Foundation is in Existence.
>
> That The Founder(s) is (are):
>
> 1) CL Corporate Services Inc
>
> That the Members of the Council are:
>
> Tatiana Itzel Saldaña Escobar
> Humberto Gregorio Barrera Mojica
> Fernando Enrique Montero De Gracia
>
> The Resident Agent of the Foundation is: Cambra La Duke & Co
>
> That The Person(s) with Right to Sign is (are):

> The Individual Signature of the Protector will bind the Foundation regarding any Act, Transaction Or Business. The Council May bind the Foundation with the Joint Signature of two (2) of the Members if it is composed of physical persons or the Sole Signature of the Legal Representative if it is composed of a Juridical Person. The agreements of the Council whereby the Foundation is obligated will have to be endorsed by the Protector"

241. The first paragraph of a document headed, "Regulations of the Allardice Foundation" indicates that, by resolution at an extraordinary meeting of the Board of Shareholders, named CL Corporate Services incorporated, an anonymous corporation, as the Corporate Founder giving it the authority to determine the beneficiaries of the Foundation. It continues by stating that Corporate Founder declares the main Beneficiary of the Foundation to be Mr Malde and that:

> "The appointed main Beneficiary will remain as such during all the time that the Foundation exists, but can be removed and replaced only by the Protector.
> …
> This document may be amended and/or additioned or revoked only by the Protector."

242. Mr Malde was appointed Protector of the Allardice Foundation by a document, dated 18 February 2011 which was signed by Tatiana Escobar who was authorised by means of a resolution of an extraordinary general meeting of the board of shareholders of CL Corporate Services, the Corporate Founder of the Allardice Foundation.

243. Mr Malde said that he thought that these documents had been provided to him as part of a "pack" which on receipt he had given to Ms Sounumpol. He said that the company was not his and that he did not look what was in the pack but just took the documentation and handed it over to Ms Sounumpol. Mr Malde said that when he handed to documents to her they "wrote a document" to say that he was making Ms Sounumpol the "Protector of the Allardice Foundation".

244. He said that he had not taken legal advice before doing so as he did not consider it necessary. However, he was unable to produce the document saying that he had given it to Ms Sounumpol and not retained a copy. Although, as he explained, Mr Malde still considered himself the Protector "in perpetuity", he said that once he had transferred the position as Protector to Ms Sounumpol there was no need for him to do anything and that he would cease to be Protector, and that as Protector Ms Sounumpol would appoint herself or whoever she wished as beneficiaries.

245. Another document, also signed by Tatiana Escobar on the authority of the Corporate Founder on 17 February 2011 and headed "General Power of Attorney", appointed Mr Malde as the "Attorney-in-Fact" for the Allardice Foundation.

246. In addition, by a document, also headed "General Power of Attorney" Mr Malde was appointed "Attorneys-in Fact" for Global to enable him to "undertake the general interests of [Global] in any country of the world and may bind [Global] in its relations with third parties."

247. Under this appointment Mr Malde was authorised to, inter alia:

> "Undertake the representation of the Corporation before any judicial, administrative, fiscal labour or maritime authority, as well as before any other public or private personal or institution. …
>
> Open, operate and close bank accounts in banks and other financial institutions; to withdraw against their funds held by the Corporation in such

> accounts, as well as to make deposits therein; and to purchase shares, bonds, titles and obligations in the name of the Corporation."

Mr Malde did not recall appointing Ms Sounumpol to take his place in respect of Global. He said that he assumed that he had given her "power for everything" when she was appointed Protector.

248. However, Global's appeal in this case was made by Mr Malde in his capacity as Attorneys-in-fact on behalf of Global attaching the General Power of Attorney as his authorisation for doing so. When asked in cross-examination whether, under this document, he retained the authority of Global to conduct the appeal Mr Malde said, "according to these documents, yes."

Bank Accounts

249. On 17 March 2011, in an internal Turner Little email under the subject matter heading Panamanian Company, to Martin Smith and copied to David McIntyre, Mr Nicholson wrote:

> "The other day I mentioned we had incorporated a Panamanian company with Panama foundation for our client Paru1 Malde (aka Bruno).
>
> The company has now been incorporated and foundation incorporated and they are awaiting copies of Swiss bank forms and Cyprus bank forms to have signed by the various nominees and return to our offices for Bruno to sign as signatory.
>
> They will also send us apostille identification and utility bills and a reference each (but will need reminding when we send the bank forms).
>
> I appreciate this is a major job!
>
> I have passed you the copies of the company documents however if you need clarification on the company details (ie registered office address, nominee director details, nominee founder details, nominee council details, company numbers or anything else) please e-mail … of Cambra La Duke Law Firm at the email address below."

250. A Turner Little "Task Sheet" dated 17 March 2011, which records the client as "Malde" refers to a Panama company and Panama foundation identified two banks, FBME in Cyprus and CIM in Switzerland.

251. An application for an FBME account for Global was made by Turner Little on 11 May 2011. The application form stated that Mr Malde was to be the sole authorised signatory on the accounts and his home address in London to be the business address for the Panamanian registered company. The account was opened on 30 September 2011 and the closing balance of SA's account transferred into it on 7 October 2011.

252. A letter dated 13 May 2014, following the incorporation of Amirantes and having opened an account for that company (in circumstances which we describe below), sent by fax to FBME on Global headed notepaper stated:

> "We are writing to request the immediate closure of our accounts with yourselves.
>
> We need to close our accounts due to a change in situation of our trading. We have been very happy with the service provided by your bank and hope to open new accounts with you again soon.
>
> Could you please debit any charges that are still due to the bank and forward the remaining balances to the appropriate currency accounts, after charges, to the beneficiary below.

The beneficiary referred to in that letter was Amirantes with the remaining balance of £2,733,265.84 to be paid into its EPB account although in fact, as described below, this did not happen.

253. The letter had been signed by Mr Malde and his signature verified by the bank. Mr Malde explained that he thought he had been sent the Global headed notepaper by Ms Sounumpol as an attachment to an email and that he had completed the bank details for Amirantes and signed the letter. However, he was unable to produce any email to confirm that this was the case even though he had been interviewed by HMRC on 10 December 2013 (see below) and that HMRC had subsequently been provided with an email, dated 17 February 2014, attached to the 2014 Report as evidence of Ms Sounumpol and her involvement with Global.

254. With regard to the CIM account, Turner Little had written to CIM on 20 July 2011 to inform the bank that, having spoken to Mr Malde he had advised that SA was the source of the deposit of £3,000 being used in relation to the opening of a bank account for Global and that the funds were to be transferred from SA's FBME account in Cyprus. The letter also notified the bank the estimated anticipated turnover was expected to be £900,000 which would be derived from the sale of wholesale of general products "including beverages, plastics and bags within Europe."

255. Further details were provided on the "Business Activities" section of the CIM application form in which the activity was described as:

> "Wholesale of general products, including beverages, plastics and bags within Europe. These goods are purchased from the Far East and sold to clients within Europe."

256. The expected turnover stated in the form was £900,000 for 2011 increasing to £950,000 for 2012 and 2013. Adrena and Corkteck were stated as the source of incoming funds on the form. When asked for the source of these details Mr Malde said that he "must have had a conversation" with Ms Sounumpol about this but could not recall if that were the case. Mr Malde explained that the reason why the anticipated turnover stated on the CIM application was less than that of SA was that although Global was meant to be SA under a new jurisdiction, the turnover was what Ms Sounumpol had expected to go through the Swiss account rather than the overall turnover that was expected.

257. An "Account Opening Agreement" was signed by Mr Malde on 19 July 2011. In doing so it is clear from its terms that he made a commitment "to communicate at once and in writing to the Bank any change of address or data of contact". However, he did not recall reading it before it was completed. Mr Malde explained that he had signed blank documents on the advice of Turner Little who would fill out all the necessary information.

258. Mr Malde also signed signature cards, for individual persons and corporate bodies as part of the application process on 19 July 2011 but did not complete a power of attorney section to include Ms Sounumpol's name explaining that he would have "just signed where I was told to sign." The completed account application, together with supporting documents eg copy of Mr Malde's passport, source of funds letter etc, were sent to CIM by Turner Little on 8 August 2011. On 23 August 2011 Turner Little sent CIM a certified copy Global share certificate.

259. The application was successful and a CIM account opened for Global with Mr Malde being the sole signatory of the account. He could not explain why, unlike SA, it was decided that Global should have more than one bank account.

260. When giving evidence at the Hardship Hearing Mr Malde had said that it had been Mr Nicholson of Turner Little who had decided that Global should have a CIM bank account and had given instructions accordingly and maintained this position in evidence during the present

case. However, Mr Malde could not explain why Mr Nicholson would have done so and while he suggested that it might possibly have been to obtain commissions he said that he did not know why Mr Nicholson may have done this.

261. In evidence, Mr Malde confirmed that he was the sole signatory of Global's CIM account and that he had not granted permission for anyone else to become a signatory. However, he said that, as with SA, he had passed all the documentation to Ms Sounumpol. He said that as she was the protector and beneficiary of Global, "she could have changed whatever she wanted" but he did not know if she had or not. Although Mr Malde also said that he did not know how Ms Sounumpol intended to use the CIM account when he was shown a sales invoice issued by Global to Adrena on 6 March 2012 containing the CIM account details for payment Mr Malde was unable to recall if he knew at the time that Global was inviting its customers to make payments into that account.

262. In the Hardship Hearing Mr Malde's evidence was that the CIM account was closed after a few months "because they didn't like using that bank." When asked in the present case who it was that did not like using that bank he said it was Ms Sounumpol and that it had been Ms Sounumpol who had asked him to close the account. Mr Malde said that he had, on Ms Sounumpol's instruction, contacted Turner Little to close the CIM account explaining that Turner Little had dealt with opening the account and that he just assumed they would be able to close it in the same way. However, Turner Little have no record of ever receiving such instructions.

263. Mr Malde said that he did not know if Turner Little had closed the account and had no recollection of receiving any communication from them to inform him that the account had been closed. Rather he assumed that this was done as he did not hear to the contrary from Ms Sounumpol. Mr Malde also said that he had "no idea" where the funds in the account were to be transferred and had assumed that Ms Sounumpol had "moved it."

264. However, as is apparent from the bank statement, the sum of £212,796.58 was transferred from Global's CIM account to its FBME account on 28 December 2012. An FBME document, dated 25 June 2015, issued to Global confirms that the transaction, an inward payment of £212,796.58, was "executed" on 28 December 2012. When it was put to him that he must have made the transfer Mr Malde said that he could not recall doing so although he had given "all the internet stuff" to Ms Sounumpol. However, he did accept that it would not have been necessary for Turner Little to have been involved in the closure of the CIM account.

265. Although Mr Malde said he was not aware of it and had "no idea" of Global having a second Swiss bank account it would appear, notwithstanding the absence of any bank statements, that such an account did exist, in the name of "Sintra Global SA", given that a document was issued by FBME on 30 December 2011 confirming the execution of an outward payment from SA's FBME account to a Swiss account in the sum of £50,075.15 with the beneficiary of that payment recorded as Sintra Global SA. As the sole signatory for SA's FBME account Mr Malde was the only person who had the authority to direct that such payment be made.

Trading (SA and Global)

266. Trading by SA and Global can, as Mr Webster submits, be described as occurring in three phases:

(1) The first phase, during which SA purchased alcohol from York Wines which, on the basis of York Wines records, continued until 2007;

(2) The second phase, during which York Wines supplied alcohol to Galac and Golden Apple (which HMRC contend were controlled by Mr Malde) rather than SA – which

HMRC say is to disguise Mr Malde's involvement which continued until Global assumed and continued the trade previously undertaken by SA; and

(3) The third phase is the period in which Global traded during which its sales were either via Adrena (which HMRC contend was "inserted" by Mr Malde as a buffer) or via third companies such as Alexsis, CCN Nord "(CCN"), Izabella, Shalimar and Coast.

267. It is not disputed that between 2004 and 2011 SA was a direct supplier of alcohol to Corkteck and that between 2011 and 2014, although it was not a direct supplier of alcohol to Corkteck, Global was a direct supplier of alcohol to Adrena which made onward supplies of that alcohol to Corkteck.

York Wines to SA

268. It is common ground that York Wines was the main supplier of alcohol to SA. Bank transfers record some £3.3 million being paid by SA to York Wines. HMRC contend that there were total sales by York Wines to SA of approximately £29 million in the VAT periods 12/04 to 09/07. Evidence of these supplies can be found in the SAGE records of York Wines, the York Wines bank statements and cashbooks, courier notes and in the records of the French bonded warehouse Wybo Transports SARL ("Wybo").

269. Given their importance to the case and the issues between the parties in relation to them. we have considered the SAGE records of York Wines (and their relation to its cashbook and bank statements) in a separate section later in this decision (see below).

270. HMRC produced a schedule for the purposes of the present case which it is submitted shows a correlation between supplier invoices to York Wines and York Wines release notes to SA and the SAGE records of York Wines.

271. To take one example, the schedule shows that Elbrook issued invoices to York Wines on 1 and 4 July 2005 for Kronenbourg, Fosters Export and Fosters 4%. On 5 July 2005 York Wines issued a release note to Reading Soft Drinks (a cash and carry). According to HMRC's schedule, the Kronenbourg, Fosters Export and Foster 4% with the addition of 90 cases of Carling Black Label were released to SA with this transaction being linked to an invoice issued to SA which is also shown on York Wines SAGE records.

272. Although an invoice for these goods was issued by York Wines to SA in Weimar, Germany on 5 July 2005, as recorded in the SAGE records, there is no mention of SA on the York Wines release note, also dated 5 July 2005, which directs that the goods be released to Reading Soft Drinks. That said, it is necessary to exercise some caution in relation to the release notes that were recovered from the home of Mr Burrage as part of the Operation Rust investigation (see below). These do not have fax headings or markings to indicate that they were sent by fax to anyone. They are also not consistent with the SAGE records.

273. By way of example, although a York Wines release note, dated 12 November 2007, signed by Mr Burrage, (which has no indication of it ever being sent by fax) directs Global Negotium to release two loads of 1,920 cartons of Fosters 4% underbond to SA, no sale is recorded in the SAGE records. Another York Wines release note, dated 15 November 2007 which similarly had no indication of ever being faxed, suggests stock being released to Galac even though according to the SAGE records York Wines did not commence trade with Galac for another six months.

274. Courier notes were purportedly issued by fax (there is no indication on the documents, such as transmission or receipt dates and times, which show that it was actually sent) from SA to York Wines to notify York Wines that SA's courier would make contact regarding a payment on account.

275. A typical example is a fax, dated 20 August 2007, on "Sintra SA" headed paper to York Wines from "European Office" which states:

> "Dear Sirs,
>
> Please be informed that our courier will be contacting you by telephone today to arrange meeting to make payment on our account.
>
> The monies paid today will be: £59,000.00
>
> Best regards,
>
> Sintra SA (Europe)"

York Wines' cashbook for 2007 records that on 21 August 2007 that £179,000 was banked and that under a column headed "Invoice – Invoice Total" lists the following receipts:

Doom:	£70,000
Golden Apple:	£50,000
Sintra:	£59,000

Its bank statement shows that on 21 August 2007 there were ten credits, in various sums of between £4,000 and £25,000, paid into York Wines' account totalling £179,000. The bank statement has a handwritten annotation allocating these receipts to "Doom 70, Gold App 50" and "Sintra 59K".

276. The Wybo records, which commence in November 2004 and continue until August 2006, show duty being charged and paid by York Wines to Wybo and is consistent with the supply to York Wines and with the York Wines invoice number to SA as recorded on the SAGE record.

277. By way of example, on 6 September 2005, there is reference with a number 7299 of a despatch of 640 cartons of Stella from York Wines to Reading Soft Drinks. This was an underbond supply to York Wines by Hothie Cash & Carry Limited ("Hothie") of 1,920 Cartons of Stella with invoice number 11067. The load was split and 7299 appears as one of four rotation numbers with a description of 640 cartons of Stella. York Wines' release note to Wybo to release the 640 carton of Stella to Reading Soft Drinks also contains the rotation number 7299 and the York Wines invoice number, 6888. The same invoice number, 6888, as is on the invoice to SA, dated 6 September 2005, and also appears in the SAGE records.

278. Further confirmation of the trading between York Wines and SA can be found in a "Sift recommendation and assurance event report" of a visit to York Wines by HMRC officers on 7 July 2006 to:

> "… gather further information for consideration of any liability that the trader might have to register for TVA in France and any disclosure to be made under Article 19 of EC Regulation 1798/2003"

The report notes that SA was one of York Wines' "main customers" during the period from January 2005 to May 2006.

279. The alcohol acquired by SA from York Wines is said to have been released to cash and carries (including Reading Soft Drinks) in the European Union, with four of the seven cash and carries located around Calais. However, there is no evidence of any payment to SA from any of these cash and carries. A HMRC "Sift recommendation and assurance event report" completed on 15 January 2008 in respect of York Wines records, under the heading "checks and tests undertaken":

> "Letter sent to York Wines Ltd on 17th December 2007 requesting audit trail in respect of purchases from Iceaction Limited. Iceaction Limited invoice 4855 dated 22.1.07.
>
> This covered 2080 cases Budweiser. This was paid by bank transfer on 27.2.07. These goods were held on Wybo reference 18353. Released as follows:-
>
> 160 cases to Newside [one of the cash and carries] French duty paid for the account of Sintra SA Germany."

280. Although HMRC's report records a release note to "Newside on the account of Sintra SA Germany", an examination of the York Wines release notes of alcohol to cash and carries do not provide any support for the goods being released to the account of SA, there being no mention of SA on any of those release notes. By way of contrast, where goods are to be released into SA's account it is clearly stated on the release note. By way of example, a York Wines release note, dated 5 June 2006 states:

> "Please release to Bull & Beer (underbond) for the account of Sintra [SA] 1,800 cartons Carling Black Label".

281. Turning now to the SA's FBME bank statements, although these show the receipt of substantial sums by bank transfer during the period from 2004 to 2008, in the absence of bank narratives, it is not possible to identify the source of such funds and whether those transfers came from the United Kingdom, European Union or worldwide companies. No enquires as to the source of those funds were made by HMRC although almost £700,000 was received from a Malaysian account.

282. Following the cessation of trade by York Wines it would appear from SA's FBME account that SA continued its commercial activity. By way of example, on 3 June 2010 SA received a credit in the sum of £195,641.14 from Corkteck. The narrative in the bank statement in respect of other credits received around that time indicates that they are payments for invoices.

283. In March 2011 sums were received from HS Lexus Limited ("Lexus"). It appears that these are the same funds as had been paid by SA to Adrena and then immediately transferred on to Corkteck. The bank statements of Corkteck show those funds are then used by Corkteck to pay Lexus and, in turn, those funds are paid out to SA. There were also funds paid into SA's account in September 2011 from United Kingdom traders FNB (UK) Limited ("FNB") and Alas Balas Limited (Alas Balas").

284. A further indication of its continuing trade was that SA asserted itself as the owner of the goods seized by UKBF being shipped to Corkteck from BBC in the first of three seizures described above.

285. Lexus was established by Formation Direct Limited on 13 September 2009 with its first director being a Mrs Thusyanthi Ayadurai. It was registered for VAT from 1 March 2010. In its application for registration for VAT (Form VAT1) Lexus stated that its intended business activities were "professional, in business accountancy services". The VAT1 also stated that the current and or intended activities were "accounting and auditing activity". In an application, dated 18 June 2010, to join the VAT flat rate scheme it was stated that the company's main activity was "accounting and bookkeeping".

286. However, Lexus sold Corkteck mixed black refuse bags and self-adhesive tapes, between 14 February 2011 and 29 July 2011 for £1,451,251.20, self-adhesive tape, between 2 August 2011 and 30 August 2011 for £162,000, and black refuse bags between 31 August 2011 and 7 March 2012 for £545,646. In evidence Mr Malde said that Corkteck's total purchases from

Lexus were £2,613,369.60 (including VAT) which was paid via bank transfer, £2,026310.14, cash, £18,720 and in contra stock supplied. Corkteck sold "Nurishment-assorted flavours" to Lexus between 28 June 2012 and 27 July 2012, with a value of £568,339.20. The goods purchased from Lexus were supplied by Corkteck to Adrena at the request of Adrena.

287. Mr Malde said that he had not known Lexus "for long" and when asked what he knew about Lexus before commencing trade, he replied:

> "Not a lot, like I said I think I met them in someone's warehouse, had a conversation. I could see what they were supplying and it went from there, I think. Didn't know much else about them."

He could not recall who he had spoken with but thought that he "believed" he had met the director as he "would have due diligence on them."

288. HMRC were not notified of the apparent change in trading by Lexus. On 13 October 2010 its director, Mrs Ayadurai, contacted HMRC's Debt Management Unit to report that the company was unable to pay the outstanding VAT in full. However, on 29 February 2012 a notice of resignation for Mrs Ayadurai was sent to Companies House stating that she had resigned on 13 September 2009. A Companies House document dated 2 March 2012 records the appointment of a new director Ramona Moldovan who was appointed on 24 February 2011 but, according to an internal HMRC document, dated 19 December 2012, had told HMRC that the business had never started. Mr Malde, when this was put to him accepted that "something's not quite right" but did not agree with the suggestion that Lexus was a "fraudulent company".

289. Lexus was struck off the Companies House register and dissolved on 3 September 2013.

York Wines to Galac/Golden Apple

290. Both Galac and Golden Apple, French cash and carries, were supplied with alcohol by York Wines. HMRC contend that orders for these companies were made by Mr Malde and that they were paid for by SA. Because of this HMRC say that Mr Malde controlled both Galac and Golden Apple.

291. In relation to orders, HMRC rely on SMS messages sent from a mobile telephone with a number ending 8800. As noted above (under the sub-heading 'Telephone numbers') in the six months between 21 January and 10 July 2008 Mr Burrage made 164 calls to a mobile telephone number ending 8800.

292. On an examination of the "phone book" stored on Mr Burrage's mobile telephone SIM card the telephone number ending 8800 was recorded as belonging to "Bro". HMRC contend that this is an abbreviation for Bruno, a name used by Mr Malde, and that Mr Malde was the recipient of the telephone calls from Mr Burrage. We have already mentioned that Mr Malde accepts that he is referred to and uses the nickname "Bruno" but that he was adamant that he had never owned a mobile telephone with a number ending 8800 (see above).

293. HMRC also contend that a number of SMS messages sent to Mr Burrage from that mobile telephone (number ending 8800) were from Mr Malde. The following examples of these SMS messages, taken from January 2008, relate to Mr Burrage being contacted in order to purchase alcohol.

- "Can I have 8 carling 8 fosters 8 stella on A214507 A161443 (sent at 12:47 on 14 January 2008)"
- "Can I have 8 carling 8 fosters 8 stella on A231077 A237309 (sent at 10:10 on 17 January 2008)"
- "Can I have 8 carling 8 fosters 8 stella on A161443 A237308 (sent at 07:13 on 22 January 2008)"

- "Can I have 8 carling 8 fosters 8 stella on A231077 (sent at 22:51 on 28 January 2008)"

The numbers commencing A… are the cup or rotation numbers for the goods

294. A probe placed in Mr Burrage's car as part of the Operation Rust investigation (see below) recorded the following telephone conversation between Mr Burrage and another person which took place on 22 January 2008:

> "Hi mate can you talk. I'm on the road can you do me a couple of releases for Wybo (*inaudible*) GALAT G. A. L. A. T, French duty paid in brackets. 720 Carling, 3036 (*inaudible*) 640 Fosters, 30311. 640 Stella on the 30259 and a BOND A cup number a 161443. That's the same again for Carling as the Fosters yeah but I'm waiting for this, I'm waiting for another Stella rotation number because that will be on A237308. I've got to give you another 640 of Stella from somewhere so that will leave you hopefully (*inaudible*). Yeah, yeah he likes to send the person and hopefully I can get loads of Credits (*inaudible*). That 2000 never went in, erm, I have got a cheque (*inaudible*) today."

295. The following release notes which are said to have been sent by fax (but contain no marking or any indication to show that that they were) to "Frankie" at Wybo, on York Wines headed paper:

- Please release to Galac (French Duty Paid)

  640 Fosters 4%
  720 Carling
  640 Stella Artois

  A231077

  Regards K Burrage (signed and dated 29 January 2008)

- Please release to Galac (French Duty Paid)

  720 Carling Black Label
  640 Fosters 4%
  640 Stella Artois

  A237308

  Regards K Burrage (signed and dated 31 January 2008)

- Please release to Galac (French Duty Paid)

  720 Carling Black Label
  640 Fosters 4%
  640 Stella Artois

  A161443

  Regards K Burrage (signed and dated 31 January 2008)

- Please release to Galac (French Duty Paid)

  720 Carling Black Label
  640 Fosters 4%
  640 Stella Artois

  A161443

  Regards KB (signed and dated 7 February 2008)

- Please release to Galac (French Duty Paid)

720 Carling Black Label
640 Fosters 4%
640 Stella Artois

A237308

Regards KB (signed and dated 7 February 2008)

- Please release to Galac (French Duty Paid)

  720 Carling Black Label
  640 Fosters 4%
  640 Stella Artois

  A161443

  Regards KB (signed and dated 6 February 2008)

296. Probe evidence from Operation Rust (which we have set out below) recorded references being made to "Bruno" and Mr Burrage during a telephone conversation with someone using the mobile telephone number ending 8800 referring to delivery to Global or "Ed", which Mr McGuinness suggested was a reference to Edwards warehouse and that the recording was of a conversation between Mr Burrage and Mr Malde about the business of SA.

297. The probe evidence also recorded Mr Burrage having a conversation with the 8800 number on 22 May 2008 in which he said:

> "I just wanna lose no more money. I can make good money with people like – I don't wanna (*inaudible*), a lot less hassle, (*inaudible*) proper service, but at the moment I'm getting – I'm getting hurt so bad because of these dogs. H, 700 – he won't (*inaudible*) well, well it's cleared (*inaudible*) but it's still 700 – well yeah, yeah. Yeah just keep drip feeding it and it helps. I've got (*inaudible*) Carlings (*inaudible*) erm – if I can (*inaudible*) Yeah, yeah. Right, Oh (*inaudible*) alright.
>
> Right, OK, He's not going? Yeah? Oh right, so he's – and now do you (*inaudible*) into Sintra. Right, I'll get – I'll get on that now. Right on that now, OK"

It was suggested that this was a call between Mr Burrage and Mr Malde with the reference to Sintra being a reference to SA.

298. Mr Malde denied having anything to do with any of these transactions between York Wines and Galac and York Wines and Golden Apple, the telephone conversations, that he was the Bruno referred to in the probe evidence or that he would have a reason to speak to Mr Burrage about the business of York Wines and SA. Also, as Mr Foster accepted, both Galac and Golden Apple had their own independent corporate existence with their own officers.

299. York Wines was the subject of a criminal investigation, Operation Rust (see below), leading to the conviction of its director, Kevin Burrage, for the facilitation of inward and outward diversion fraud. However, the transactions between SA and York did not form part of the Operation Rust investigation.

Global

300. Global, it is accepted, was the successor company to SA. It purchased significant quantities of alcohol from European Union based traders such as Adrena, Elbrook and B&R.

301. Documents obtained from the warehouse, Dunkerque Bonded Stores ("DBS"), Brunel and an examination of movements of goods by HMRC, as recorded on the EMCS system for the two month period from 30 September to 30 November 2013, show that there were 22

movements from Adrena at the Belgian Beverages Company ("BBC") warehouse to Global at DBS with the goods being transported by Brunel.

302. During 2012 a minimum of 44 loads were sent by the BBC warehouse in Belgium to the DBS warehouse in France. In 2013 this had increased to a minimum of 98 loads, in a large number of these movements the haulier was Brunel. In the period from April to November 2013 Brunel's records indicate that the 32% of the loads transported were beer and 68% wine. A large number of these movements in 2013 and 2014 can be linked to Global's DBS account. An analysis of the DBS EMCS records, by reference to the ARC numbers, shows that, between February 2013 to December 2013, there were approximately 100 scheduled movements from BBC to Global's account at DBS from where they were subsequently distributed. A similar position existed until 13 May 2014 at which point there are no further records from DBS.

303. Between March 2012 and May 2013 Global made 61 payments to Adrena amounting in total to £8.1 million. Applying the above beer/wine ratio this amounted to purchases of £2,592,000 of beer and £5,508,000 of wine. If the average estimated average price of beer and wine is applied there would have been 423 loads transported, 184 of beer and 239 of wine. As a result HMRC contend that the DBS, EMCS and Brunel records do not fully reflect the true level of purchase by Global from Adrena. Additionally, although the narrative on the bank statements refers to 22 of these 61 payments to Adrena as payment by Global for the supply of chocolate and plastics, HMRC contend that this was a "cover" for the movement of money from Global to Adrena which in reality concerned the purchase of alcohol.

304. Between February 2012 and January 2014 Sintra Global purchased 235 mixed consignments of beer and wine from Elbrook through third party companies, Huzar Borys Chilkiewicz ("Huzar") and Izabella Hryhorowicz ("Izabella"). Although invoices were issued to Huzar and Izabella by Elbrook the goods were despatched directly to Global which made payments for the goods to Elbrook either by bank transfer or cash. Global paid Elbrook £4,597,374 for the stock which equates to £19,563 per mixed load. Between October and December 2013, Global paid B&R over £311,000 by way of 4 payments.

305. Huzar and Izabella were described by HMRC as "intermediary buffer companies who did not serve any genuine commercial purpose." Both companies are based in Poland with Huzar being located in Szczecin.

306. On 3 July 2014 HMRC visited Elbrook and raised a number of questions with regard to its trading with Izabella. The responses by the director of Elbrook were somewhat vague, eg he either could not recall or did not know where Izabella was situated, and/or how long it had had an account at DBS. A further visit to Elbrook took place on 27 January 2015 at which its director was able to confirm that Izabella had an account at DBS and the goods went straight to Izabella's customers' accounts on its instructions as this saved time and saved Elbrook money.

307. HMRC visited B&R on 1 July 2015. The Principal Place of Business was a two room building at the bottom of the garden of a house and Mr Popat, the director, confirmed that he held no stock on his premises or anywhere in the United Kingdom. All stock was held in bonded warehouses on the continent. Mr Popat listed the warehouses used by B&R which included DBS. Mr Popat, who had no recollection of Global, said he virtually never visited the warehouses where his stock was kept. He did not have trading records available (which he said were with his accountant) and he initially refused to provide HMRC with a list of customers and suppliers.

308. In addition to these purchases there were other movements of alcohol. For example hundreds of loads were despatched from Edwards in the United Kingdom to Care Distribution Warehouse ("Care Distribution"), a warehouse in Calais used, amongst others, by Elbrook and

Park Royal. Over a hundred of these loads were transported by Brunel. Elbrook sent stock from Edwards to the DBS in France to the account of one of Huzar or Izabella which subsequently sold it to Global (while the stock remained at DBS). Global then sold the stock back to Huzar or Izabella, sending it from DBS to Care Distribution. There is, however, no evidence of payment from Huzar or Izabella to Global for these goods although it is possible that payments were made into another account held by Global of which we are not aware.

309. According to EMCS records, hundreds of movements of alcohol were despatched from Care Distribution to warehouses such as San Pedro a French warehouse/cash and carry, DAB Di Arruzzoli Bruno ("DAB"), a bonded warehouse in Vicenza, Italy and Premium Traders in Estepona, Málaga, Spain.

310. Despite the DBS records indicating that Global issued instructions to DBS to send wine purchased from Adrena to San Pedro, a company registered in France, with French duty paid using Brunel as haulier, the banking, transport and warehouse documentation do not support that this was the case. No payments for the wine that the DBS documents record as being sent to San Pedro were ever received into Global's bank account. There are no cash deposits received in Global's bank account that could relate to these transactions and no invoices are known to exist in relation to this trade. In addition the movements of Brunel in transporting the wine are not contained within the data received by HMRC directly from Brunel. San Pedro closed as a warehouse/cash and carry on 31 December 2014 sometime after the trade with Global had ceased.

311. The EMCS records show that there were hundreds of movements of alcohol from Care Distribution (which was subsequently closed by the French authorities following an investigation) to DAB. However, when the Italian authorities visited DAB on 20 November 2013 they ordered its immediate closure as there was no stock, warehouse stock reports, no record of any movement of goods and no business records of any kind present at the premises. DAB had also never paid any applicable excise duty. Additionally, the investigation by the Italian authorities established:

> "… alleged trading linkage with other Italian and European companies including association with suspected UK and/or UK based criminal organisations."

312. During the period between October and November 2013 there were at least 68 movements of alcohol were identified entering the United Kingdom during the lifetime of the an ARC when the goods were said to be being transported to Italy. These movements were identified using the Freight Targeting System ("FTS"), which shows entries and exits of vehicles and trailers crossing United Kingdom borders. The average driving time between Care Distribution in Calais and DAB in Vicenza according to information from the website www.drivingdistance.eu produced by HMRC, which was not disputed, is approximately 12½ hours (not allowing time for unloading and loading times).

313. The time between the dispatch of the ARC (when the goods left Care Distribution) and the same lorry being seen entering the United Kingdom is often as little as a few hours making it extremely unlikely that it could have travelled to and from DAB in Italy in this time. Of the 68 movements seen directly entering the United Kingdom, 21 can be identified as lorries owned or regularly used as subcontractors by Brunel.

314. In relation to these vehicles, although the EMCS records them as transporting goods being destined for DAB in Italy, according to the FTS records they were, in fact, moving from Calais to Dover or in the United Kingdom at the point of despatch.

315. By way of example, the EMCS records a load being despatched from Care Distribution to DAB at 14:03 on 16 October 2013. It had an ARC number 13FRG0074000069934767. The "transporter" was Brunel using lorry/trailer CN08AEC/BFF03. The goods were recorded as having been delivered. However, the FTS records the lorry CN08AEC as moving through Calais to Dover at 17:55 the same day, 16 October 2013.

316. A further example concerns a load, recorded on the EMCS with ARC number 13FRG0074000069954700. The EMCS shows that this was despatched from Care Distribution to DAB at 16:57 on 16 October 2013 with Brunel as transporter. However, the same lorry, according to the FTS was moving from Dover to Calais at 20:15 on 16 October 2013 having travelled from Calais to Dover at 09:45 on 15 October 2013 and been in the United Kingdom at the same time as it was apparently despatched from Care Distribution in France.

317. This is not the only example of a Brunel vehicle being in the United Kingdom at the same time as the EMCS shows it was being despatched from Care Distribution to DAB. A load is recorded on the EMCS as having been despatched from Care Distribution and transported by Brunel at 11:08 on 28 October 2013 but at the same as in the United Kingdom the FTS records the same lorry and trailer as having moved from Dover to Calais at 18:35 the same day. Therefore, it is not possible to rely on the EMCS records created by Care Distribution.

318. Although DBS records also show that Global sold or released goods to Shalimar, Coast and Drinks Club there is no evidence of any payment having been received by Global from any of these companies.

319. Shalimar was a French company that was incorporated in August 2011 and struck off the register in February 2014. According to HMRC, the DBS records show that between 8 December 2013 and 13 January 2014 Shalimar acquired 3,818 cases of beer and 12,920 cases of wine from Global. Following a request for assistance from HMRC the French tax authorities stated that in 2011-2012 Shalimar had purchased stock valued at approximately €4.5 million from a United Kingdom company, Canyon Products Limited.

320. Coast, another French company, was based in Calais and involved in the wholesale trade in alcoholic goods. Coast was incorporated in December 2012 and appears to have continued to operate until 2016. The company filed VAT declarations in relation to seven periods, but apparently defaulted on VAT from August 2013. HMRC say that between 11 July 2013 and 13 May 2014, Coast purchased 152 cases of wine and 36,515 cases of beer from Global in DBS. According to the mutual assistance material, it purchased alcohol from a number of suppliers based across Europe.

321. The French authorities inspected the records of Shalimar at six bonded warehouses (including IEFW, RM Trading, Wybo and DBS) and found that Coast had received in 2013 over five million litres of wine and 4.5 million litres of beer. The total value of its purchases in 2013 was in excess of €21 million. Coast had an account at, and consigned goods from, Care to DAB which are alleged to have been smuggled. It also supplied goods underbond to Ramstrad and was named in the Elbrook customer list.

322. Drinks Club was been named as the purchaser of alcoholic goods between 2011 and 2014 from a UK company, Pulse Products Limited. It appears that it held accounts with DBS and Care.

323. Global also suppled mixed beer to Ramstrad, a company incorporated in the United Kingdom, during 2012 and 2013. In its VAT1 Form Ramstrad described itself as a trader in "wholesale of alcoholic beverages underbond". Ramstrad paid over £1.245 million in pounds sterling for the alcohol supplied to it by Global. The invoices issued by Global indicate that the

goods were delivered/transferred to Ramstrad's DBS account and its account at the Calais warehouse, Eurostop.

324. A French Customs investigation into Eurostop concluded that:

> "… very large quantities of alcoholic beverages (mainly beer) were being falsely consigned from that company to other companies located in a number of other EU Member States (Italy, Spain, Germany and Lithuania) by means of electronic accompanying documents (EAD) as recorded on the Excise Movement and Control System (EMCS) through the domestic electronic· version of the GAMM@remote procedure, which enables traders to discharge by electronic means any electronic document received from a trader established in another Member State for a movement of products under .arrangements for the suspension of excise duties.
>
> The enquiries, which have been continued by the investigators with the help, inter alia, of international mutual assistance, have shown that the documents in question were falsely discharged at destination.
>
> We have found that about 53% of the vehicles involved in the consignments were shown as embarking for the British Isles within a few hours or minutes after dispatch. On checking the days and times of embarking recorded we found that they could not have had the time to deliver their load to the approved warehouse companies as entered on the EAD.
>
> A comparison between the times of boarding the ferries and the minimum time needed for the journey to the approved warehouse companies which were shown on the EADs showed that it was physically impossible for the means of transport chartered to take the goods from EUROSTOP to be delivered in the countries in question, and then to return to finally be able to embark on cross-Channel vessels on the dates and at the times announced.

325. Ramstrad sold, almost exclusively, to Spanish trader, Premium Traders. However, the Spanish authorities informed HMRC, following a request for information, that Premium Traders had been deregistered on 6 February 2015 as a missing trader. Other customers of Ramstrad were Coast (in France) and, despite it denying that it made sales in the United Kingdom, another customer was Best Buys in the United Kingdom. On 29 March 2017 HMRC issued an assessment in the sum of £932,733 against Ramstrad for undeclared/unaccounted acquisition tax. Ramstrad appealed on the basis that its business was trading in alcoholic goods in duty suspension in a recognised French bonded warehouse. However, the appeal was struck out for non-compliance with directions.

326. Between February 2012 and January 2014 Global's bank statements indicated that it bought over £13 million of alcohol in Europe. It received approximately £970,000 (in sterling) into its FBME account from Adrena and £1.245 million from Ramstad leaving approximately £10.78 million of unexplained purchases that cannot be accounted for by reference to its FBME statements.

327. An analysis of Global's FBME account shows that it received payments from the following entities:

(1) Sea Inn Foods - £200,000;

(2) Universe - £335,000;

(3) Corkteck - £550,000;

(4) Alexsis - £615,000;

(5) Best Buys - £7.1 million;

(6) Hobbs - £5.37 million;

(7) Ramstrad - £1.245 million; and

(8) Miscellaneous from unidentified sources and/or stating that the sums represented payment for plastics supplied by Global - £703,000

328. Sea Inn Foods was incorporated on 31 October 2011. Its director was Malik Faisal. Mr Faisal completed its VAT1 describing its business activity as "retail sea food products". HMRC records show that nil VAT returns were submitted for the 02/12 and 05/12 accounting periods. On 13 September 2012 HMRC notified Sea Inn Foods that its supplier Europa Cash & Carry Limited ("Europa Cash & Carry") had been deregistered for VAT with effect from 12 September 2012.

329. A visit to Sea Inn Foods by HMRC Officers took place on 12 October 2012 during which Mr Faisal confirmed that its customers were Eurochoice, Lucky Star, Nawab and Golden Harvest. He explained that he had met the first two customers, Eurochoice and Golden Harvest at a friend's wedding and his first supplier Europa Cash & Carry at a pub with friends. Mr Faisal confirmed that he paid Europa Cash & Carry either by bank transfer or cash and that he made the cash payments at his office or at a nearby petrol pump. There is no record in the visit report of any mention of Global.

330. On 24 October 2012 HMRC wrote to Sea Inn Foods advising that its officers were unable to confirm that the company was making taxable supplies and, in the absence of arrangements being made within the next five days to inspect the business records the company would be deregistered for VAT with immediate effect. A letter was issued on 31 October 2012 confirming the deregistration of the company. VAT returns for the 08/12 period and the final period from 1 September 2012 to 31 October 2012 were filed showing net sales of £1,669,968.22 and £2,466,061.94 respectively.

331. HMRC officers visited the principal place of business of Sea Inn Foods on 7 February 2013 only to be told that the company had defaulted on rent payments and was no longer there. Mr Faisal was not present at his home address when the officers called there either. On 15 July 2013 HMRC (Mr Woods) wrote to Sea Inn Foods to disallow a claim for input tax on amounts shown on invoices issued by Europa Cash & Carry. On 29 July 2013 a penalty was issued for the over deduction of input tax. On 17 September 2013 HMRC issued a "warning of winding up action" letter to the principal place of business and Mr Faisal's home address. However, as Sea Inn Foods had been dissolved on 16 July 2013 the assessment to disallow the recovery of input tax and penalty were withdrawn.

332. Universe, which was incorporated on 18 October 2010 and dissolved on 29 January 2013, was a defaulting trader in the chain of supplies to Elbrook, supplying Golden Harvest which, in turn, supplied Elbrook. Although the amounts charged as VAT by Universe on its supplies were assessed, Myers the assessment was withdrawn when HMRC became aware that the company had been dissolved. The HMRC officers involved in the civil investigation of Universe were unaware of its financial transactions with and payments to Global.

333. The business of Corkteck and Ramstrad have already been described (see above) and it is not necessary, at this point, to say anything further in relation to those companies.

334. Alexsis was incorporated on 11th June 2012 by Shayad Mia, a 23 year old with a history in the restaurant trade. Alexsis submitted a nil return in period 10/12. Following a change of address, to Milton Keynes, where it purportedly commenced supplying alcohol to Eurochoice and later to Golden Harvest and Best Buys having purchased the goods from Saad (a missing trader at the commencement of the Operation Banjax supply chains but which was trading in the European Union) and subsequently Mr Cash & Carry. Sales then 'mushroomed' with

Alexsis declaring sales of £16.8 million in its 01/13 VAT accounting period, £17.7 million in its 04/13 accounting period and £6.7 million in its 07/13 accounting period. However, Ms Myers was not aware of there being any evidence of Alexsis trading in the United Kingdom.

335. During a visit by HMRC (officers James Woods and Mahendra Gajjar) on 31 July 2013, Mr Mia was unable to provide names of his current suppliers and had to refer to notes or a list to answer questions from the officers. When asked about Global and why Alexsis had paid it £210,000 Mr Mia said, after referring to his notes, that it was a customer in Malaysia and he did not know why the business had made payments to Global or why it had not received payments from it. Mr Miah said that he could not find any due diligence on Sintra but would email it to HMRC. He said that his contact at Global was "Becky" but did not know her surname or email address and thought that she was based in London.

336. Mr Woods, who gave evidence in respect of Alexsis, explained that calls by HMRC to its principal place of business were invariably answered by unpaid "assistants/friends" of Mr Mia. During the July VAT visit when Mr Mia was present he was asked about millions of pounds of payments to traders where there were no corresponding invoices and was told by Mr Mia that these traders were customers in bond trading. However, Mr Mia could not explain why Alexsis was paying its customers when it should having been receiving payment from them.

337. Alexsis was deregistered for VAT with effect from 1 October 2013 and various assessments raised. The final VAT return has never been completed. On 1 September 2014 Alexsis had begun a compulsory winding up process and the company was dissolved on 14 April 2020.

338. Best Buys company incorporated in the United Kingdom that engaged in wholesale trading activities. It conducted VAT inclusive sales over a period of two years of £118,796,601 with the vast majority of its sales being wholesale alcohol. It did not have warehouse facilities in the United Kingdom, rather it arranged for its purchases to be delivered directly to its United Kingdom customers by its supplier.

339. In addition to making taxable supplies in the United Kingdom, from July 2013, Best Buys also traded in duty suspended wines and beers, ie stock purchased and sold in bond in Europe. Mr Beaddie, whose witness statement was adopted by Mr Nevin, said that Best Buys only used freight companies to transport stock duty-suspended which it shipped from the United Kingdom to bonded warehouses in France. Best Buys traded underbond with companies including Aquia Corp in Cyprus; Ramstrad; CWB Trading; and Amish Wholesalers,

340. Following repeated requests by HMRC for the company to produce trading records, bank statements and annual accounts, Best Buys produced records up to the end of 2013. HMRC attempted to visit Best Buys on 19 May 2015 but found that the company was no longer trading from its premises. HMRC were subsequently informed that the trader had moved from those premises and was deregistered for VAT. On 20 May 2015, HMRC assessed Best Buys for VAT in the sum of £1,260,383.47.

341. From a standing start, in the space of 10 months from its VAT period 04/13, Hobbs achieved a turnover of £97 million. That was despite Mr Dhanji, its director and 100% shareholder, working full-time as a security guard at Heathrow airport throughout the period. Hobbs operated from a serviced office with no warehouse, storage or distribution facilities and no employees. Hobbs was deregistered for VAT in November 2013. Various assessments and claims to input tax have been raised against Hobbs (totalling in excess of £16 million) on the basis that its supplies were connected with the fraudulent evasion of VAT and that it knew or should have known of the connection.

342. Corkteck, Alexsis, Best Buys and Hobbs purportedly on-sold the same non-alcoholic stock to traders such as CCN, a French company based in Roubaix which was the purchaser of underbond goods in Operation Banjax, including the supplies by Global to Alexsis and Hobbs. Other companies to which the goods were sold include Mint and Beetrade. CCN, Mint and Beetrade, however, are missing traders and there is no evidence of these companies receiving the non-alcoholic stock, or selling it on or paying Alexsis, Best Buys and Hobbs for the goods.

343. Mr Foster produced a diagram (not reproduced in this decision) setting out his understanding of the movement of such non-alcoholic or other goods together with the corresponding flow of money with each stage broken down as a deal number. The other goods included Pride Vegetable Oil, chocolate, Coca Cola, shrink wrap and plastic waste bags. Mr Foster said that there was some doubt as to the existence of these goods and whether the transactions took place but whether they did or not it was HMRC's case that the transactions were utilised to launder the proceeds of the fraud by moving the money obtained from the slaughter of alcohol.

344. Deal 1 concerns the movement of funds from Best Buys to Global, in the sum of £7.8 million. Bank statements and other trading documents show that Global traded with Best Buys between 31 July 2012 and 29 November 2013. An analysis of Global's sales invoices during this period shows that it supplied Best Buys with Pride Vegetable Oil in 20 litre units and Dunns River Nurishment. The value of these invoices is £7,385,544 (£7.3m).

345. Between 16 August 2012 and 16 December 2013, Global's bank statements show receipts of £7,864,548 from Best Buys although Best Buys' bank statements show payments from Best Buys to Global in the aggregate sum of £7,803,645.53. An analysis of Best Buys' bank statements shows unidentified cash deposits of £1,381,799.30 although the source of that cash is unknown. There is no record of any trade in alcohol between the two companies. Although Deal 1 referred to a movement of funds from Best Buys to Global, Mr Foster explained that the diagram was a "snapshot" at a given time and that the trader occupying the position of Best Buys in the transaction chain could vary.

346. With regard to the Pride Vegetable Oil, email correspondence between HMRC officer George Beaddie and West Mill Foods, a subsidiary of A B Foods plc ("A B Foods") the sole manufacturer of Pride Vegetable Oil confirmed that although 20 litre tins of Pride Vegetable Oil produced the company had not traded with Global which is not known to the sales team of A B Foods. It also confirmed that not only there was no evidence of a "grey market" in vegetable oil but that the price which Global was selling to Best Buys was not commercially viable.

347. Deal 2 concerns the sales between 1 April 2013 and 29 November 2013 by Best Buys to Mint. During that period Best Buys supplied Pride Vegetable Oil in 20 litre drums and Dunns River Nurishment to Mint. An analysis of those supplies shows that their value between April 2013 and November 2013 was £5,091,372. HMRC maintain that the Pride Vegetable Oil in 20 litre drums and Dunns River Nurishment, purportedly sold by Best Buys to Mint Drinks, were the same goods that Best Buys purportedly acquired from Global although no payments are recorded in its bank statements as having been received by Best Buys from Mint for these goods.

348. When HMRC officers visited the principal place of business of Mint on 29 April 2013 it was found to be an empty shop unit subject to a demolition order. A person in the vicinity of the premises said that there were no offices or businesses at that address and that she had never heard of Mint.

349. Deal 3 shows the movement of money from United Kingdom slaughter sites to Best Buys providing the funds for it to purchase the goods from Global in Deal 1.

350. Deal 4 concerns the supplies of Coca Cola and chocolate by Best Buys to Corkteck between 2 November 2012 and 28 August 2013, which had an aggregate value of £3,299,815.80. Payments made by Corkteck to Best Buys during the period of 28 November 2012 to 13 December 2013, total £4,317,235.20.

351. Deal 5 concerns trade between Corkteck and Lexus between February 2011 and March 2012. HMRC contend that the supplies of plastic bags and self-adhesive tape never took place, but were a fiction to cover the movement of money from the United Kingdom slaughter to SA and identify a flow of money from Corkteck to Lexus and on to SA. However, Mr Malde denied this (see above) and maintained that the goods were purchased by Corkteck from Lexus and then supplied on to Adrena, Deal 6.

352. Deal 7 concerns supplies by Adrena to Global. In his witness statement Mr Van de Vondel explained how Adrena's trading relationship with SA and subsequently Global (referring to them as "Sintra" without distinguishing between the two companies) and Corkteck developed and his initial concerns regarding the proposal that Adrena should supply goods purchased from SA to companies of which it had no knowledge as well as his concern about the use of the DBS bonded warehouse.

353. Mr Van de Vondel said that it was agreed that Adrena would purchase goods from SA, which would be supplied into to the BBC warehouse in Belgium. Adrena would supply those goods either to Corkteck (who had been proposed as a customer by SA) and other customers selected by Adrena. Sintra would provide Adrena with a list of stock which Adrena would match to demand from customers. Sometimes these were back to back supplies, sometimes Adrena held stock. Mr Van de Vondel confirmed that Adrena purchased non-alcoholic goods from Corkteck, which it sold on to "Sintra" with such goods being delivered to addresses in Romania and Bulgaria, where there was a market for those goods.

354. Deal 8 concerns the supplies from Global to Corkteck. During the period from 28 June 2012 to 27 July 2012 Corkteck traded directly with Global in respect of the purchase of Dunns River Nurishment drinks with the value of that trade amounting, according to the invoices issued by Global, to £555,984. This is confirmed by Corkteck's bank statements which show payments being of £555,984 being made to Global. However, Global's bank statements show it received £555,952.47 from Corkteck.

Commission payments

355. On 29 January 2014 HMRC (Mr Foster) wrote to Corkteck. This 129 page letter (including enclosures) to which we referred in paragraph 226 above, noted that in interviews on 10 December 2003 with HMRC and 2008 with the police Mr Malde had said that he had little knowledge of SA.

356. However, Mr Foster wrote that he had viewed documentation connected to a commission payment to Global linking Mr Malde's home address to Global's Cypriot bank account at FBME. The commission payment had been made by a company, Huzar, which had made a commission payment of €1,725 to Global on 28 March 2012. The letter continued:

> "… I would therefore like a response from you as to your involvement with [Global], your role in the business, copies of the accounts of the company from when it was incorporated in Malaysia, copies of all business bank statements from the date the bank account was opened in Cyprus. Schedules of all purchases and sales from their date of incorporation. Details of any corporation tax paid by the company, to whom and when and copies of all related correspondence with any relevant tax authority.
>
> I have contacted Polish Customs and asked them to visit another of CORKTECK LTD's customers/suppliers, ADRENA SP ZOO (hereafter

"ADRENA") They have provided me with a large quantity of commercial material from ADRENA who I know are now the company in the supply chain that now sits between CORKTECK LTD and [SA]. According to ADRENA's bank statements ADRENA only buy from CORKTECK LTD, [SA] or CANNDOBEERS LTD and only sell to [SA], [Global] or CORKTECK LTD.

I have examined the copy sterling bank statements from "ADRENA" and note that between Jan - Dec 2012 there are 18 entries on the statement relating to [Global] – the bank account reference from the originating bank again has [Mr Malde's home address] as the account associated address. I would therefore like you to provide a credible explanation as to how your home address is directly linked to this bank account? A copy of a page from the ADRENA bank statement showing three of the eighteen entries. (partly redacted for confidentiality reasons is [**ENCLOSURE 11**].

The identical Cypriot bank account number also appears on 270 invoices from [Global] to a company called BEST BUYS SUPPLIES LTD (a UK company) during 2012 and 2013. I have calculated that average invoice value for these supplies is £22,348 per invoice using this sample. All of the invoices state that the account is held at the FBME Bank Ltd which is in Nicosia, Cyprus. The invoices identified run to over £6m [**ENCLOSURE 12**]. The identified invoice sequence between 31 July 2012 and 31 July 2013 is Inv numbers 299399 to 304849 respectively. A run of some 5,450 invoices. This indicates to me that [Global] has a turnover (estimated) of around £121.7m during this period based upon the above invoice sample.

Finally, I have a copy of a document obtained from the Ministry of Finance in Cyprus who have contacted the FBME Bank in Cyprus at the request of HMRC and confirmed that you, Parul Keshavlal Malde are the SOLE BANK SIGNATORY to the bank account held in the name of SINTRA SA at the FBME Bank in Cyprus. HMRC therefore hold irrefutable evidence also linking you directly to [SA's] bank account in Cyprus which indicates to me that you are in fact in financial control of the company [SA] [**ENCLOSURE 13**]

This directly contradicts almost every piece of information you have previously given in interviews with Police, HMRC and Judiciary with regard to your stated "arms length" relationship with [SA]."

357. The 2014 Report which responded to Mr Foster's letter of 29 January 2014 did not refer to the commissions paid to Mr Malde by Global which were not addressed until after he was presented with Global's bank statements at the PN160 interview. In relation to commissions, which he said in evidence he received from both SA and Global, saying that there was "never a Sintra SA and a Sintra Global" for him – "it was Pat's" and so far as he was concerned Global was a continuation of what she had in SA.

358. In addition to the payments of commission shown in the table below, all of which were paid into his Dubai bank account, a document issued by FBME on 31 March 2010, indicates that Mr Malde was also the beneficiary of a debit from SA's FBME account, dated 30 March 2010, in the sum of £237,680.94 which has the description "Commission 2009/10".

Date	Description on Bank Statement	£	Paid By
11/06/2013	Commission on Contracts	1,325,978.48	Global
21/03/2014	Worldwide Commission	378,137.51	Global
25/03/2014	Payment for Services Provided	250,075.13	Global

24/03/2011	Commission for 2010	341,075.84	SA
06/01/2012	European Commission 2011	376,448.89	SA
11/01/2012	Worldwide Commission	320,079.00	SA
	Total Commission Rec'd	2,991,794.85	

359. Mr Malde said that there was no formal arrangement with Ms Sounumpol in relation to commission. Rather they agreed that she would give him "a fair commission on anything you've got for us." Nothing was agreed as to the regularity of payment or size of the commission. With regard to which introductions resulted in a payment of commission he said:

> "I don't know which companies I was paid Commission for. I know which ones I introduced them to. Whether they traded after that, I don't know. If I had an introduction, if someone came to me looking for something that I couldn't give them, or something in Europe, I would say "speak to Pat, maybe she can help you." And they would speak and she would know it's from me, and if they did trade I would have got some commission, but I don't know who because I wasn't – it wasn't a figure to me. For me it was just like she was given me commission, I never asked for it. She goes "I'll give you commission", and I said, "Fair enough", and if I got something I got something. That wasn't why I done anything."

360. Although Mr Malde said that Ms Sounumpol occasionally contacted him to let him know she was sending a commission payment he did not always know if such a payment was being made and never knew how much commission he was going to receive. Mr Malde said was never expecting a payment and he was not looking for commission and had he not received any commission he said it would not have made any difference to him as he had his own businesses and making his money. He described the commission payments he received as, an "added bonus".

Amirantes

Formation

361. Although Mr Malde said that, following his interview with HMRC on 13 December 2013 (see below), he had been advised by Mr Simmonite to notify the "owners" of SA and Global that he would be contacting the bank to remove his name from the account he explained, in evidence, that he did not do so but contacted Ms Sounumpol and told her that HMRC were accusing him of trading as Global. He said that he had not simply contacted FBME to remove himself as signatory to the account because Global was not his company and he could not "just close someone's account with their money in it.

362. He considered that by doing this he had followed Mr Simmonite's advice to contact the owners (ie Ms Sounumpol) of Global who, rather than agree to him removing himself as a signatory to the bank account, had asked him to do "something slightly different." This was to establish, via Turner Little, another company with a bank account in a different jurisdiction to hold funds until they could be properly dispersed to the beneficiaries of the Allardice Foundation.

363. Mr Malde said that was not prepared to be involved in a successor company but that, having been advised by Turner Little that it was not possible for an account to be opened by the Allardice Foundation to hold the money itself, he agreed to the formation of a new company especially as Ms Sounumpol had told him that if he did she would close Global and that he would no longer be involved. He explained that although it was not his money he was still concerned as he understood that the money was an asset of the Allardice Foundation and it had to stay in the Foundation. He said it was when Ms Sounumpol:

> "… said to me "it has to stay in the Foundation, and that's what needs to be done", for me that was fine. It dragged on and on and she hadn't got another person to sign on the account, at that point I just said, "look I can't wait for you to do this, resolve this any longer, it needs to be moved", which is when I went and got the company sorted."

364. Mr Malde said that he told Ms Sounumpol that the new company could not be a trading company while his name was "on there". When asked what the new company was being set up for, Mr Malde said it was to hold the funds for the Allardice Foundation and that he would not let Ms Sounumpol trade through it or provide her with the details to do so until he was "totally disassociated with it", saying that he, "wasn't going to let her use that company with my name on it, like she has with Sintra."

365. A Turner Little "Task Sheet" dated 11 February 2014, the client being Mr Malde, records that:

> "The following bespoke corporate services had been ordered:
>
> - Strike off Panama Company "Sintra Global Inc" and remove nominee directors (NB the foundation owner of this company will continue to exist."

Mr Malde confirmed that he had given Turner Little this order and also the following instructions, as recorded by Turner Little, also on 11 February 2014, as a "client enquiry":

> "Client called for new company incorporation to be owned by his existing Panama foundation and which will be involved in his international based trading within the food and drink wholesale industry. The company will sell many major brands including coca cola on a wholesale basis throughout the world and the client has been utilising several other companies (some formed by TL) to provide the same and similar services for many years. The client wishes to use a Seychelles company because it offers him privacy and has less red tape than EU companies."

366. Although he said that he had told Ms Sounumpol that he would not allow the new company to trade Mr Malde said that he told Turner Little that, ultimately that company would probably do the same thing as a "replacement" for Global. With regard to using a Seychelles company Mr Malde said that it was not his choice but suggested by Mr Nicholson of Turner Little and that he, Mr Malde, did not know why it had been suggested. He said he was not "bothered" where the company was registered.

367. Turner Little documents relating to the incorporation of Amirantes include an anti money laundering check by the compliance department which was signed by Mr Nicholson on 19 March 2014. In relation to the classification of risk, the check notes that the product sought, a Seychelles offshore company formation (including bank) – Amirantes, as an offshore company will provide the client with privacy services and is "therefore falling into the higher risk category."

368. Under the "Action" section of the form it is recorded that the:

> "Client is visiting the office on Thursday so we will be seeing him face to face and he has been to the office on a number of occasions previously. Request certified ID although we will be certifying it anyway when he comes in. Please also request a banker's reference from his existing bank FBME to evidence his previous trading within the sector and check the business activities of the company on bank forms against my notes and also look at the suppliers named on the bank form."

Mr Malde agreed that the bankers reference was in relation to Global's FBME account.

369. However, it appears that a bank reference had already been requested by Global as, on 19 March 2014, Turner Little had received a letter, dated 14 March 2014 from FBME to confirm that Global, a company incorporated in Panama had maintained an account since October 2011 which had been "properly conducted" to the satisfaction of the bank. The letter also confirmed that as at 14 March 2013 Global had not liabilities to the bank. The letter continued:

> "According to our records Mr Parul Keshavlal Malde, is the sole beneficial owner, and sole authorised signatory on the above company's account."

370. In evidence Mr Malde said that he would have been surprised that he was still the sole beneficial owner and sole authorised signatory of the account as he had understood that the Allardice Foundation was the owner of Global and that Ms Sounumpol would have used the documents he had given her to change this.

371. As stated in its certificate of incorporation, Amirantes was incorporated in the Republic of Seychelles as an International Business Company on 24 February 2014. Also, on that date the nominee director and secretary, Genevieve Yolande Pennill, in a declaration of trust acknowledged and declared that she acted as director and secretary of the company as a nominee trustee for Mr Malde who was granted a power of attorney by Amirantes.

372. Further documents, signed by Ms Pennill but not dated, include the minutes of a meeting appointing Mr Malde as a director of Amirantes with Ms Pennill presenting a letter of resignation to be effective at the close of the meeting. As such Mr Malde could rely on these to documents for his appointment as director of the company. A further document, of which Mr Malde said he was unaware, confirmed that in 2014, Mr Malde was still the beneficiary of the Allardice Foundation.

373. On 19 March 2014 Turner Little wrote to Mr Malde at his home address regarding Amirantes. Enclosed with the letter was a copy of the Certificate of Incorporation, copies of the Memorandum and Articles of Association and a copy of the Share Certificate for him to retain. Also enclosed was a "Director Indemnity and Warranty Letter" for him to sign and return to Turner Little.

374. The letter explained that, in accordance with Seychelles company legislation, Amirantes was required to have a registered agent and registered office situated in the Seychelles but that the company could engage in "any lawful act, conduct business, and hold offices worldwide." The letter continued:

> "<u>Ownership and Directorship</u>
> The units of ownership in Amirantes International Trading Inc are registered shares. The authorised share capital of the company (the allowance of shares that can be issued during the company's lifetime) is five thousand shares of US$1.00 each. Upon incorporation, one share in the company was issued to your existing Panama Foundation: "The Allardice Foundation"
>
> <u>Directorship:-</u>
> As per your request, an overseas company Director has been appointed on Amirantes International Trading Inc to maintain the records of the company in accordance with Seychelles company legislation, and to direct the company in accordance with your wishes. The Indemnity & Warranty Form for this service that (enclosed for your signatures) will ensure that the Director can direct the company in accordance with your requests. The power of attorney document for the company is currently being drafted by the Director and will be provided to you as soon as it becomes available.

> In the event that you would wish to be appointed on the company in succession to the current director, this can be arranged upon request. At such time the director would tender their resignation from the company immediately and simultaneously appoint you in their place.
>
> Corporate Bank Account Application
> A member of our banking department will provide you separately with the application forms for the company's business bank account. When we are in receipt of the completed forms and the documentation requested therein, both the bank application and company documents will be submitted to the bank to open the business account.
>
> Should you have any queries regarding any aspect of the company incorporation, please do not hesitate to contact us. Should your query relate specifically to the company's business account application, please contact David McIntyre in our banking department."

375. Mr Malde was unsure whether he had given the Amirantes documents to Ms Sounumpol as he had done with SA and Global. He accepted that if that was the case then he could not have passed control of Amirantes to Ms Sounumpol. However, he said that Amirantes was the Allardice Foundation's company and as Ms Sounumpol and her associates were the beneficiaries of the Foundation they would therefore "own the company."

Bank Account

376. By a resolution signed by Ms Pennill, which took effect from 19 March 2014, the Board of Directors of Amirantes resolved to:

(1) Open a corporate bank account in the name of the company with EPB; and

(2) To appoint Mr Malde as the authorised signatory of that account "to do in such capacity whatever may be requisite and necessary under the circumstances herein described as fully, including but not limited to: signing all required account opening documents, to all intents and purposes as might be done by any officer or officers of the Company."

Mr Malde said that the purpose of the bank account, indeed the sole purpose of Amirantes, was to hold the money until Ms Sounumpol had decided where she wanted it sent. If she wanted to trade through the company he would not allow it until such time as he was "completely off" the record.

377. A completed "Confidential Bank Account Pre-Approval" form records Mr Malde as the "primary account contact" and the name of the company is Amirantes. It also gives a date of March 2014 for the beginning of business operations.

378. In addition, the form contains the following description of the business of the company written in Mr Malde's handwriting:

> "Wholesale of food and beverages in Europe and globally. We trade in container loads of branded items eg Coca-Cola, Cadburys, Stella Artois. Both duty paid and in bonded warehouses. Most of our deals in Western Europe although we do occasionally import from Middle and Far East. We are known within the industry and have an existing customer and supplier base."

Mr Malde said that he had written this because Mr Nicholson of Turner Little had told him that the bank would not open an account "just to hold money" and that the company "has to be a trading company to open the bank account so put down something." He therefore "put down" what Global did and SA had done. He accepted that it was "possibly" misleading but said that he did what he was told to do by Turner Little.

379. Mr Malde had also written on the form that Amirantes had two employees in Malaysia – which was because Ms Sounumpol was in Malaysia and he assumed that she had someone with her. Added in a different hand was that the company would have one employee in the United Kingdom. Mr Malde thought that this was because it was necessary to include himself as a signatory on the account and because his home address had been included in the "contact" details on the form.

380. Also included in Mr Malde's handwriting under "Name website/contact details key customers and sources of income" is Global and details of its website. He explained that these were included as that was where the funds, ie the balance in Global's FBME account, were coming from. He had also included Adrena as a "key supplier" and £1.2 million as "outgoing payments" saying that he had filled in the form in a "certain way" as instructed by Turner Little, who were the banks agents, and "didn't have any second thoughts about it."

381. On 26 March 2014 David McIntyre of Turner Little sent an email to EPB. The email, to which a pre-account questionnaire was attached, explained that the registration of Amirantes had been completed and that he looked forward to receiving:

> "… log in information and uploading the bank account contract and source of funds declaration and supporting documents."

382. On 28 March 2014 a further email was sent to EPB by Turner Little to say that Mr Malde had been advised to expect a call. The response from EPB stated:

> "Ashe just spoke to Parul and all looks good. He did however mention that the client will be funding the a/c with $2.5 million from a company that he is also a beneficial owner of "Sintra Global Inc.". The client mentioned that he has sent you some documentation to verify the relationship between "Amirantes International Trading Inc" and "Sintra Global Inc." Can you please send on these documents to us for compliances sake?
>
> And in case compliance requests additional documents, perhaps you may also want to tell the client to prepare this additional paper work too."

However, in evidence Mr Malde said that he had no recollection that he had been asked to send any additional paperwork to EPB.

383. On 6 May 2014, an email was sent from EPB to Turner Little to advise that Mr Malde "now has an active account" and that he had been notified of this.

384. On 13 May 2014 Mr Malde sent the fax to FBME (to which we have referred above at paragraph 252) requesting the closure of Global's account and the transfer of the closing balance of £2,733,265.84 to the EPB account of Amirantes.

385. On 15 May 2014 £100,000, described as a down payment for sunflower oil, was transferred into the Amirantes EPB account from the account of Adrena. A further £795,000, described as "payment sunflower oil" was also transferred from Adrena into Amirantes EPB account on 19 May 2014.

386. On 20 May 2014 £2,733,265.84, the closing balance of Global's FBME account was transferred in the EPB account. However, on 24 June 2014, Amirantes received an email from EPB with a statement showing the balance which did not include the £795,000 or the £2,733,265.84 which had, the EPB email stated, been "returned to sender". Mr Malde said that he probably would have forwarded this email to Turner Little.

387. A Turner Little "Client Enquiry" form dated 9 June 2014 records that Mr Malde called Turner Little in relation to the arrangement of an overseas bank account in Seychelles for

Amirantes explaining that the "client" requires a new account as his existing EPB account has been closed.

388. A Turner Little "Task Sheet" also dated 9 June 2014, noted that the:

> "… following bespoke corporate services have been ordered".

These included a Seychelles Corporate Bank Account, Certificate of Good Standing, Apostille Company Documents, Foundation Apostille and Identification Documents for individuals associated with the Foundation. Mr Malde confirmed that he had paid for these services which had cost £1,469.29.

389. In evidence, Mr McIntyre of Turner Little reported that he had been told during a telephone conversation with a Senior Banking Consultant of EPB, Ashe Whitener, on 17 June 2014, that he, Mr Whitener, had closed the bank account for Amirantes because Mr Malde had told him during a telephone conversation that:

> "… he had to get his money out of the FBME bank account as the UK authorities are after him".

Mr Malde denied he had said this to Mr Whitener but had told him that there was an issue with the United Kingdom tax authorities. He assumed that Mr Whitener had paraphrased what he had been told and that this had then been misinterpreted by Mr McIntyre.

390. However, the conversation with Mr Whitener led Mr McIntyre, who had previously completed a Turner Littler Compliance Department anti-money laundering check classifying the risk as "high", as "the client lives in the UK and is associated with several offshore companies and banks", to complete a report to Mr Turner and Turner Little's Money Laundering Report Officer who referred the matter to the National Crime Agency ("NCA") on 18 June 2014.

391. On 25 June 2014 Turner Little requested clearance from the NCA to continue to assist Mr Malde in opening a corporate bank account for Amirantes in the Seychelles. Consent to continue was given by the NCA, under Part 7 of the Proceeds of Crime Act 2002, on 27 June 2014.

392. On 24 September 2014 Turner Little sent a corporate account application on behalf of Amirantes to BMI Offshore Bank Limited ("BMI Bank") in the Seychelles enclosing documents including an Indemnity, Business Description, Board Resolution, certified copy of Mr Malde's passport, Mr Malde's CV and certified copy of his bank statement, certified copies of the Certificate of Incorporation, the Certificate of Good Standing, the Memorandum and Articles of Association and the Allardice Foundation Declaration of Trust, the Register, the Minutes and a notarised set of documents for CL Corporate Services Incorporated and the individuals associated with the company.

393. When asked whether he had had discussions with Turner Little regarding this account Mr Malde said:

> "Not specifically this account. As I said after the [EPB] account got closed Turner Little got back to me and said "look, the account's been closed and we need to open another account for you". From recollection, …, I went back up [to Turner Little] and I filled some more forms out with – it wasn't Rob Nicholson at that time, it was David McIntyre I think by that time. Rob had left, or was about to leave soon – and I filled some more forms out with David McIntyre, and he went through – I can't recall which bank it was, or whether there was more than one bank, but he went through the forms again, and got me to sign through them and got me to fill out whatever information was

> needed at the time. So I was aware that they were making applications to other banks, yes."

394. Mr Malde said that he was told by Turner Little, as he had been in relation to the EPB account, that in order to open an account the company had to be trading. To that end he had signed a letter of introduction to BMI Bank from Amirantes, which he said had been drafted by Ms Sounumpol and sent to him as an attachment to an email which he had not retained. The letter stated:

> "We [Amirantes] are an international trading company that specialises in bulk sales of food and beverages. We purchase goods all around the world and supply mainly to the European markets although we are able to deliver goods anywhere in the world. Our trade is mainly in branded goods such as Stella Artois beer, Fosters lager, Budweiser lager, Coca-Cola products, Blossom Hill Wines, Heinz products, Napolina tinned tomatoes to name but a few. We also purchase non-branded goods, especially when we buy in bulk shipments such as vegetable oils."

He agreed that, given his explanation for forming Amirantes, the letter was "probably misleading to the bank" but that was what he had been told to do by Turner Little and that he "was in their hands."

395. An email of 17 October 2014 from Turner Little to Amirantes requested further information from Mr Malde that had been requested by the bank. This included supporting documentation for the initial deposit:

> "… to prove the source of the £2,840,000 initial deposit"

It also included proof of Mr Malde's address and specified corporate documents. Mr Malde initially said that he thought the email had been forwarded to him by Ms Sounumpol but confirmed that this may have not been the case as he did have access to Amirantes email account which had been provided to him by Turner Little.

396. However, Amirantes did not open an account with BMI Bank and, as an alternative, on 23 December 2014 in an email to Amirantes, to which Mr Malde had access, Turner Little attached a pre-account questionnaire which had been pre-populated for Mr Malde to consider in respect of an account at Mediterranean Bank ("Med Bank") in Malta.

397. The Med Bank "Account Opening Information Questionnaire" included Mr Malde's home address as the company's correspondence address and a declaration that Mr Malde was the "ultimate beneficial owner" of Amirantes. Mr Malde, who had paid all the necessary fees in relation to this application, said that this was "incorrect" as he was not the owner of Amirantes. The Account Opening Questionnaire also included a telephone number that Mr Malde did not recognise but thought that it may have been that of a car phone that he had used at one time. However, the application did not come to fruition and Amirantes did not open an account with Med Bank.

398. An application form for an account for Amirantes at Baltikums Bank was signed by Mr Malde on 2 June 2015. Mr Malde's name was included on the form as the "Client's contact person" and his relationship to the client, ie Amirantes, was stated to be "signatory and UBO" [ultimate beneficial owner].

399. The Baltikums Bank application form contained a declaration that Mr Malde was the 100% beneficial owner which Mr Malde said was incorrect. However, he was unable to say whether he or Turner Little had completed the form or whether he had signed it in blank. However, he agreed that he would have signed the form with the declaration if that was what Turner Little had advised him to do as he had:

> "… never gone against what they said, because they are, in all intents and purposes the bank's agents."

400. As with BMI Bank and Med Bank, Amirantes did not open an account with Baltikums Bank. Mr Malde explained, in evidence that he understood that the balance in Global's FBME account had been transferred to Amirantes EPB account but had been returned. After that his understanding was that the Seychelles account had been "ready to go" there was:

> "… all of a sudden some problem within the bank or within the Seychelles and then stopped opening bank account for a while."

Mr Malde was unable to remember what had happened to prevent an account being opened with Med Bank but recalled that FBME had been under investigation in America and the bank itself, "got seized" with the result that no money could move from there.

Dunns River Worldwide Incorporated ("Dunns River Worldwide Incorporated")

401. Although not addressed in any of his witness statements, in evidence Mr Malde said that Ms Sounumpol had asked him to establish another company "in the same scenario" as SA, ie incorporated in Belize, but that it was to be called Dunns River Worldwide. Although she did not give Mr Malde any further details he understood that it dealt in Dunns River Nurishment but could not recall being told by, or asking why, Ms Sounumpol wished to form a company with this name.

402. He nevertheless made a request to Turner Little who formed the company and arranged for it to have an account with FBME with the first credit to the account being a transfer of £2,000 from SA on 22 January 2009. However, other than service, "hold mail" and debit interest charges, there was no activity on the account which was closed, with a credit balance of £1,241.24, on 1 January 2014. Mr Malde said that he had assumed, on the basis of a conversation with Ms Sounumpol, that the company had been closed "a long time before that."

403. Although Mr Malde could not recall, he assumed that as "it was a similar set up" to SA, he probably was a director of Dunns River Worldwide. He said that, as with SA and Global, he had handed all of the company documents he had received from Turner Little to Ms Sounumpol shortly after its formation. His assumption was confirmed following the request by HMRC to the Cypriot tax authorities, made on 12 March 2014 (see above), for information relating to banking matters concerning Mr Malde which elicited the following response:

> "Parul Keshavlal Malde is the director, signatory and the ultimate beneficial owner of DUNNS RIVER WORLDWIDE INC, …, with correspondence and registration address …, Belize City, Belize and business address … Weimar, Germany."

The Belize and German addresses being the same as those of SA as stated on its FBME account application form.

Operation Rust

404. Operation Rust concerned the criminal investigation leading to the trial and conviction of Kevin Burrage, Gary Clark and others.

405. A Press Release issued on 10 February 2012 by HMRC states that:

> "A criminal gang has been jailed for one of the biggest ever alcohol smuggling frauds ever uncovered in the UK. The scam was worth £50m a year in unpaid duty and VAT and allowed the gang members to spend recklessly on high performance cars and luxury properties throughout Europe.
>
> Gang ringleader Kevin Burrage, 49, owned Prompstock Ltd, a bonded warehouse in Essex. His brother-in-law, Gary Clark, 55, managed the

warehouse which the pair used to import and export alcohol without paying a penny in tax.

The gang bought household branded beer, wine and spirits from bonded warehouses in France and imported it duty free into the UK, destined for Prompstock. Once safely through customs, the alcohol was illegally diverted to locations around the UK where it was sold on without duty being added.

The gang also reversed the fraud by appearing to send trucks to France loaded with non duty paid alcohol. The alcohol actually remained in the UK and was sold on, again with no tax added. To avoid detection, the gang sent empty trucks to the continent, several of which were intercepted by UKBA officers.

Accomplice Michael Turner owned Keytrades (Europe) Ltd which provided a seemingly legitimate cover for movements of the alcohol consignments. Davinder Singh Dhaliwal operated as Burrage's righthand man, organising the delivery of large quantities of alcohol ready for distribution. Following a covert surveillance operation, the gang was arrested in a series of dawn raids by HMRC officers in November 2008."

406. In addition to Prompstock Mr Burrage also owned York Wines. The Prosecution's Opening Note for the Operation Rust trial provides a more detailed description of the fraud. From this it is clear that Mr Burrage, via York Wines, was engaged in substantial and sophisticated inward and outward diversion fraud. It was a feature of the fraud that false invoices were being created in relation to purported transactions and false records were made, using bogus stamps, showing the receipt of goods in bonded warehouses.

407. York Wines was, as we have observed, a major supplier of alcohol to SA. The sales by York Wines to SA did not feature in and were not part of the Operation Rust prosecution. However, evidence was obtained through probes placed in Mr Burrage's car and at Prompstock's warehouse.

408. Examples of such evidence are set out in the table below (with emphasis added):

Date	Probe Recording
07/02/2008	KB [Kevin Burrage] asks person if they have got 20-30 from bank today. KB talks about someone being honest and paying him. **KB talks about having 20 loads in the bond and starting to use them**. KB on a new call talks to someone about prices they need and mentions Glens is 1050 bottles/1250 litres
04/04/2008	Gary Clark speaking about Kevin Burrage making a loss in deals he sells to Bruno: "he said on the recently as people have all got in troubles financially and all that not that they basically haven't really just been keeping an eye on the finances … Because they're, they're, you know, to start with in a lot of it, especially with the euro, you know, you were having to pay French duty, and pay this in France, and when the old, I mean years ago when the rate was two euros to the pound … well these people are still working on the assumption that in France it's costing 'em three grand sort thing … and where they might be working (coughs) like £1,000 worth of profit, like Kev works on £500 on a load … but what he's not taking into consideration is the euro increasing…he hasn't really been earning the 500 quid that he thought he was earning, he's only been earning 300 … because the difference in the euro has eaten away at his profit …. And that's what happened to everybody you know? I mean they have, people obviously have made a lot of money out of it, but the, in the last year the euro's been

	affecting 'em and a lot of 'em just haven't realised … people sold beer and then really, and sold it for, well **Kevin sells it to Bruno over in, but he buys it in France and sells it in France, er Stella for £13.10p, and er … he like said, I've lost money on that selling it at £13.10, and he sells it to Bruno, and he said to Bruno, you know, I've got it, you can 'ave it, he said, but you can't 'ave it at that price. Oh you know, you're getting too fucking, he said, I'm not too dear, he said, no you can't, he said, with the Euro you can't buy it for that anymore … he says … I'll lose, I'll lose money at it**"
16/04/2008	Kevin makes a call: "Hi mate, yeah, you? No why? I don't know, not as far as I know, I can phone Gary. Mate I've got, I've got one of my suppliers, my Irishman's now got the bank onto him saying that I should put up a winding up order on York Wines, yeah saying they should put a winding up order on to me. I just don't know what to do (sighs). Can't, must be able to get a company that can lend me money and then pay them back, I know it don't, it doesn't make sense does it? Not going anywhere (*inaudible*) I owe about seven hundred all the time, don't I? but if I want, cos it's all December and January and they're saying right, over ninety days or they put a winding up order on me. They're not paying me are they? **No fuckers paying me. Can't just survive on Bruno can I?** I get one, I've got, I get one week, I have to pay five grand, any money I make I'm losing on the solicitors anyway so I can't pay anyone off anyway, well I don't know (*inaudible*) let me just check with Gary…I should imagine it would be Bryndawn wouldn't be a problem wouldn't it? Does he pull out of Bryndawn?
12/05/2008	Kevin on a call (continuing conversation): "(*inaudible*)… is paying slowly, he is coming down but very, very slowly, it's not coming down quick enough … we had some good news about that today Alan Ducksworth, Ducksbury, do you know of an Alan Ducksbury? Yeah he's being charged now been brought to Court which is bad err there's a case going against him, there's a case against him now and he was, he was erm one of my customers he was threatening like saying that I was bad person and all that so that will all come up so it won't be a bad thing so err that's a good thing … I put in the company has made no profit (*inaudible*) the accountant making no profit for the last year, putting in all bad debt and I've put all bad debt in and I can claim three hundred thousand pounds back that I've paid … and then what with the Irishman getting on the phone and having a go because like he's saying I've given you more stock than what you're paying, I've got Herschel on the phone every five minutes, you're a month behind … I can't cos if I give him any of the money that I've got to play with I definitely won't be able to pay anyone. **The only person paying me is Bruno**. Yeah I mean Tak has given me little bits but it's not enough to make a big…
20/05/2008	The following coincides with the timing of a call made by Kevin Burrage to a mobile telephone number ending 8800 which HMRC contend, and Mr Malde denies, belonged to Mr Malde - Kevin (on phone): "**I've def got one and one in ED. Do you want to just release to Sintra and ED … that's all my profit gone, fucking hell … no forget it … fucking hell … Carling or Stella … I've got loads of Carling … Global or ED … you want it delivered to Global … ok … yeah …(***inaudible***) thanks mate**"

23/09/2008	Kevin on the phone to Diana, talking about Leon coming round tonight, possibly to fix the computer. **Kevin on the phone, mentions having sent Bruno 11** and talking about Omar, possibly sorting out a meeting, talking about getting a Blackberry for his emails. On another call, mentions G101 and talking about something being done wrong and mentions invoice numbers. Kevin seems to then go onto a second call but still talking about the same invoice numbers, mentions Bubbles and clearing something tomorrow and asking for an invoice that gets them right up to date.
29/09/2008	15.58-16.18 ... He states that they do not need another 40/50 grand tax bill at the moment. He then states 'Even if they drip, they all drip 5, 10 grand a week that'd be (*inaudible*). I don't reckon we'll be 3 million, might be (*inaudible*) I reckon a million'. He says it'll be this time next year before they level. He makes mention of someone owing money and says he'll be lucky if it's down to 'a hundred' by Christmas. He states he's lost '250' with the bankers but wants to get '250 in there' plus has '100' coming in from a load, which will be money they wouldn't have had; he states if they keep Elbrook doing what he's doing then this would get Rick '350'; **he could hopefully get up to '200' out of Bruno re. the deal**; he got another one that's got '50'; he therefore hopes to get '800' if he can. He makes mention of people all being in the same boat and not buying any property. He then says their Hummer vehicle has got to go to auction 'and whatever we get for it is what we get for it'. He states he thinks it is Craig who has 'blabbed and that's why he said nick money off him. **He states Bruno owes him half a million**. He states he was 3 months behind with Rick, owing '700', and is now is down to 3 weeks but as Rick is not getting paid he's taking it out on everyone else.
04/11/2008	Kevin (on phone): "Alright thank you … no, just uhm yeah not bad, I've got meetings today. **I just can't do it at the moment Bruno, as much as I want to I haven't got enough money to do it. Unless you've got like fifty grand to put in to start it off, I can't do it … I'm doing … because of the money situation isn't it**, you see … if I had the money I could do it but the other man just messed me up something chronic, I can't do it … yeah I know sorry … I think he owes the whole world money, he's not a good man at all, terrible man … hmmm … I'll swap the amount any day of the week … so where's all the money … Where's all his money … all the people that got him there, he's just fucked … well take that, with the profit, there's a lot of difference isn't there … no I know, I can't invest any more at this stage, not …"
10/11/2008	Kevin Burrage taking about a court hearing relating to '105' which HMRC contend is consistent with £105,000 being seized from himself and Darren Curtis which could be linked to Mr Malde – Kevin (on phone): "Alright mate … yeah just getting organised (*inaudible*) just off to a meeting… it's the 10th day isn't it … We've got this pre-trial hearing for the 105 haven't we. Well hopefully Tim's going, I'd be upset if Tim doesn't go because this really is where they give the evidence. They haven't even interviewed me on this 105 … (*inaudible*) … bond and do some releases and sort myself out … oh yeah have to then … he ain't gonna pay that eighty grand … (*inaudible*) **I was wondering whether we've got to go and we've got to chat** [to] **Bruno as well … cos I don't want him to find out through the grapevine you know ... I'll go to see him face to face. I'll just go and say (***inaudible***) 'it was a good proposition but the police are moving out now it's not and we're not risking it'**…

12/11/2008	Male mentions Pinky and a warehouse where all the lorries are going now. Kevin mentions **Bruno being his own boss and having his own place in Park Royal, on an industrial estate with his own men.**

409. Although there is a reference in the 4 April 2009 conversation to sales of Stella to "Bruno" for £13.10 [a case], the deal documents for SA show that York Wines supplied SA those goods for £11.45 per case in July 2007 with similar prices for supplies to Galac and Golden Apple.

410. HMRC also contend that the SMS messages, sent from the mobile telephone number ending 8800 to Mr Burrage in January 2008 (which we have set out above in paragraph 293) were orders for Galac sent to him by Mr Malde. Mr Malde denied that it was his telephone number, that he had sent those messages or that he was the "Bruno" referred to in the probe evidence.

411. The prosecution's opening note for the Operation Rust trial describes, under the heading "Luton", how, on 29 October 2008, HMRC officers on an inspection of the lower deck of a P&O ferry, *Pride of Kent*, which was sailing from Calais to Dover observed a tractor and trailer. Documents, including a CMR, showing the load was of Fosters and Carling Black Label and identifying the haulier (T Markham) and consignor (Jacobs and Koch), had been placed on the dashboard and were visible to the officers who took photographs of the documents and vehicle. Although not visible on the photographs, the officer who took them was able to read part of the address and postcode which indicate that the destination of the goods was Prompstock which, as HMRC's 10 February 2012 Press Release states, is a bonded warehouse in Essex owned by Mr Burrage.

412. Following disembarkation the lorry, which was kept under observation by HMRC officers, did not travel to Prompstock but to an industrial estate in Luton where it stopped outside the first in a row of industrial units. At the same time a white Mercedes van stopped outside the same unit. Two men were seen next to the trailer and after the trailer curtain was pulled aside one of the men was then seen pulling stickers of the pallets to remove the rotation numbers used to identify the provenance of the goods. After the Mercedes van left the scene the HMRC officers observed a forklift truck unloading pallets of lager from the trailer and taking them inside the unit. Once complete the lorry left the industrial estate in the direction of the M1.

413. It was during Operation Rust that HMRC obtained the print-outs of the SAGE records of York Wines which subsequently formed the basis of the assessments and penalties, the subject matter of the present appeals.

Operation Banjax

414. Operation Banjax involved, as Ms Myers described it, "a sophisticated joint enterprise" by certain individuals and others, who were also involved in the laundering of in excess of £87 million, to defraud/cheat HMRC of VAT payable in respect of transactions between a series of companies in the wider context of the large-scale movement of smuggled alcoholic drinks. It led to prosecutions of the 14 individuals concerned.

415. There were two trials, the first took place at Southwark Crown Court between February and May 2019 and the second trial, also at Southwark Crown Court, between June and July 2019. These resulted in convictions for ten of the individuals concerned with the other four being acquitted.

416. The convicted defendants set up and controlled at least 19 purported United Kingdom alcohol buffer traders including Alexsis and Hobbs. The defendants ran a "paperwork factory" manufacturing mainly paper transactions the purpose of which was to clean the smuggled

alcoholic stock and make it look as though it had been purchased legitimately from the first company in the manufactured supply chain. The Operation Banjax OCG then laundered the proceeds of the diverted alcohol back to a number of overseas entities including Global via Alexsis and Hobbs.

417. A flowchart of money movements between January 2103 to January 2015, produced by the HMRC case officer for the Banjax criminal trials to assist the jury with the period of time that had been selected by the prosecution (which we have not reproduced in this decision), shows that during this period the OCG transferred £37,511,476 to United Kingdom companies and £49,950,652 to overseas companies which it had received from cash and carries. The flowchart illustrates that the cash and carry customers paid their OCG suppliers the invoice total following which the funds were transferred via complicit entities and then paid out by the OCG, minus the commission that they retained.

418. The money paid by the OCG was, during the indictment period, made through the accounts of Hobbs Close and Alexsis and others and went to overseas or United Kingdom entities "badged as bonded transactions." The accounts of Hobbs showed a throughput of £24.8million, being funds from Golden Harvest and Eurochoice. The Alexsis accounts showed a throughput of £18.2 million.

419. A schedule of the banking transactions of Hobbs, prepared by HMRC officer Michael Newman showed credits from the United Kingdom based purchasers of alcohol being paid out by Hobbs on the same day, not to the purported United Kingdom suppliers of alcohol, but to the eight companies supplying in the underbond transactions – Gold Dust Drinks Limited, Surf Management Limited, Westend Wholesale Limited, AA Europe Limited, Fleximo Limited, Global, Spritzer Limited and GV Distributions Limited. Hobbs received no payments from CCN its "customer" in those deals. Mr Newman agreed that he would not expect to see any payment to Hobbs if the goods acquired in the EU were smuggled into and sold in the United Kingdom rather than having been bought by CCN in which case he would not expect to see any payments from CCN.

420. The judge in the "sentencing remarks" at the conclusion of the first Banjax trial observed that:

> "The offending took place in the wider context of the large-scale movement of smuggled, that is, non-duty paid, alcoholic drinks, mainly wines and beers onto the open market through outlets which have been generically described as cash and carries – the so-called grey market in such goods. Inherent in that trade is the evasion of very substantial quantities of excise duty; but none of you is said to have been involved in that side of the business. The fraud which you carried out in effect provided a service to those involved in the wider activity while at the same time generating a second source of unlawful profit by cheating the public revenue of the VAT properly payable on the transactions between the companies which you ran, whether they were genuine transactions or, as seems now to be broadly accepted, mainly paper transactions the purpose of which was, in the words of Sarah Macdonald, the officer of HMRC who acted as the Officer in the Case "to clean the stock and make it look like it has been purchased legitimately" from the first company in the chain."

He continued:

> "…payment, instead of being relayed back down through the companies involved in the supply chain would be diverted into third party companies and then onward to entities in the UK and overseas with no apparent connection with the original supply. In this way a total of just over £37 million were

channelled to entities in the UK and fractionally under £50 million to entities overseas, notably in Hong Kong, Cyprus and Dubai"

421. One the entities in Cyprus to which the judge referred, was Global, the main overseas recipient of laundered money from Operation Banjax.

422. As part of the Operation Banjax investigation the computers and mobile telephones of the defendants were seized and their contents analysed leading to the discovery of the blank invoice templates, which contained on a memory stick in an excel format, which appeared to show a trail of sales transactions of non-alcoholic goods between Global, Alexsis and Hobbs and their purported customer CCN Nord. Also found were blank invoice templates, contained on a memory stick in an excel format, for the sale of non-alcoholic goods between Universe and Corkteck as well as text messages between the Operation Banjax defendants requesting due diligence documentation for Global.

423. Cash book and spreadsheets detailing the amounts those involved in the Operation Banjax fraud had paid to Global and other overseas entities were also found as part of this process. A schedule which was found at the address of Horizon, a company of which one of those acquitted in the second Banjax trial was a director, match payments being made to Sintra from Hobbs. Spreadsheets were also found at the address of Horizon showing Park Royal paying a 3% commission to the perpetrators of Operation Banjax for their services as well as evidence of Park Royal's purchase price and that of the traders earlier in its supply chains, being pre-determined, consistent with it using Operation Banjax false paperwork services.

424. In addition evidence was found which HMRC contend is of Park Royal (Mr Malde's company) using Operation Banjax to launder money or using their false paperwork services. This is predicated on SMS messages being sent from the mobile telephone number ending 1608, the number attributed to Mr Malde by HMRC on the basis of a text saying, "Bruno new number" (see above,) which was sent to an Operation Banjax defendant Divyesh Karsan of Golden Harvest detailing amounts of money which, notwithstanding Mr Malde's denial that he used a mobile telephone with that number, did coincide with payments made from Park Royal to Golden Harvest:

425. An SMS message, "paid £115,499.88 today", was sent from the mobile telephone with the number ending 1608 on 20 March 2012 to Mr Karsan of Golden Harvest. Further SMS messages from that number (ending 1608) to Mr Karsan are set out in the table below:

Date	Text
28/04/2012	Paid £69,963.84 today
16/05/2012	Paid £184,837.92 today
03/07/2012	£201,903.12 paid yesterday 02/07
09/08/2012	£114.367.30 paid today
31/08/2012	Paid £129,544.08 today
24/10/2012	Paid £110,084.14 today

426. On 22 November 2012 an SMS message. "Bruno new number" was sent to Mr Karsan from a mobile telephone number ending 5318. Mr Malde accepted that this could have been a "burner" mobile telephone (ie one used for a short while before being disposed of and replaced with a new handset with a different number) but said that he had not sent the messages and the mobile telephone from which they were sent was not his.

427. Deal documents uplifted from Horizon Wines contained in several lever arch files included the following Golden Harvest payment receipts in relation to cash payments from Park Royal:

(1) Receipt dated 20 March 2012, which was signed by Mr Malde as "payer" and the director of Golden Harvest, records that three invoices in the total sum of £115,499.88 was paid in cash. Mr Malde said, in evidence, that he had made the cash payment but that he had not sent the SMS message of the same that stating that £115,499.88 had been paid;

(2) Receipt dated 27 April 2012, which was signed by Mr Malde as "payer" and the director of Golden Harvest, records that two invoices in the total sum of £69,963.84 was paid in cash. Mr Malde agreed that he had paid the cash to Golden Harvest but denied sending the SMS message, shown the table above, on 28 April 2012 saying, when asked, that "wouldn't need to tell anyone because I paid Divyesh [Karsan] and he signed for it. Why would I be sending a message?";

(3) Receipt dated 2 July 2012, which was signed by Mr Malde as "payer" and the director of Golden Harvest, records a payment in cash for five invoices in the total sum of £201,903.12. Mr Malde accepted he had made the cash payment but denied sending the 3 July 2012 SMS message stating payment had been made the previous day;

(4) Receipt dated 9 August 2012, signed by Mr Malde as "payer" and the director of Golden Harvest, records a payment in cash for three invoices in the total sum of £114.367.30. Mr Malde accepted he had made the cash payment but denied sending the SMS message on the same day;

(5) Receipt dated 31 August 2012, signed by Mr Malde as "payer" and the director of Golden Harvest, records a payment in cash for three invoices in the total sum of £129,554.08. Again, Mr Malde accepted he had made a cash payment in that amount but denied sending the SMS message on the same day; and

(6) Receipt dated 24 October 2012, signed by Mr Malde as "payer" and the director of Golden Harvest, records a payment in cash for three invoices in the total sum of £110,084.14. As previously, Mr Malde accepted he had made a cash payment in that amount on 24 October 2012 but denied sending the SMS message on the same day.

428. Mr Malde said that payments by Park Royal to Golden Harvest were, on the request of Golden Harvest, predominantly in cash.

429. Divyesh Karsan pleaded guilty to cheating the public revenue during the Operation Banjax trial on the basis that he was responsible for Golden Harvest and responsible for keeping paper records for that company produced by the OCG as well as a point of contact for HMRC. However, he was not responsible for the physical creation of the paperwork or the organisation of chains of invoices. His basis of plea also recorded that he was aware of the purpose of Golden Harvest as a:

> "… purported trader in deal chains and that had some overall knowledge of the operation of the OCG"

The OCG had charged the end purchasers of the goods commission of between 1.5% to 6% of the gross invoice amount.

430. Probe evidence recorded the following conversations between the Banjax defendants in relation to the "underbond side" of the transactions. A "chicken", Ms Myers explained, is the description given to missing traders by those involved in the fraudulent transactions:

> Mr Ahmed: Although I'm not doing the paperwork but still need to begin to understand, fully.

Mr Khan: That's what I mean so you need to come in here and learn from him while he is doing it, or he will explain to you whatever you need.

Mr Rasool: It's almost the same like the UK's but just no VAT on it.

Mr Ahmed: No VAT

Mr Rasool: Basically we don't want to create all this in from your office because we have to raise a back-up company as well yeah.

Mr Khan: See you know what it is yeah we are buying from one underbond company. Then we'll have the details of the CHICKEN as well. You buy underbond, you sell it to a CHICKEN and that CHICKEN is in Europe as well.

Mr Ahmed: So you buy from a CHICKEN.

Mr Khan: No, no you buy from a proper company.

Mr Ahmed: Oh you sell it to a CHICKEN.

Mr Khan: You sell it to a CHICKEN so we are gonna do the paperwork for the both.

Mr Ahmed Oh I see.

Mr Khan: And then when you've done it, you TT the money from your account, this is how it works, you, what you do is UK side of money, what else coming in your side, you're sending it to underbond instead of paying your supplier. That's the way to get the money out of the accounts. That's what we doing to Gujarr, everyone. So you send that to underbond, you buy underbond.

Mr Ahmed: It's an underbond account.

Mr Khan: Yes, no no whoever you're buying it from.

Mr Ahmed: Ok that's underbond.

Mr Khan: That's underbond right so say if you buy from this company Interswitch right they are based somewhere in Cyprus. Just keep sending offers and this and that on your email. Then you say OK I want this, I want this. Then you pay them and then you write on your purchase order please can you release it in IFW or any bond. All underbond stock goes through the bonds. You don't touch it. It goes in the bond and then you, they will, they have accounts.

Mr Ahmed: They transport it and you collect it whenever you want.

Mr Khan: No, no you have an account there as well. Your underbond company and the one you selling to, they have an account so you say instruct from here to the bond or to the company say Interswitch. Interswitch purchase order gonna say "can you please release it into account of this company in IFEW or DBS Bond or RS bond". That company orders the truck so what will happen is, stock will come there in a truck into your name, from your name to transfer into that company.

Mr Ahmed:	OK.
Mr Khan:	So you sold it to that. Then they will send you a purchase order and you just send them an invoice. When that happens they pay you cash and you pay the back up cash.
Mr Ahmed:	Ok I see.
Mr Khan:	So that's how the circle completes.
Mr Ahmed:	OK then.
Mr Khan:	And if the Customs or anybody else asks say well fuck got a bit of credit haven't I? I can make a few pounds extra here, so I'm using this money to make a bit of money there, come back into here.
Mr Ahmed:	Yeah OK.
Mr Khan:	Yeah, that's how the circle works.
Mr Ahmed :	That's how the circle works, I see. Ok it's a bit, a bit of technical work eh?
Mr Khan:	But...
Mr Ahmed:	For the paperwork side of it yeah just to keep it all in place.
Mr Khan:	But you know it's more life, it's more work.
Mr Ahmed:	You need to keep on top of it because...
Mr Khan:	A lot of work, then one who, OK we got this truck with stock in it and say the stock comes you need to ring them why it's not released. Your customer will say fucking release. You have to send release notes, stock, stock fucking rotation numbers.
Rasool:	Rotation numbers, batch numbers.
Khan:	It's like a proper bond isn't it? It's going in and out of the bond because there is no VAT on it.
Rasool:	And nowadays they don't transfer anything without the email or other information.
Khan:	Yes.
Mr Rasool:	For suppose if somebody sending three notes or move this stock here for instance you will have to send an email five times in a day.
Mr Ahmed:	Bloody hell, serious?
Mr Rasool:	Yes.
Mr Khan:	Yes.
Mr Ahmed:	So really this is real stuff, office based (*inaudible*) sat in the office.
Mr Rasool:	Yes.

The evidence suggests that the "chicken", a puppet company used as route to release the goods from duty suspension and to conceal the destination of the alcohol, in this conversation was CCN.

431. Another conversation captured by the probe records the following between Mr Khan, Mr Rasool and another person "Sal" on 14 November 2014:

Mr Khan:	Come here, come close to me, explain to me what you wanna know. I'll, I'll explain to you. It's a straight forward transaction. You're buying from A, you're selling to B.
Sal:	He is genuine. These guys I've never met them init. That's the only thing.
Mr Khan:	They were not here. They are never gonna find these guys so they can't say to you.
Mr Rasool:	Sal mate there is never any issue with underbond in the UK. The Customs don't even bother.
Sal:	Hmm.
Mr Rasool:	Hmm, because there is no VAT involved, they don't care.
Mr Khan:	There's no duty involved.
Mr Rasool:	There is no duty, there is no nothing. All you are doing is that you are increasing your profit a little by saving five, seven pence on each product. Because you have been in this trade for five years now yeah?
Sal:	Hmm.
Mr Rasool:	Ok, you have good links everywhere. With a little stock movement and with people's money you are making more money."

432. Further probe evidence records a telephone conversation between a Banjax defendant, Raja and another person as follows:

Mr Raja:	I see, I see. Alright let's see what happens with this then tomorrow morning, then let's see if we get it.
Caller:	(*inaudible*)
Mr Raja:	No this is Rav, he says it's coming from over there. He said that we are paying French duty. No, no it won't be, trust me you know why because if it was here mate trust me he would've said I never knew it give me a day I'll get it delivered. He would've text this on Monday not bloody Tuesday now and saying it's gonna be here tomorrow morning. I think it is coming through over there.

433. After that call ended there was a conversation between Mr Raja, Mr Rasool, Mr Ahmed and Mr Khan:

Mr Raja:	Mate over there, France is so fucking, security is so tight.
Mr Rasool:	That's correct.
Mr Raja:	He is saying that one minute's journey is taking five hours. Dundok is fucking completely, they are checking everything.
Mr Ahmed:	Because of tomorrow, because of tomorrow's thing.
Mr Raja:	Because of tomorrow's thing anyway but because of tomorrow's thing as well.

Mr Khan: So has the stock not come in?

Mr Raja: The stock is not arriving mate, the stock is not arriving. They have spoiled the work here. It's on amber at the moment, critical, now how do they know what is amber, idiots, terrorists have, no one is interested in terrorism now all of a sudden shit it's on amber. France is on amber mate, [for] fuck's sake.

(all laugh)

434. At the close of the prosecution case in the first Banjax trial an application of "no case to answer" was made on behalf of three of the defendants. The judge, HHJ Grieve QC, having outlined the prosecution case that there had been a fraud which involved the sale of very large quantities of smuggled alcohol into the United Kingdom domestic market by an OCG (to which the three defendants belonged), in which over £34 million of VAT due to HMRC was lost observed that there was no evidence as to the source or provenance of the alcohol and dealt with the paper trail before saying:

> "The principal role of these defendants is said to have consisted in the creation of the false paper trail upon which the ultimate purchaser could rely to show that his trade was legitimate at the same time as facilitating the fraud. In addition, RK in particular is also said to have played a major role in transferring money between bank accounts and in the distribution of the proceeds of the fraud."

He continued:

> "… after the defence had sought clarification of the prosecution case by way of a series of written questions eliciting written answers, this exchange took place between myself and Mr Hughes [counsel for the prosecution]:
>
> "Judge: It is not your case that the missing trader ever purchases or makes payment from a bank account for alcohol which then goes down the chain?
>
> Mr Hughes: No
>
> Judge: Is it your case that the only entity which receives and pays for a quantity of alcohol is the cash and carry?
>
> Mr Hughes: Indeed; the end purchaser."
>
> …
>
> Based on the revised prosecution case that the transactions between the missing traders and the buffers are on paper only, the defence submits that the transactions between them are purely fictitious, or a sham, and asks the prosecution to identify the statutory provision which makes a sham supply a taxable supply."

435. Having considered the applicable legislation relating to "taxable supply" the judge concluded that any issue regarding both counts in the indictment could be resolved by the addition of the of the words "or any other sums due to the Crown as representing VAT" to count one and by replacing the words "namely Value Added Tax fraud" in count two with words to the effect of "namely, fraud in relation to VAT or other sums due to the Crown as representing VAT." He considered that as such an amendment would not alter the case presented to the jury in any significant or substantial way and would not cause any unfair prejudice to the defence and dismissed the "no case to answer" application.

436. While the prosecution case in Banjax was that the role of the defendants was to supply the false paper trial Ms Myers agreed, when it was put to her, that the OCG "undoubtedly" acquired illicit alcohol which it supplied to the cash and carries through either the final company or penultimate company in the chain.

Operation Epsom

437. Operation Epsom was a criminal investigation into a fraud predicated on the supply of illicit alcohol between September 2009 and December 2012 which had been disguised in various ways though over 20 companies which created false documents to substantiate the supplies of those smuggled goods.

438. The operation commenced in September 2012 with HMRC officer Ian Foote as the case manager of the investigation. He remained in that role until 2 November 2015 when he moved to another role within HMRC's Fraud Investigation Service. Mr Foote described how he had taken part in what he described as an "intervention" on 12 December 2012 part of which was a search of the home address of a Clare Hill who, it transpired, also used the name "Emily Parker".

439. Documents concerning Global were seized at that intervention on 12 December 2012. Theses included a quantity of invoices and purchase orders for Pride Cooking Oil which, Mr Foote said, appeared at odds with the alcohol trade normally portrayed on invoices and purchase orders from Beetrade as, from the documents he had seen in relation to Beetrade, its trade was solely in alcohol, specifically beer, wine and cider.

440. Clare Hill declared no income from any employment with Beetrade and was never a director or company secretary. A number of documents for other companies involved in Operation Epsom, including Nugents and Selections Limited ("Nugents"), Fun Fluid and Chelsea Wines and Whiskey Limited, were also found at Clare Hill's address. She was not a director or company secretary for any of these three companies and declared no income in relation to them and was one of the 12 charged and prosecuted as a result of Operation Epsom.

441. As with the Operation Banjax, the Epsom trial was split for case management purposes. In the first trial there were two counts on the indictment. These were conspiracy to cheat the public revenue and conspiracy to evade alcohol duty. However, the second trial only concerned conspiracy to cheat the public revenue with the second count, conspiracy to evade alcohol duty being removed from the indictment.

442. The following, taken from the prosecution's opening note from the first trial, sets out the background to the case:

> "1. This case is about fraud and the relentless and dishonest evasion of tax. These defendants organised and operated a scam designed to manipulate the VAT system by the creation of bogus paperwork suggesting that alcohol had been bought and sold through a series of companies before ending up in the hands of the first defendant Shafqat Majeed. The truth of it was that there was no real business or competitive trade being carried on. The supply chain had been artificially created for the purposes of the fraud. The identities of innocent people were stolen to set up companies which were centrally controlled and existed simply to service the fraud, which resulted in a loss to the Revenue of approximately £4.8 million. The evidence reveals that another purpose of the creation of the fake supply chain was to disguise the origin of the alcohol. It had not been bought and sold on the legitimate market, rather it had been smuggled into the UK from the Continent, so evading the tax, or duty, which was due to the Revenue."

443. It continued, by explaining that Shafqat Majeed (one of the defendants in the case), who is known as Chas, controlled M&O Limited ("M&O) a company of which he was, apart from a four-month period in 2011, neither a director or shareholder. The business of M&O was trading in alcohol operating around forty small retail shops and off-licences in West Sussex and on the South Coast. Its VAT records were not on issue and the prosecution did not question its VAT records accepting that it did genuinely purchase alcohol from a number of wholesale suppliers, some well-known in the industry. But M&O also purchased a significant quantity of alcohol from another company called South Coast Wholesale Limited ("SCW" which operated out of the same premises, a warehouse [in] West Sussex.

444. The prosecutions opening note continued:

> "12. The prosecution say that SCW, through its various identities, was the pivot in the supply chain. It acquired its stock from the illegitimate and sold onto the legitimate wholesale market in the guise of M&O. Its role in the fraud is crystallised in its VAT returns. On the one hand it genuinely charged and accounted for its output tax on its supplies to M&O; on the other hand, it falsely claimed it had paid input tax to its various 'suppliers'. That meant that by off-setting the input tax against the output tax, SCW had a very small VAT bill to pay to HMRC. … For example, for the quarter-end June 2012 the bogus supply chain accounts for £1.39 million input tax out of a total of £1.69 million).
>
> 13. The Jury Bundle sets out the input tax which SCW claimed it had paid on its purchases from its suppliers …. The two principal companies are firstly Nugents and Selections Ltd which purportedly operated from the end of 2011 into the first quarter of 2012 and then Beetrade Ltd which took over up until the date of the first arrests which was 12 December 20102. Between them they purportedly supplied SCW/Palace with alcohol worth over £20 million with input tax totalling over £4 million."

445. Mr Foote confirmed in evidence that Nugents and Selections Limited had been created using the stolen identity of a Patricia Nugent and that the company was actually operated by Shafqat Majeed and Clare Hill and that, although various directors were recorded at Companies House including one of the defendants in the second trial, they also controlled Beetrade. On 28 November 2019 Shafqat Majeed and Clare Hill and two others were found guilty of the conspiracy to evade alcohol duty. Another defendant had entered a plea to alcohol smuggling.

446. With regard to Beetrade the prosecution's opening continues:

> "26. Nugents' role as a significant supplier to SCW was taken over by another company – Beetrade Limited which also traded as M62 Cash & Carry. SCW claimed to set-off £2,965,350 worth of input tax which it claimed it had paid to Beetrade. Beetrade also purportedly purchased alcohol from both Nugents and another company, Nisa International."
>
> 27. Beetrade was incorporated as early as 3 March 2010. Its sole shareholder and director then was Paul Bingham. Bingham is one of the other individuals (Sayed Shah is another) who is named on the indictment but who is not in the dock. In order to keep this trial to a manageable size and length, they are due to be tried in a second trial by a different jury later on this year. An electronic application for registration for VAT in the name of Bingham was submitted the same month. As set out on the schedule [in the Jury Bundle], the company changed its purported trading address several times. Suite 54 is a unit in an industrial estate in Crawley, but the landlord did not lease a unit to Beetrade, although post for the Beetrade did periodically arrive. In August 2011 it transferred its operation to Risley which is near Warrington in Yorkshire and

> Jibran Khan, the fourth defendant, became its director. Beetrade's premises in Warrington was a commercial unit which was leased on behalf of the company sight unseen – the lease was signed by Jibran Khan – that is, without anyone coming out to visit the unit to see if it was suitable for the bulk storage of alcohol. Strange you may think but entirely consistent with the premises being a front. It purported to trade in Lancashire in the name M62 Cash & Carry. Sayed Shah, the man who spoke to Officer D'Rozario at the premises of SCW, replaced Jibran Khan as director in January 2012 and in turn was replaced in August 2012 by a David Gerrelli. He is an IT specialist employed by Cable & Wireless. He has never heard of Beetrade or M62, indeed has never been to Warrington. His identity was hijacked, no doubt to distance the fraudsters from the role of Beetrade in the scheme.
>
> 28. What about the money paid by SCW to Beetrade? Millions of pounds of it. Fifteen million pounds net of VAT according to the records of SCW. It was all – or about 99% of it – paid in cash. Beetrade had a bank account which was open for an eighteen-month period. … As you can see there is very little evidence of multi-million pound trading. In fact, during that period it received a grand total of six credits amounting to approximately £600. Bear in mind that the drinks industry is traditionally cash-based and HMRC recognise that. But it makes the industry more attractive to the fraudster who more easily hide the money trail.

447. The prosecution opening also provides further details regarding Clare Hill, also known as Emily Parker:

> "30. In April 2012 a local HMRC compliance officer visited the Warrington address [of Beetrade]. It appeared to be abandoned. He therefore wrote an enquiring letter to the director at that address. A fortnight later the officer received an answerphone message at work from someone calling herself Emily Parker asking about Beetrade's VAT registration. She rang again later from a withheld number but the officer said he couldn't discuss the company's business with her as she was not satisfied as to who she was. A minor detail you may think. But remember that name, Emily Parker. The prosecution say that Emily Parker was a pseudonym for Clare Hill, the second defendant. Clare Hill was in a relationship with Shafqat Majeed of M&O. Emily Parker rang into HMRC's Helpline purporting to be acting on behalf of several companies in SCW's supply chain: Beetrade, Nugents, Fun Fluid, Chelsea Wine and Whiskey and Nisa International, each time claiming to be the company secretary. HMRC wrote to Beetrade on 11 April 2012 informing them that the company had been deregistered for VAT. A week later Emily Parker (Clare Hill) rang the Helpline and said that they had not received the letter. The telephone number she provided to HMRC for Beetrade was unregistered. It appears from notes Clare Hill's diary that M62's registration was reinstated later in April 2012."

448. Mr Foote confirmed that after the 12 December 2012 intervention HMRC were able to definitively say that that these documents relating to the various companies were found at Clare Hill's home address. Mr Foote was also able to confirm that HMRC primarily regarded South Coast Wholesale Limited (referred to as SCW in the prosecution opening) as the importer, as he put it:

> "South Coast Wholesale would ultimately be taking, as I say, first hands on if you like of those goods when they entered the United Kingdom and then moving on to M&O, the various outlets to be sold."

449. Other companies in the transaction chains included Best Buys, which was incorporated on 8 February 2005 and had made payments of some £7.8 million to Global between 16 August

2012 and 16 December 2013. However, Mr Foote said that while it did make some supplies to companies in the chains and was supplied by others it did not form part of the criminal investigation.

450. The opening note sets out the following under the heading "Alcohol Duty Evasion Fraud":

> "53. The manufacture of false invoices, which facilitated the commission of the VAT fraud, had another purpose. SCW, the pivot company of the VAT fraud, did actually sell alcohol onto M&O, Shafqat Majeed's company, which in turn sold it on through its various retail outlets on the South Coast. Where did SCW itself obtain the alcohol which it sold to M&O? On the face of the paperwork, from Nugents and Beetrade as part of the supply chain network. But you know that that network was a fiction; the companies were all centrally controlled with fake invoices used to create the pretence that SCW paid 20% VAT on each purchase. There were no actual sales and purchases and SCW did not buy alcohol from Nugents and Beetrade. The prosecution say that SCW got its stock from supplies which were smuggled into the UK in lorries evading the payment of alcohol duty. The same false paperwork which supported the claims to set-off input tax which was not in fact paid also served as cover to deceive HMRC into believing that the alcohol had been bought on the legitimate duty paid market. Shafqat Majeed was in charge of the operation which was supervised on a day to day basis by the others who are charged on count 2."

451. The "Agreed Facts" in the Operation Epsom trial record that on 24 August 2012 at Dover Eastern Docks there was a seizure of approximately 24,000 litres of mixed beer. The ARC had been raised on 21 August 2012 and the same driver had entered the United Kingdom on 22 and 23 August 2012. According to the paperwork the load was destined for Palace Drinks account at Edwards. A Notice of Seizure was sent by HMRC to Palace Drinks on 24 August 2012. Mr Foote confirmed that Palace Drinks was the trading name of South Coast Wholesale Limited.

452. Another seizure, of some 11,500 litres of mixed beer, 2,880 litres of cider and 3,240 litres of still wine occurred on 27 September 2012 at Coquelles, at the Channel Tunnel Freight Terminal. That alcohol was going from the IEFW warehouse to Edwards. EMCS records showed that the goods had been despatched at 17:00 on 25 September 2012. Checks on the intercepted lorry show that it had previously entered the United Kingdom on 25 September using the same ARC. Two further seizures are recorded on 26 October 2012 on at Pease Pottage Services and in Grays, Essex respectively. On 31 October 2012 there was a seizure at Dover.

453. Mobile telephones were also seized as part of the Operation Epsom investigation and their contents were analysed. The evidence obtained, which the prosecution contended was a series of SMS discussions between the parties, referred to the success or otherwise of the smuggling operation and the status of the lorries with "red" meaning that the lorry has been stopped by UKBF and "green" if it had not.

454. Examples of such messages, taken from mobile telephone of Clare Hill between her ("CH") and Shafqat Majeed ("SM"), are set out in the table below:

Date & Time	From	To	Message
01/03/2012 20:16	CH	SM	Going to be one of those nights then waiting to hear how the loads go??x
01/03/2012 20:20	SM	CH	Lol yes

01/03/2012 20:22	CH	SM	Oh well I'm going to bed in a bit…hope it's green green green for you tonight x
01/03/2012 20:25	SM	CH	Pray
02/03/2012 08:15	CH	SM	How did last night go?? X
02/03/2012 08:17	SM	CH	Not good clare first truck got caught
02/03/2012 08:25	CH	SM	Praying didn't work then shit x
13/03//2012 08:21	CH	SM	Green last night??
13/03/2012 08:33	SM	CH	Yes three x
28/03/2012 06:03	CH	SM	Loads??
28/03/2012 06:03	SM	CH	Three so far
26/04/2012 21:34	CH	SM	It's dead in here … six people
26/04/2012 21:35	SM	CH	Oh well at least the wine load is green
19/07/2012 07:33	CH	SM	How the loads doing?
19/07/2012 07:34	SM	CH	OK
19/07/2012 07:38	SM	CH	Good
19/07/2012 07:39	CH	SM	Three green waiting for 4

455. SMS messages between two other Epsom defendants refer to "Red" loads, for example the question sent by SMS message at 05:14 on 17 April 2012, "any news on the loads? lead to the following exchange of messages between Zohab Malik ("ZM") and Jibran Khan ("JK") with the time the message was sent in brackets:

ZM (05:45): Red

JK (06:13):	Both of them?
ZM (07:07):	Just the 1 [one] I look after don't know about the others. Our paper is red the 1st one got hit.
JK (07:08):	Ricky [AS] said two near identical were coming through.
ZM (07:20):	when?
JK (07:20):	Yesterday.

In a message to Ahmer Shafiq, another Epsom defendant, at 07:24 the same day, JK stated "Load gone red thought there were two coming? We're gonna struggle without a load today."

456. Mr Foote explained that HMRC considered that these SMS messages referred to multiple loads matching the same ARC reference and if one of those loads had got stopped and had taken the message "Our paper is red. The first one got hit" to mean that the ARC had been used and which prevented any mirror loads from being brought in with the same ARC reference.

HMRC Interviews

457. In addition to his interview by the police in 2008 (see above) Mr Malde was interviewed by HMRC on several occasions.

HMRC interview 1 December 2009

458. On 1 December 2009 Mr Malde was interviewed by HMRC Officers Gary Collins and Reema Qaisrani on a pre-arranged Assurance Visit to Corkteck in relation to a drawback claim as HMRC's checks had been unable to verify SA as a registered company in Poland. The visit report states:

> "When questioned Mr Malde stated that the person he contacts is a Mr Janczac, he has not had any problems from the company and as far as he is aware the company sends all the stock that he has purchased from their account in the Belgium Bonded warehouse – Jacobson and Koch. Mr Malde provided copies of his bank statement showing payments made to Sintra SA, his supplier of the goods. They are large amounts of payments made and he does not pay each invoice but each payment on the statement relates to several invoices."

HMRC interview 10 December 2013

459. Mr Malde was interviewed by HMRC Officers Dean Foster, James Dibb and Guy Bailey on 10 December 2013 at HMRC's office in Wembley where he was accompanied by Mr Simmonite and Stewart Smith of SKS. He was asked about SA, which was referred to as Sintra at the interview, and confirmed "for the record" that he did not recall speaking to SA about goods that had been moved out of a Belgian Fiscal warehouse and transported to the United Kingdom for which it appeared that the Belgian authorities were suggesting Corkteck was responsible.

460. The following exchange then took place:

Mr Smith:	Who are Sintra?
Mr Simmonite:	They're one of your suppliers Mr Malde.
Mr Malde:	Yeah.
Mr Foster:	Yeah.
Mr Simmonite:	Are they a Belgian supplier are they?
Mr Malde:	No a Polish ...
Mr Simmonite:	A Polish....

Mr Malde:	… but the stock's coming from Belgian goods.
Mr Simmonite:	Right.
Mr Foster:	Right. Who's the director of Sintra Mr Malde just out of interest?
Mr Malde:	No idea.
Mr Foster:	You've no idea.
Mr Malde:	No.

461. In evidence, Mr Malde said that he said that he had "no idea" of who the director of SA was during that interview because as:

> "… at December 2013, from my understanding, Sintra SA didn't exist, so there could not be a director."

He also confirmed that at the time of this interview he had not made his advisers, Mr Simmonite and Mr Smith, aware of his involvement with SA and that that, notwithstanding its purchases from SA of approximately £2.2 million in 2009 and £3.1 million in 2010, Corkteck had not made any enquiries in relation to the identity of its directors.

462. Mr Malde's response when asked if he had tried to find out who were the people running the company was:

> "No, we had records of who we dealt with who was running it, but none of our customers or suppliers did we ever ask for directors' details, because if anyone ever asked me for my details and copies of my passports and home address details, I used to tell them to go, where to go, "you're not getting it." And in the same vein I wouldn't ask anybody else. I do checks on the company because it's companies that we deal with."

PN160 interview 4 December 2015

463. Mr Malde was interviewed by HMRC Officers Parminder Birdi, Dean Foster and James Dibb at HMRC's offices in Manchester on 4 December 2015 under the PN160 procedure. He was accompanied by Mr Simmonite and Mr Smith of SKS and Mike Kenyon of Taylor Wessing, Mr Malde's solicitors. Also present was Sarah Lee of Howes Percival solicitors as adviser to HMRC.

464. A letter, dated 3 September 2015, from HMRC to Mr Malde explained that, following information received by HMRC, the enquiry into SA had been referred to Mr Birdi:

> "… to make enquiries into the Value Added Tax status of your business.
>
> We have reason to believe that under-declarations of Value Added Tax have occurred and this may be the result of dishonest conduct.
>
> I enclose Public Notice 160 for your benefit this details the procedure will use in this type of enquiry. It also explains your rights. Please read it carefully.
>
> The enquiry will be conducted with a view to the recovery of tax arrears and interest, and, if there is sufficient evidence of dishonest conduct, the imposition of a Civil Evasion Penalty. The enquiry will not be conducted with a view to your prosecution.
>
> Please be aware that as I suspect that dishonest conduct has occurred relation to you or your businesses tax affairs I will want to meet with you personally as described in the attached Public Notice 160.
>
> I would like to meet with you at [HMRC's office on Leeds] on 15 October 2015 at 10:30 hours to discuss these matters. Your advisor, if you have one,

> is also welcome to attend. At the meeting I will explain the procedure outlined in Public Notice 160 and you will be invited to make a full disclosure of any irregularities. It also likely that I will need to ask you some questions about your business and areas linked to our suspicions
>
> My colleague Mr. Foster will be present at the meeting
>
> …
>
> Whilst attending this meeting may have benefit for you, as outlined in the Public Notice 160, you should be fully aware that this does not mean that you are obliged to co-operate with our enquiries. It is up to you to decide whether or not to speak to us or assist us generally in our enquiries. If you do speak to us we may use what you say, or any information you provide, in assessing your liability to tax or a penalty or in any Tribunal proceedings."

465. Notice PN160, which applies only where HMRC have reason to believe "dishonest conduct or deliberate behaviour has occurred", explains what happens during a check into Indirect Tax matters. Under the heading "How does this affect me" the notice states:

> "If we identify irregularities due to conduct involving dishonesty, a civil evasion penalty will normally be applied. If we identify irregularities due to deliberate behaviour we will normally apply a deliberate penalty or a deliberate and concealed penalty.
>
> We will normally ask you and your professional adviser, if you have one, to attend a meeting with us. Please tell us in advance if you need an interpreter or have any special needs so that we can take these into account when we prepare for the meeting.
>
> We will tell you:
>
> - the check is not being conducted with a view to prosecution in relation to the matters that are subject of our check.
> - the matters that are subject of the check. This means that the behaviour(s) and period(s) under enquiry, rather than the specific information we hold that gives rise to a suspicion of dishonesty or deliberate behaviour.
>
> You will have an opportunity to disclose any irregularities or matters in relation to your tax affairs.
>
> We will:
>
> - listen to any explanations that you or your professional advisers give and,
> - keep an open mind to the possibility that there may be an innocent explanation for the suspected irregularities."

466. By email dated 8 September 2015, having received the letter from Mr Birdi, Mr Simmonite requested further details of the businesses involved in the enquiry. HMRC responded by letter of 25 September 2015, following a further email of 25 September 2015 from Mr Simmonite, refusing to name the business or businesses concerned.

467. Mr Simmonite, in an email dated 30 September 2015 raised the issue of costs explaining that Mr Malde had several businesses and that the costs of a meeting dealing with one of these would clearly be less than if his advisers were required to prepare for a meeting dealing with three or four different businesses. Mr Birdi, in evidence, agreed that this was a reasonable request. HMRC, in a letter dated 14 October 2015, confirmed that the business concerned was SA.

468. Although in his letter of 3 September 2015 Mr Birdi had stated the PN160 meeting should take place at HMRC's Leeds office on 15 October 2015 following correspondence between Mr Simmonite and HMRC the meeting was arranged for 4 December 2015 at HMRC's Manchester office.

469. To put the PN160 interview in context on 17 July 2015 HMRC had, on a without notice application to the High Court, obtained a Freezing Injunction against Mr Malde. Mr Foster had sworn an affidavit on 16 July 2015 in support of HMRC's application. This set out the alleged route of over £20 million worth of alcohol to SA via Prompstock under the heading 'Movement of Goods as shown in evidence from the Criminal Case (Operation Rust).' A diagram exhibited to his first witness statement in the present case set out how Mr Foster considered the "fraud worked" which was on the basis that HMRC had "established" that York Wines transferred alcohol, mostly comprising of beer but on occasion wine, from its United Kingdom warehouse (Prompstock) to its warehouse in France (Global Negotium) following which it would be sold to SA and smuggled back into the United Kingdom by SA (or subsequently Corkteck).

470. We should add that, in evidence, Mr Foster accepted that he had advanced the diagram without checking whether it reflected the underlying records saying it was not an area he was "personally involved with". Mr Dibb described it as a "working document" that was "designed to just put bits of string between the bits of evidence as they came in."

471. Prior to the PN160 meeting it had been agreed that the issues relating to the High Court claim would not be discussed at the meeting.

472. The following excerpts are from a transcript that was taken of the PN160 meeting:

Mr Kenyon:	Let's suppose that you are right and, just for the purpose of the tape, let's suppose you are right and Mr Malde is in control of the company?
Mr Birdi:	Hm hm
Mr Kenyon:	So what? Where's the evidence of the taxable supplies in the UK which gives rise to a VAT liability irrespective who controls it? Where's the evidence of the taxable supplies, that's all we want to know?
Ms Lee:	You've made your point for the tape.
Mr Kenyon:	Please, that's all we want to know.
Ms Lee:	And we've said, and we've said that we considered the evidence if in the affidavit, so I think …
Mr Kenyon:	Point us to it please?
Ms Lee:	We could go round in circles.
Mr Kenyon:	He knows it no doubt backwards, point us to the evidence of taxable supplies in the UK in your own affidavit Mr Foster and we have it on disc?

473. The exchanges continued in a similar vein until Ms Lee, the solicitor advising HMRC, that the officers wanted to ask Mr Malde the questions they had prepared for him and if there were matters raised in Mr Foster's affidavit, there would be an opportunity to "come back".

474. Mr Simmonite responded that they did not want to come back but to be told at that meeting where the supplies took place. The transcript records that this led to Ms Lee to say:

> "… so you asked the officers to, to take you through the affidavit and point you to the evidence that they think support HMRC's case that there was

trading by Sintra SA in the UK. The officers will not go into that detail today and they note that you have made your point on the tape, made your case, your view of what (*inaudible*) is there is clearly a difference of opinion. They, they do not think that today is the forum for you to trawl through the detail of that evidence, than the purpose of today is to consider whether and (*inaudible*) to the penalty which should be opposed (sic) on the company and/or personally on Mr Malde, and for that purpose they just wish to go through and confirm some of the information that they have. We note the objections are in place, we could sit here for another two hours and, go round in circles on that you are welcome to say (*inaudible*) tape when I've finished speaking if you want to, but what the others propose is that we, we go back to the set of questions that are prepared for today. They've asked me to point out to you that (*inaudible*) some of the information they have has changed, for example I think you previously said that you had no involvement with SA at all and weren't a Director, but obviously you today have said that you were involved as a director on the setting up of the company right at the outset (*inaudible*) so on the basis that some information has changed we feel that it's appropriate and arguably in your interest as well that they go through the information that they've got, verify it with you and give you an opportunity to comment on it."

475. Having asked Mr Malde questions about Corkteck, Anpa, Park Royal, Brunel and his other businesses Mr Foster turned to SA and asked Mr Malde what his involvement had been with SA between 2004 and 2012. Mr Malde responded:

> "I set the company up on behalf of some friends, I arranged a bank account for them and that was it. After that they run the company themselves.

476. Mr Foster continued by referring to the 2014 Report and reading from it that SA is registered in Belize and Global is registered in Malaysia and that neither company undertakes trading activity in the United Kingdom, the transcript of the meeting then records:

Mr Foster:	… Can you confirm Mr Malde how you know that Sintra SA doesn't trade in the UK if, as you've previously stated, other than forming the company you've no day to day control of the company or its finances?
Mr Malde:	Because it was confirmed to me by the people who do run the company.

In evidence Mr Malde said that by "people" it was "just Pat [Sounumpol] that I was referring to." Also that he recalled having discussions with her in which he had been told that SA was not going to trade in the United Kingdom.

477. The Transcript of the PN160 interview continued:

Mr Foster:	Can you confirm whether you've ever been at anytime since the formation of Sintra SA in 2004 a director of Sintra SA?
Mr Simmonite:	I think obviously if you look at the records that were picked up from Turner Little Mr Malde does not deny that he signed his name as director of Sintra SA we've clearly seen that …
Mr Foster:	Yeah.
Mr Simmonite:	… in the documents so there can be no denial that he has signed as a director when he set up SA.
Mr Foster:	So in answer to my question can you confirm whether you've ever been at any time, since the formation of Sintra

	SA in 2004, a director of Sintra SA. Is that answer yes or no.
?	Do you want to explain why you signed your name as a director?
Mr Foster:	Yes.
Mr Kenyon:	How long you were?
Mr Malde:	At the time the company was set up all the actual form filling and application was done by Rob Nicholls (sic) at Turner Little. I told him what was required as far as the company was concerned and he done all the, all the forms and said right this is what you need to sign, this is what you need to fill in, this is the descriptions. So at that point it was signed, I signed and he said write down director so I wrote director. As soon as I was given the company paperwork it was passed to the people whose company it was and I signed a ... what's it called now …
Mr Kenyon:	Power of Attorney.
Mr Malde:	… Power of Attorney sorry that's it thank you, a Power of Attorney which gave the owners the Power of Attorney over shareholding and the directorship. So at that point as far as I was concerned I was no longer a director, it had been passed over but yes at the time that the forms were filled out Turner Little under Rob Nicholls' (sic) instructions it was filled out inside

478. Although he had referred, when prompted to a Power of Attorney by the time of the hearing of this case Mr Malde was not sure that this was the case. He said the "power of attorney" were Mr Kenyon's words and that he was not sure of the description of the actual document, Although Mr Malde recalled the document being typed he could not remember if he or Ms Sounumpol had prepared it but did confirm that Turner Little had not been made aware of Ms Sounumpol and that while she had the original document he had not kept a copy of it for himself.

479. Returning to the PN160 interview, Mr Foster then referred to a letter, dated 3 November 2015, from Mr Malde's solicitors, Taylor Wessing, to HMRC which stated that Mr Malde "is not and has never been a director shareholder or employee" of SA. Mr Simmonite said that it was right that Mr Malde was not an active director. He continued:

> "… immediately once he'd set up the company [he] handed it over to the parties that were in the business. So in all practical terms he's accepted he signed it, he put the word, he put his name next to the word director but in all practical terms he was never a director of that company. … he never traded as that company."

Mr Malde said that he had nothing to add and when asked by Mr Foster said that he agreed with what Mr Simmonite had said.

480. The transcript continued:

Mr Foster:	Right Okay thank you. So you, so you say you've just stated that you passed over the control, ownership, Power of Attorney to a third party …
Mr Malde:	Uh huh.

Mr Foster:	… so who, who did you pass the control of the company over to Mr Malde?
Mr Malde:	I don't want [to] pass people's names across."

481. Mr Malde, later in the PN160 interview, referred to his having not wanted to provide names and said that he had previously done so at paragraph 3.9 of the 2014 Report in which Ms Sounumpol is described as "one of the directors" and Arnaud Carre the "General Manager". Mr Simmonite confirmed, as stated in the 2014 Report, that they were happy to by contacted by HMRC to verify this information although this did not prove to be the case.

482. Further questions were put to Mr Malde in relation to whether he controlled SA's bank account between its opening in 2004 and closure in 2012 or if he had been involved in the transfer of funds into or out of the account. This led to a request by Mr Malde and his advisers for HMRC to put any questions relating to the bank account in writing and that a response would be forthcoming. We have referred above to the letter of 29 January 2016 from HMRC to Mr Malde to which Mr Simmonite responded on 18 February 2016.

483. The PN160 interview continued with Mr Foster handing SA's FBME bank statements, comprising 35 pages which had been uplifted from Turner Little on 15 May 2015 under the provisions of schedule 36 to the Finance Act 2008, to Mr Malde's advisers. Having done so Mr Foster referred to a transfer out of SA's FBME account in the sum of £237,680.94 which was described on the bank statement as "Commission 2009/2010". He asked Mr Malde if he had any idea what that payment related to. Mr Malde responded:

> "… looking at it it's commissions that are paid to me"

484. Having been asked further questions concerning various payments and transfers shown on SA's bank statements the interview became rather heated. At that point Mr Kenyon asked what the questions had to do with trading in the United Kingdom. This resulted in the following exchange:

Mr Foster:	We're trying to establish what Mr Malde's knowledge is of these transactions if any. If Mr Malde …
Mr Kenyon:	With a view to?
Mr Foster:	With a view to establishing dishonest conduct.

485. When asked, Mr Birdi agreed that this was not the purpose of a PN160 meeting but said that on reading the transcript of the interview he "would say the Mr Foster misspoke" and that he was unable to "speculate" why he had not corrected him at the time but, because it had been a "very emotional and heightened meeting", said he may have missed what Mr Foster had said.

York Wines' SAGE Records

486. Mr Simmonite, having undertaken a careful analysis of them, was critical of the SAGE records of York Wines. He questioned the reliability and accuracy of these records which had been created by an entity controlled by an individual, Mr Burrage, who was convicted as a result of Operation Rust (see below). Mr Foster who described of York Wines as "a company operated by Burrage for the multimillion pound fraud with which the criminal case was concerned" had nevertheless relied on those SAGE records, which he took as "being accurate" when making the VAT assessments (see below).

487. During a lengthy cross-examination by Mr Hayhurst, Mr Simmonite was taken through his analysis of the SAGE records in some detail in particular his observation, in his fourth witness statement that:

> "The net sales by YW [York Wines] to Sintra SA after some credit adjustments, for the period 18 October 2004 to 18 July 2007, was

> £28,981,747.90 (cell D6). The net cash and bank receipts allocated to Sintra SA was £27,692,530.76 (cell G21). Therefore, the sales exceed the receipts by £1,289,217.14 (cell G25). This would not be evident looking at the summary of the Sintra SA account in Sage, where it would appear that all sales made to Sintra SA were paid in full. This can be seen in the year end adjustment figures, which I explain in [further in the witness statement].

488. It was suggested to Mr Simmonite that he had made an error, in fact "six broad categories of error", and that the correct difference between the sales and receipts was in fact not £1,289,217.14 but £47.54. This was the amount stated on a York Wines customer balance summary for SA as at 31 December 2007, dated 18 February 2008.

489. The first of the six categories of error was the inclusion of a sales credit for £16,320 by Mr Simmonite in his calculation of total sales without including, what Mr Hayhurst described as, the "linked" sales invoice.

490. The second category of "error" concerned year end adjustments. Mr Simmonite explained that it appears to have been the common practice for York Wines, where a customer of York Wines carried an outstanding balance at the year end, for an internal credit note to be raised equal to the amount due to effectively, on paper, clear the account and produce a nil balance. This would be followed by the issue of an internal sales invoice for the same value as the credit note reinstating amount due which would be carried forward into the subsequent financial year. Mr Simmonite accepted that the correct way to account for this when completing a reconciliation was to include both the credit and the invoice. However, it was suggested to him that he not done so on a number of occasions resulting in an error in his calculation.

491. The third category was the failure by Mr Simmonite, which he "fully" accepted, to include certain sales invoices within the net sales figures.

492. The fourth concerned the omission by Mr Simmonite of four further credits totalling £139,083.20.

493. The fifth category concerned the banking receipts, in particular the deduction of £537,350 which Mr Hayhurst said was not included in the £1,287,905 total.

494. The sixth category related to the cash amounts shown in Mr Simmonite's spreadsheets and the deduction, by Mr Simmonite, of £1,558,702 which Mr Hayhurst said had not been included in the total cash receipts of £19,222,101.

495. Mr Simmonite, who fairly accepted that he had made some mistakes in his calculations, revisited these overnight following his second day of cross-examination and produced a new schedule which took account of the points raised by Mr Hayhurst. However, the disparity between the sales and receipts rather than being £1,289,217.14 as it previously had been was, in the new schedule, £1,792.779.94.

496. In evidence, Mr Simmonite explained his approach:

> "I think it was what Mr Hayhurst was saying to me yesterday which really brought something home to me about the reconciliation, and it got so confusing, not least by the fact that there are internal amendments being made where year-end adjustments are raising invoices, raising credit notes, they're cancelling them, re-issuing them, and they're all internal movements that there may have been genuine reasons for creating them but it didn't impact at all on the sales invoices that were going out to customers and what the customers were paying, so I thought, well, rather than add them in, take them out, deduct them here, add them twice I think as Mr Hayhurst has got on one of his schedules, I thought this is overcomplicating the issue, the issue is simple, what receipts have been received? What invoices have been raised and what's

> the difference between the two, and there are clearly adjustments where invoices have been deleted or credited and obviously we still don't agree about the receipts that have been adjusted, so I tried to over-simplify things by taking out anything that wasn't dealing directly with the customer; internal stuff I just dismissed and said, "it's not relevant".

497. When asked if as a result he had been left with a significant discrepancy, Mr Simmonite replied:

> "Yes, and you can see why the accountant has resulted in a £47 difference, and that is because he has used internal adjustments to get to that figure, he's used credit notes, he's used internal invoices. It's a reconciliation that I am sure you could get to if you were to allow for movements within the records that don't impact on the customer."

498. Another aspect of Mr Simmonite's analysis of York Wines' SAGE records concerned cash deposits paid into York Wines' National Westminster bank account. In his fourth witness statement Mr Simmonite had referred to 17 such cash deposits paid into York Wines' National Westminster bank account on 14 January 2005, totalling £130,000, within a four minute period as set out in the table below:

Credits paid into National Westminster Bank account of York Wines on 14 January 2005 (in order as stated on Bank Statement)		
No.	**Time**	**£**
1	09:12	20,000
2	09:13	20,000
3	09:09	4,000
4	09:09	4,000
5	09:13	4,000
6	09:11	4,000
7	09:12	5,480
8	09:12	2,000
9	09:12	2,520
10	09:10	8,000
11	09:11	8,000
12	09:10	8,000
13	09:09	8,000
14	09:10	8,000
15	09:11	8,000
16	09:11	8,000
17	09:10	8,000
Total		**130,000**

499. Handwritten notes on the bank statements have allocated all of these receipts, which are split it into two amounts of £66,000 (the first nine in the above table) and £64,000 (numbered 10 – 17 in the above table). The SAGE records of York Wines show the two payments, both

of which were both posted on 26 January 2005 and were allocated transaction numbers 14973 and 14974 respectively by SAGE.

500. Although Mr Simmonite considered that the "only link" between the cash deposits and SA was the handwritten narrative "Sintra £64,000" and "Sintra £66,000" on the bank statements, the 2005 York Wines cashbook records, in manuscript, that £130,000 was banked. Under a column headed "Invoice Total" it states "Sintra £130,000 14/1".

501. In the "Paid Out" column of that cashbook the SAGE transaction numbers, "T14973 & 14974", are handwritten in red. Mr Simmonite accepted that these references had been added after the transaction had been posted on SAGE as the transaction number is allocated by SAGE and would not have been known beforehand. However, it was not possible to identify which was first, the completion of the figures in the cashbook or the annotation of the bank statement.

502. Mr Simmonite also referred, in his fourth witness statement, to 22 cash deposits of between £2,000 and £8,000 made into the bank account of York Wines on 18 January 2005 in a 20-minute period between 13:45 and 14:04. As with the earlier receipts, handwritten annotations on the bank statements have allocated all these to SA having divided them into two amounts of £66,000 and £60,000. The two payments are recorded on SAGE having been posted on 26 January 2005. The cashbook records "Sintra 18/1" with £126,000 in the "bank" column. SAGE references have been added in red which correspond to the SAGE records.

503. Another cash receipt into York Wines bank account to which Mr Simmonite referred was a payment of £150,000, that was posted to SA's account in York Wines' SAGE records on 10 April 2006.

504. Although he considered that there was no audit trail for this sum, the York Wines bank statement for that date contains the handwritten annotation "Sintra £150,000", although, unlike the previous cash deposits to which we have referred, it does not show which of a number of several sums, of between £5,000 and £10,000, make up that total. When asked about this, Mr Simmonite said that it was "less of an audit trail" than the previous examples because the amounts included in the total sum were not clearly identified. However, the £150,000 and SAGE reference number were included in the cashbook.

505. There were further examples, which we have not included, of cash payments being made into the bank account of York Wines recorded in both its SAGE records and in its cashbook.

506. Mr Simmonite said that he had not referred to the cashbook, which he agreed was a "primitive" accounting record, in his witness statement. When asked why he said:

> "I knew the cashbook existed, and I had examined the cashbook - we are obviously going to come on to that, and I had concerns, let's put it that way, of the amounts that were being recorded in the cashbook, so I didn't refer to this because I didn't know whether it was accurate but I do accept that those two amounts that have been allocated on the bank statements add up to the 130[,000] and the transaction numbers match them too, but when I was writing this I was starting the process of thinking, "Okay, where is this money coming from? How is it first recorded?" so I was starting from the bank statements as the first "event" if you like that happened."

507. He agreed, when re-examined, that it had not been part of his exercise to try to reconcile the actual bank records themselves and the SAGE records and had decided just to focus on the bank statements and "what had ended up in SAGE".

508. Mr Simmonite also queried the reliability of York Wines SAGE records in relation to other companies that it was said to have sold alcohol to. As part of his investigations into the SAGE records a report by an independent risk management company, ESA Risk, was

commissioned. ESA Risk conducted background checks in relation to the 11 companies concerned.

509. We refer to three of these companies by way of example:

(1) Carikstone Export Limited ("Carikstone") which, according to the York Wines SAGE records, purchased £2 million worth of goods in 2007. It was a company that was registered at a residential address and was dissolved on 13 January 2004. The former Director of Carikstone, Barry Livingstone, confirmed to Mr Simmonite that the company had not purchased goods from York Wines in 2007;

(2) Mondeo Trading (UK) Limited, shared a director with Bryndawn Limited a participant in York Wines' outward diversion fraud. According to the York Wines SAGE records Mondeo purchased £1.4 million of stock from York Wines in the three months between April and June 2007. Its last accounts, to 30 April 2007, showed an annual turnover of £348,832 with a profit of £8,443. The company went into liquidation in 2009 with unsecured creditors of £756,402; and

(3) Blue Fountain Limited, purchased £22 million of stock from York Wines in 2004 and 2005. Its registered address was a residential property. In its 2005 accounts it declared a profit of £137,651 giving a profit margin of less than 1% on the sales allegedly made in that period.

510. With regard to Carikstone, as HMRC's letter to the appellants' solicitors of 26 November 2021 makes clear, that although Carikstone was dissolved as a company in 2004 its former director, Mr Livingstone, continued to trade as a sole proprietor under the trading name Carikstone Export. Letters from HMRC dated 16 February 2004 and 29 September 2008 addressed to Mr Livingstone trading as Carikstone Export with a different VAT number from the dissolved company confirm that this was the case.

Assessments and Penalties

VAT

511. As a result of his involvement in the investigation into the tax affairs of Mr Malde, Corkteck, SA and Global, described above, Mr Foster came to the conclusion that Mr Malde was the controlling mind of SA and subsequently Global and that Mr Malde had, through those companies, been engaged in inward diversion fraud, smuggling alcohol into the United Kingdom and selling it at slaughter sites giving rise to a liability for VAT and excise duty that was neither declared or accounted for.

512. In his affidavit for the High Court freezing order application Mr Foster stated:

> "It appears that the businesses operated by Mr Malde are a facade created for the purpose of facilitating and undertaking the fraudulent evasion of taxes properly due to HMRC.
>
> …
>
> The evasion of taxes by Mr Malde is on a very substantial scale and is believed to involve the evasion of VAT in the sum of at least £20,670,728 by reason of which HMRC are also intending to raise penalties against Mr Malde personally in the sum of at least £8,698,037.
>
> …
>
> … the evidence shows that Mr Malde operates the fraud through various corporate entities but when HMRC subject one of those companies to careful scrutiny Mr Malde closes that company down and moves its assets and

> operations into another company he has set up in order to perpetuate the fraud."
>
> …
>
> In my view, Mr Malde has been a knowing participant in the fraudulent evasion of taxes due to HMRC on a large scale using various corporate entities, and over a significant period of time."

513. The Particulars of Claim, issued by HMRC, in those High Court proceedings in relation to the freezing order made its case explicit, stating:

> "Mr Malde has set up a complex web of companies to perpetrate the alcohol diversion fraud. His involvement in the central pillars of these [sic] fraud namely Sintra [SA] and Sintra Global, Corkteck, Park Royal, Brunel Freight and Anpa reflects dishonesty on his part."

514. In his first witness statement in the present proceedings Mr Foster said:

> "Mr Malde has shown scant regard for his legal obligations to account for taxes on the sales of alcohol derived from the activities of the Sintra entities by both failing, to register for VAT, declare and pay excise duty and by failing produce and submit annual accounts and to account for Corporation Tax on any of the profits derived from the operation of the Sintra companies."

515. He continued in the same vein saying later in the same statement:

> "Mr Malde was in control of both Sintra entities and also Corkteck. Corkteck was utilised only when a load was stopped and that load then became the cover load. Any loads that got through undetected were effectively smuggles by Sintra. They may or may not have gone anywhere near Corkteck's premises."

516. Mr Foster maintained his view when cross-examined, that SA and Global were entities created by Mr Malde to disguise his trading.

517. It is clear, from the documents created at the time of the assessments, that the focus of HMRC was on the activities of Mr Malde and Corkteck. For example an extract from a SAGE backup file showing sales by York Wines to SA is headed:

> "Parul K Malde Schedule of VAT arrears"

The extract includes Mr Malde's sole proprietor VAT number and refers to Corkteck's VAT quarters. Mr Foster was unable to explain why the documents referred to Mr Malde rather than SA. He did not accept responsibility for having prepared this SAGE backup schedule even though he had exhibited it to his statement.

518. Another document, a VAT assessment schedule, set out in a table includes column headings, one of which states:

> "Gross value of onward sales by Parul K Malde."

Although he was not able to say when the schedule had been prepared, Mr Foster did accept that it was something that he had prepared,. He also said the column should have read "sales by Sintra" and not "sales by Parul Malde" but could not explain either when it had been prepared or why he had included sales by Mr Malde rather than SA.

519. As Mr Foster explained, during the period before the assessments were made, HMRC were exploring different avenues of investigation which altered on the basis of the evidence that was obtained. This is apparent from the investigation which commenced in 2012 by HMRC's Leeds Specialist Investigation team led by Helen Hill as a result of the material gathered during the Operation Rust investigation.

520. On 27 June 2013, before Mr Foster's involvement, Helen Hill sent an email in the following terms seeking technical advice from HMRC's Special Investigations Technical Team:

> "At the AOT I & James [Dibb] mentioned re £29.7m worth of sales between York Wines, Sintra, Galac & Golden Apple.
>
> We know from Op Rust that any trade between these companies is fraudulent and we can link Malde to these through his connection with Sintra.
>
> I am therefore looking to raise assessments on the VAT due on these sales due to them being mirror loads.
>
> Firstly, could you please check whether any time restrictions apply to the years we can raise assessments for bearing in mind that Cl [Criminal Investigations] are going to be coming on board and that these transactions are part of a proven fraud.
>
> Secondly, calculate what VAT is due & for what years.
>
> Your help is greatly appreciated."

521. In the email in response, sent on 27 June 2013, the Technical Team requested a deadline for the provision of the advice. The email continued:

> "I think we're going to be out of time for the assessments anyway".

Ms Hill replied almost immediately:

> "If possible by 19 July 2013 but if any delays keep me updated.
>
> I hope it isn't out of date. Can you look into it further especially as it is deliberate fraud."

The advice from HMRC's Technical Team, by reference to a Customs and Excise Manual, was that, because the information regarding the supplies from York Wines to Sintra was made available to HMRC "more than 12 months ago" it could not be used to raise assessments.

522. Having been told it could not issue assessments on the basis of the apparent trade by York Wines with Sintra, it would appear that consideration was given to targeting Corkteck's REDS approval. Ms Hill then sought further assistance from the Alcohol Technical Team. By email, of 22 November 2013, she wrote:

> "we are trying to establish if the business between Sintra & Corkteck mainly took place in the UK, if so then we will bring Sintra into the UK for tax purposes and look at charging CT, SA & VAT."

523. In any event, Mr Foster said that by July 2014 he had received "irrefutable evidence" linking Mr Malde to SA's FBME account in Cyprus. Following the interviews and correspondence described above and in the absence of any records from either SA or Global (neither of which provided any records to HMRC), Mr Foster assessed the VAT, under s 73 VATA, and penalties, under s 123 and schedule 41 to the Finance Act 2008 as set out in the table below:

Company	**VAT** **£**	**Penalties** **£**
SA	11,749,664	11,162,180
Global	8,921,064	8,698,035
Total	£20,670,728	19,860,215

524. Mr Foster explained that the VAT liability was calculated on the basis that, other than an allowance for goods relating to SA's "cover sales" to Corkteck which he considered "were probably made while the goods were still in France", all of SA's sales were made in the United Kingdom. However, no such allowance was made for Global which Mr Foster said, "apparently did not make its own cover sales" (which were made instead by Adrena)."

525. In evidence Mr Foster accepted that Adrena sat between Global and Corkteck but maintained that all of Global's supplies should be included in the assessment with no allowance given for supplies by Adrena. However, he excluded Galac and Golden Apple supplies from the assessment on the basis that there was "insufficient evidence" to support this "beyond what we had seen from the Rust evidence."

526. The assessments were derived from detailed SAGE accounting prints, obtained by HMRC from Operation Rust, which showed that from 1 October 2004 to 30 September 2007 there had been sales totalling £28,945,635.86 of alcohol by York Wines to SA. In addition an analysis of SA's bank statements from 2004 to 2014, obtained by HMRC via an Exchange of Information Request to the Cypriot tax authorities, showed purchases from York Wines of £9,914,635.81, leading Mr Foster to conclude that the difference between the bank transfers shown on the statements (being 34.254% of the total purchases) and the SAGE records was made up of cash payments which amounted to 65.746% of the total purchases from York Wines by SA which created a cash/bank ratio of 65.746/34.254.

527. Mr Foster explained that in calculating the cash/bank ratio, HMRC had to make the assumption that, during the period from 1 October 2004 to 30 September 2007 all bank payments were made to York Wines. This is because the level of detail in the early SA bank statements was insufficient to identify exactly who the recipients of the payments were. He accepted that payments could have involved other suppliers but as HMRC have not been provided with any records by SA it was necessary to draw conclusions from the available evidence which was to SA's advantage as an increase in the number of suppliers would have the effect of increasing the VAT assessment against SA and Global.

528. A further mark-up of 19.61% was applied to the total purchases on the basis that the purchases are commercial transactions. However, as noted above in reference to his evidence Mr Foster failed to exclude items which he, himself, had identified as non-commercial and accepted should not have formed part of the assessments.

529. Mr Foster said that the 19.61% mark-up was arrived at by reference to HMRC Business Information Unit ("BIU") research which identified the average Gross Profit Ratio ("GPR") for wholesalers and cash and carries in the alcohol sector as 19.61% after accounting for costs. He said that consideration was given to applying the Office for National Statistics Annual Business Enquiry GPR average of 36.29% for all periods, but rejected this on the basis of being too high and including product types which SA and Global do not appear ever to have dealt in. Consideration was also given to using the average GPR of Corkteck, of 5.895%.

530. However, this was rejected, Mr Foster said, on the basis that "Corkteck's role in the fraud is exclusively to provide the 'cover loads' for diversion and so it was never intended to achieve a profit". On balance, and having considered all the available information Mr Foster decided that a GPR of 19.61% was the fairest and the most accurate mark-up to be applied.

531. The VAT assessment was therefore made on the basis of the York Wines SAGE records or, where there are no SAGE records, the bank statement debits using the cash/bank ratio 65.746/34.254. The commercial mark-up was then applied to the resulting amount with the relevant variations in the United Kingdom VAT rate being applied across the assessment period as appropriate. Initially HMRC did not possess either SAGE records or bank statements for the last two periods of the Global assessment. Mr Foster explained that a calculation was therefore

made using the closing cash at bank figure on 31 December 2013 (£4,105,590.95) less the closing balance on 13 May 2014 (£2,733,265.84), a difference of £1,372,325.11.

532. This amount was reduced by a notional 10% to allow for bank charges and other non-commercial expenditure giving a figure of £1,235,092.59. this was then divided by two for the final two VAT periods which gave a bank debit figure of £617,546.29 for each of the final periods (ie 03/14 and 99/99). As such, the assessments cover the period, with respect to SA, from 1 December 2004 to 26 March 2012 (when the balance in SA's bank account was transferred to Global) and, with respect to Global, for the period 1 May 2012 to 13 May 2014 (the date of the attempted transfer of the balance from Global's FBME account to the EPB account of Amirantes.)

533. Although the York Wines bank statements were in the possession of Mr Foster's team at HMRC some time before he assessed SA, when asked, Mr Foster said that he had not considered comparing these with the bank statements of SA even though, had he done so, it would have been possible to have identified precisely which payments had been made from SA's account into that of York Wines.

534. Mr Foster sought to explain why he had not considered the York Wines bank statements at the time of making the assessments leading to the following exchange:

Mr Foster:	I suppose if I'd thought to use those, the York Wines bank statements, it would have been an alternative to the method that I decided to go down. It was clearly something that didn't occur to me at the time.
Mr Gurney:	Because, of course, using York Wines' bank statements, you could have identified precisely which payments out of the Sintra [SA] accounts went to York Wines.
Mr Foster:	Yes, and, I mean, I have seen the work that's been done in respect of that and I know the figures are significantly less. However, I think when I, you know, when I put the best judgment assessment together I was mindful of the nature of a best judgment assessment in terms of it being obviously estimated on the basis of the information that was available at the …
Mr Gurney:	Well, is not that the point, Mr Foster? That was information that was available to you [at the time], was it not?
Mr Foster:	It was. And it would have produced an alternative figure and probably an alternative ratio.
Mr Gurney:	Putting the ratio to one side, considering the York Wines bank statements would have told you, would it not, reliably precisely how much money Sintra [SA] had paid York Wines through its bank accounts.
Mr Foster:	Had I considered those records in the round for the purposes of the best judgment assessment, it would have been an alternative way of calculating a figure, yes.
Mr Gurney:	Well, of course it would have been an alternative. It would have told you precisely how much money Sintra [SA] had paid York Wines through its bank account. Yes?
Mr Foster:	Yes, it would.
Mr Gurney:	Instead, you chose not to look at them. Yes?

Mr Foster: I didn't choose not to look at them. I didn't look at them. It wasn't a case of looking at them and ignoring them. I didn't consider them at the time

535. Following the assessment further information regarding the credits and debits to and from Global's FBME bank account had been received by email, dated 22 November 2016, from HMRC Officer Robert Pritchard, who had sought further information from the administrators of the FBME bank for the Global missing period (01 January 2014 to 15 Nov 2016) in the form of a business bank statement.

536. An analysis of these bank statements shows that the actual "commercial" expenditure (bank debits relating to commercial transactions) was £2,619,705.03, a difference of £1,384,612.43 from HMRC's original estimates which were based upon the limited information available at the time. This would, applying the same methodology as the original VAT assessment against Global, have increased that VAT assessment by £805,810.96. However, no further assessment was made as a result. Mr Foster did not revisit the assessment either as a result of his own analysis of the bank statements or because of information provided to Mr Foster by Mr Simmonite on behalf of Mr Malde, in particular Mr Simmonite's fourth witness statement which challenged the accuracy and reliability of the York Wines SAGE records.

537. We have already referred, in relation to his evidence (see paragraph 57, above), that despite identifying debits (including intra-bank transfers and payments for legal advice) in his analysis of SA's bank statements which did not "on a balance of probabilities relate to a commercial transaction involving goods", Mr Foster did not exclude these from his calculation of the assessment.

538. Mr Simmonite was critical of the way in which the assessments were calculated. In the 2014 Report he wrote:

> "15.2 HMRC have produced no evidence that either [SA] or [Global] illegally imported goods into the UK. All the records examined indicate [SA] and [Global] in the main traded outside the UK. They did sell non-alcoholic goods to UK traders but as intra community supplies these goods did not attract VAT. For example, Pride Oil to Best Buys.
>
> > HMRC appear to have made an unsupported assumption that Sintra SA or Sintra Global smuggled alcohol into the UK and sold it at 'slaughter sites'. The civil standard of evidence required by a Tribunal testing this approach is 'on the balance of probability'.
> >
> > Using 'best judgment' HMRC have relied on the trading records of YW [York Wines] to determine the value of alcohol it sold to [SA]. The director of YW, Kevin Burrage, was convicted of Excise duty fraud in 2012 and the company records were discredited during that trial. Here those same records form the cornerstone of HMRC's case.
>
> In DF's [Mr Foster's] affidavit paragraph 15 HMRC explain that they rely on the Sage prints from YW obtained during Operation Rust. That investigation was conducted in 2008 and the question arises at what stage HMRC had sufficient evidence using 'best judgement; to raise an assessment.
>
> 15.4. HMRC have assumed that all the declared imports of alcohol by Corkteck are '*cover loads*'. When these assumptions have been tested by the Magistrates or Crown Court HMRC's assumptions have been found to be incorrect."

539. In relation to analysis of the SAGE records of York Wines undertaken by Mr Simmonite Mr Foster confirmed, in evidence, that he had never engaged with Mr Simmonite's analysis in his (Mr Simmonite's) fourth witness statement. He said that HMRC had been provided with schedules of the SAGE records rather than the records themselves by the Operation Rust team and that he:

> "… took them as being accurate and that's the exercises that have been undertaken since then and have shown that they are accurate."

He went to say that he had "no specific recollection" of whether he or someone else considered the points raised by Mr Simmonite.

540. When asked if he, as the officer who made the assessment, would have either commissioned or been consulted about such work being commissioned he said:

> "Not necessarily, no. As I said, there was a large team of people working on the case. I wasn't the lead case officer on the case. Helen Hill was, so it's possible that somebody else on the team may have looked at this themselves but I don't believe that I did personally, no."

However, there was no evidence before us that the issues raised by Mr Simmonite were considered by someone other than Mr Foster at HMRC.

541. As neither SA nor Global were registered for VAT the United Kingdom, HMRC (Mr Foster) issued 'liable no longer liable' ("LNLL") VAT assessments on the two companies with respect to the VAT due in periods when the two companies were liable to be registered in the UK on the basis that they should have been registered for VAT. No allowance was given for input tax. Mr Foster explained that it would not be appropriate to do so "because any due or declared import VAT would be offset by an equal declaration of acquisition VAT".

542. The narrative that accompanied the LNLL assessments stated that SA and Global:

> "…are in fact controlled, managed and operated directly from the UK by PKM [ie Mr Malde]. PKM buys and sells using the Sintra entities with assistance from other associates as cover for the illicit movement of UK non-duty paid alcohol into the UK and that PKM benefits personally from this trade…".

543. Mr Foster explained that as the failure by SA to notify HMRC of its liability to register for VAT occurred on 1 December 2004 penalties cannot be charged under schedule 41 to the Finance Act 2008 but under the previous legislation relating to a Civil Evasion Penalty for dishonest evasion under s 60 VATA 1994. As such, the penalty can be charged by reference to all of the lost tax as assessed under s 73 VATA, even though it arose as recently as 2012. This is, Mr Foster explained, because there is only a single failure to notify, rather than an on-going series of failures with the Civil Evasion Penalty being charged under the procedures contained in either Code of Practice 9 ("COP 9") or PN160 (see above).

544. Following Mr Malde's PN160 interview (see above) a "decision letter" was issued by Mr Birdi, on 8 December 2016, to Mr Malde. This made it clear that, although a penalty had been issued against SA under s 60 VATA, because of his "behaviour" HMRC intended to recover 100% of the penalty from him, under s 61 VATA, rather than from SA.

545. Global was required to notify HMRC of its liability to be registered for VAT on 1 May 2012. As it did not do so it fell within the scope of schedule 41 to the Finance Act 2008. Under paragraph 36A of schedule 41 penalty is chargeable for a failure to notify an obligation to register for VAT, unless there is a reasonable excuse with higher penalties if the failure was deliberate, or deliberate and concealed.

546. HMRC considered that the failure of Global to notify its liability to register for VAT was deliberate and concealed and that Mr Malde knew that this was the case and would have known that Global should have registered for VAT. As Global had not disclosed its failure to HMRC at a time when it had no reason to believe HMRC was about to discover it, it is to be treated as having made a "prompted" as opposed to an "unprompted" disclosure.

547. The penalty for a prompted disclosure of a deliberate and concealed failure ranges from 50% to 100%, depending on the "quality of disclosure" which considered under the following three headings:

> **Telling**: Mr Malde was asked specific questions about his knowledge of SA and Global in interview and in subsequent correspondence, denying any specific knowledge of them and giving misleading replies. Therefore, HMRC considered the reduction for "telling" should be nil.
>
> **Helping**: Mr Malde was invited to and did attend an interview at which his advisers were present (the PN160 interview). Subsequently his advisers answered written questions and he supplied a report which contains inaccurate information about SA and Global. Despite the inaccuracy of the information supplied and, in HMRC's view, misleading, there was some, albeit limited, engagement with the investigation process on the part of Mr Malde leading HMRC to conclude that there should be a reduction of 5% for "helping".
>
> **Giving**: although Mr Malde was asked for specific business records in respect of SA and Global none were provided. HMRC therefore considered there should be no reduction for "giving".

The total reduction for the quality of disclosure is therefore 5%. Applying this to the maximum possible disclosure reduction of 50% results in an actual reduction of 2.5%. This reduction is then deducted from the maximum penalty of 100%, to give an actual penalty rate of 97.5%. 97.5% of £8,921,064 is £8,698,035, which is the penalty imposed by HMRC.

548. As HMRC considered Mr Malde to be a company officer (because that term includes "manager" and HMRC maintain that, at the very least, Mr Malde is a shadow director of Global) and that the failure of Global to register for VAT was attributable to him because he controlled the company and knew that it should have registered for VAT, a PLN was also issued under schedule 41 Finance Act 2008. On 16 July 2015 HMRC notified Global of a liability to be registered for VAT the period from 1 July 2012 to 30 June 2015. The letter also stated that, due to a failure to make the necessary VAT return covering this period, HMRC had made a "best judgment" assessment in the sum of £8,921,064.64.

549. On 11 October 2017 Mr Foster wrote to Global c/o Mr Malde regarding a decision taken by HMRC to issue a schedule 24 Finance Act 2007 "inaccuracy' penalty" (and PLN) further or in the alternative to the schedule 41 Finance Act 2008 penalty (and PLN) issued on 16th July 2015. On 12 October 2016 (the day before the Hardship Hearing) Mr Malde, acting on behalf of Global, submitted a 'nil' VAT return for Global in respect of that period. It was made clear to Mr Malde at the Hardship Hearing that HMRC did not accept this return as accurate and explained to him that the assessment remained. However, as a consequence of Mr Malde having submitted a 'nil' VAT return on behalf of Global, the assessment became based upon the fact that the return was "incorrect" and/or "incomplete" as opposed to the original reason, a "failure to make returns".

550. For the avoidance of doubt as to the date (21 July 2014) that HMRC were made "fully aware" of Global's liability to be registered for VAT HMRC issued an "inaccuracy" penalty (and PLN) under schedule 24 to the Finance Act 2007 as an alternative to the schedule 41 penalty (which does not depend upon when HMRC became "fully aware" of the liability to be

registered and relying upon the fact that HMRC considered the submitted nil return as being "incomplete" or "inaccurate". The schedule 41 and schedule 24 penalties are for the same amount and for the same period. The schedule 41 penalty is HMRC's "preferred" penalty assessment, and the schedule 24 penalty the alternative assessment. HMRC do not claim that the aggregate of the two penalties is due and do not seek to claim more than £8,698,035.42 (plus interest) in total.

Excise Duty

551. On 20 July 2015 HMRC issued an excise duty assessments on SA, under s 170A Customs and Excise Management Act 1979 ("CEMA"), in the sum of £19,582,773 for the period from 1 December 2004 to 26 March 2012.

552. On the same day, 20 July 2015, an excise duty assessment was issued on Global in the sum of £14,184,948 for the period 1 April 2012 to 30 June 2015 under Regulation 6(1)(b) of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010.

553. On 21 December 2017 a wrongdoing penalty in respect of the excise duty assessment, under schedule 41 to the Finance Act 2008, penalties, in the sum of £13,830,324 was imposed on Global. Mr Malde was also issued with a PLN in respect of the penalty which was upheld following a reconsideration.

554. The excise duty assessments, penalty and PLN were, as Ms Gibson the officer responsible for issuing the assessments and penalties explained in evidence, based solely on the VAT assessment. Ms Gibson was not provided with any documents as she was not part of the VAT investigation team but, contrary to her usual practice, had relied on what she had been told by that team and had issued the excise assessment and associated penalties accordingly. In evidence she said:

> "I did discuss it with my peers and line management and it was felt that a best judgment excise assessment could be issued on the basis of the VAT assessment. It is not the way that we would do it if we had the actual sales invoices or sales records, but I was advised that the excise assessment could be based on the sales figures and this would be a best judgment based on the [VAT] Specialist Investigation case."

555. Ms Gibson explained that the behaviour giving rise to the penalty and PLN had been considered, on the basis of Mr Foster's evidence, that Global was diverting alcohol without accounting for excise duty, to be "deliberate and concealed". She also said that the disclosure had been "prompted" as Global had not notified HMRC of the wrongdoing before it had been discovered or about to be discovered. As such, the minimum penalty percentage is 50% and maximum 100%.

556. In this case the following reductions for disclosure were given:

Telling: Due to Mr Malde's "misleading" replies at interviews, eg his denial of involvement with Global (and/or SA), HMRC concluded no reduction should be given for telling.

Helping: A reduction of 5% was given for the limited engagement in the investigation process by Mr Malde, eg his attendance at interviews.

Giving: As no records were provided there was no reduction for giving.

HMRC did not consider that there were any special circumstances that would lead to a further reduction of the penalty. Given the potential lost revenue of £14,184,948, the reduction for "helping", when calculating the overall penalty percentage, equated to a net reduction of 2.5% resulting in a penalty of £13,830,324.

Appeals

557. SA did not appeal against either the VAT or excise duty assessment, both of which remain unpaid. Neither did it appeal against the s 60 VATA penalty.

558. Although Global did appeal against the VAT and excise assessments, on 13 August 2015, neither appeal was able to proceed as s 84(3) and (3b) VATA and s 16(3) Finance Act 1994 requires that in order to do so there must be either payment or deposit of the tax in dispute or, if the tax is not paid or deposited, either HMRC must be satisfied or, if not, the Tribunal must decide that the requirement to pay or deposit the tax in dispute would cause it to suffer hardship.

559. As the disputed tax had not been paid by Global and HMRC were not satisfied that it would suffer hardship, an application was made to the Tribunal leading to the Hardship Hearing at which the Tribunal found against Global and dismissed its application. Accordingly, the appeals, both in relation to VAT and excise duty, were unable to proceed any further.

560. However, as payment of the tax in dispute is not required for an appeal against a penalty or a requirement to be registered for VAT to proceed, the present appeals (as set out in paragraphs 2 and 3, above) were made.

561. The appellant in Global's two appeals (against its liability to register for VAT and against the penalty assessment), which were both made on 13 August 2015, is described on its Notices of Appeal as "Parul Malde (Attorneys-in-fact) on behalf of Sintra Global Inc – authorisation attached".

562. That authorisation being the "General Power of Attorney" dated 17 February 2011 (described above at paragraphs 132(9), 246 and 247) that was granted to Mr Malde. The grounds of appeal for both Global appeals are identical, namely:

> "(1) The Appellant did not trade in the UK. It is a company registered in Panama with offices in Poland and Malaysia.
>
> (2) The assessment is out of time. HMRC had evidence of facts sufficient to raise an assessment in 2012.They failed to do so within the 12 month period required. The time limits for VAT assessments are found in the VAT Act 1994 section 73 (6)(b) & section 77 and Finance Act 2008, Schedule 39, paragraph 34."

563. The grounds of Mr Malde's four appeals (against the PLNs and DLN), notified to the Tribunal on 13 August 2015, 5 March 2016, 6 January 2017 and 20 November 2017 respectively, are also in similar terms and are, in essence that he was neither a director nor a shareholder of Global and has no role in the management or directions as to the trading activities of either that company or SA.

564. On 30 November 2017 the Tribunal directed that all these appeals proceed and be heard together.

LAW

565. Before we address the issues arising in these appeals it is convenient, at this stage, to set out the applicable legislation in relation to the matters with which these appeals are concerned, namely, the liability to register for VAT, the requirement to notify HMRC of that liability and the associated penalties for the failure to do so and that relating to penalties arising in respect of the alleged handling by Global of goods subject to unpaid excise duty.

Requirement for registration for VAT etc

566. Section 4(1) VATA provides:

> VAT shall be charged on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

A "taxable supply" is defined, by s 4(2) VATA, as "a supply of goods or services made in the United Kingdom other than an exempt supply". As to whether goods are supplied in the United Kingdom, s 7 VATA provides:

> (1) This section shall apply (subject to sections ... 18 and 18B) for determining, for the purposes of this Act, whether goods ... are supplied in the United Kingdom.
>
> (2) Subject to the following provisions of this section, if the supply of any goods does not involve their removal from or to the United Kingdom they shall be treated as supplied in the United Kingdom if they are in the United Kingdom and otherwise shall be treated as supplied outside the United Kingdom.

567. A "taxable person" is defined, by s 3(1) VATA, as a "person" who "is or is required to be registered under [VATA]". Section 3(2) VATA provides that schedules 1 to 3A VATA "shall have effect with respect to registration".

568. Paragraph 1 of schedule 1 to VATA provides that a person who makes taxable supplies but is not registered for VAT, becomes liable to be registered at the end of any month in which the value of his taxable supplies "in the period of one year then ending" has exceeded the VAT threshold (which varied over the periods with which these appeals are concerned).

569. Paragraph 5 of schedule 1 imposes an obligation on any person who becomes liable to be registered to notify HMRC of that liability within 30 days of the end of the relevant month – the month at the end of which he becomes liable to become registered. It also imposes a requirement on HMRC to register that person, whether or not he notifies them, with effect from the beginning of that period.

570. A right to appeal against a decision of HMRC to register a person for VAT is contained in s 83(1)(a) VATA.

571. The following excise duty assessments were issued by HMRC, on 20 July 2015, to:

(1) SA in the sum of £19,582,773 for the period from 1 December 2004 to 26 March 2012 under s 170A Customs and Excise Management Act 1979 ("CEMA"); and

(2) Global in the sum of £14,184,948 for the period 1 April 2012 to 30 June 1015 under Regulation 6 of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010.

Excise Duty

572. The excise duty assessments against Global were, as noted above (in paragraph 552), stated to have been made under Regulation 6(1)(b) of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010. Regulation 5 of those Regulations 2010, which was made under s 1 of the Finance (No 2) Act 1992, provides that:

> … there is an excise duty point at the time when excise goods are released for consumption within the United Kingdom.

Regulation 6(1)(b), provides that "Excise goods are released for consumption in the United Kingdom at the time when goods are held outside a duty suspension arrangement and United Kingdom excise duty on those goods has not been paid, relieved, remitted or deferred under a duty deferment arrangement."

573. The power for HMRC to assess such unpaid duty is contained in s 12 of the Finance Act 1994 which provides:

> (1) …
>
> (1A) … where it appears to the Commissioners—
>
> > (a) that any person is a person from whom any amount has become due in respect of any duty of excise; and
> >
> > (b) that the amount due can be ascertained by the Commissioners,
>
> the Commissioners may assess the amount of duty due from that person and notify that amount to that person or his representative.

Subsection (4) of s 12 of the 1994 Act sets out the time limits for assessments which are not in issue in the present appeals

574. Section 16 Finance Act 1994 provides a right of appeal against an excise duty assessment.

Penalties

575. Under s 123 of, and paragraph 1 of schedule 41 to, the Finance Act 2008 a penalty is payable where a person, "P", fails to comply with an obligation, which includes the obligation to notify and register for VAT under schedule 1 VATA. A penalty is also payable under paragraph 4(1) of that schedule:

> … by a person (P) where—
>
> > (a) after the excise duty point for any goods which are chargeable with a duty of excise, P acquires possession of the goods or is concerned in carrying, removing, depositing, keeping or otherwise dealing with the goods, and
> >
> > (b) at the time when P acquires possession of the goods or is so concerned, a payment of duty on the goods is outstanding and has not been deferred.

576. Paragraph 5 of schedule 41 provides:

> (1) A failure by P to comply with a relevant obligation is—
>
> > (a) "deliberate and concealed" if the failure is deliberate and P makes arrangements to conceal the situation giving rise to the obligation, and
> >
> > (b) "deliberate but not concealed" if the failure is deliberate but P does not make arrangements to conceal the situation giving rise to the obligation.
>
> (2)… [not applicable in the present case]
>
> (3) The doing by P of an act which enables HMRC to assess an amount of duty as due from P under a relevant excise provision is—
>
> > (a) "deliberate and concealed" if it is done deliberately and P makes arrangements to conceal it, and
> >
> > (b) "deliberate but not concealed" if it is done deliberately but P does not make arrangements to conceal it.
>
> (4) P's acquiring possession of, or being concerned in dealing with, goods on which a payment of duty is outstanding and has not been deferred is—
>
> > (a) "deliberate and concealed" if it is done deliberately and P makes arrangements to conceal it, and
> >
> > (b) "deliberate but not concealed" if it is done deliberately but P does not make arrangements to conceal it

577. Paragraph 16 applies where a person becomes liable for a penalty under paragraph 1. This provides:

> (1) Where P becomes liable for a penalty under any of paragraphs 1 to 4 HMRC shall—
>
> (a) assess the penalty,
>
> (b) notify P, and
>
> (c) state in the notice the period in respect of which the penalty is assessed
>
> (2) A penalty under any of paragraphs 1 to 4 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
>
> (3) An assessment—
>
> (a) shall be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Act),
>
> (b) may be enforced as if it were an assessment to tax, and
>
> (c) may be combined with an assessment to tax.
>
> (4) An assessment of a penalty under any of paragraphs 1 to 4 must be made before the end of the period of 12 months beginning with—
>
> (a) the end of the appeal period for the assessment of tax unpaid by reason of the relevant act or failure in respect of which the penalty is imposed, or
>
> (b) if there is no such assessment, the date on which the amount of tax unpaid by reason of the relevant act or failure is ascertained.
>
> (5) In sub-paragraph (4)(a) "appeal period" means the period during which—
>
> (a) an appeal could be brought, or
>
> (b) an appeal that has been brought has not been determined or withdrawn.

578. The amount of the penalty is determined by calculating the "potential lost revenue". "Potential lost revenue" is defined as, "the amount of VAT (if any) for which P is…liable for the relevant period" (paragraph 7) or the "amount of duty that may be assessed as due" (paragraph 9).

579. In relation to a VAT penalty, The relevant period is defined by paragraph 7(7)(b) as:

> the period beginning on the date from which P is required…to be registered and ending with the date on which HMRC received notification of, or otherwise became fully aware of, P's liability to be registered.

580. Paragraph 7(8) requires that the sum be reduced, where goods have been acquired from another member state, by the amount of any VAT "which HMRC are satisfied has been paid on the supply in pursuance of which the goods were acquired under the law of that member state."

581. Paragraph 12 of schedule 41 provides:

> (1) Paragraph 13 provides for reductions in penalties under paragraphs 1 to 4 where P discloses a relevant act or failure
>
> (2) P discloses a relevant act or failure by—

(a) telling HMRC about it,

(b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it, and

(c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid.

(3) Disclosure of a relevant act or failure—

(a) is "unprompted" if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the relevant act or failure, and

(b) otherwise, is "prompted".

(4) In relation to disclosure "quality" includes timing, nature and extent

582. Paragraph 13 requires HMRC to reduce the standard percentage of a penalty to reflect the quality of the disclosure but sets limits as to the extent of any such reduction. HMRC are also given a broad power, by paragraph 14, to reduce a penalty because of special circumstances, which includes the power to stay a penalty.

583. The right to appeal arises under paragraph 17, both in relation to the decision that a penalty is payable and in relation to the amount of the penalty. Under paragraph 19 the Tribunal may affirm or cancel HMRC's decision in relation to the issue of whether or not a penalty is payable. In relation to the amount of a penalty payable, paragraph 19(2) enables the Tribunal to affirm the decision or substitute for HMRC's decision any decision which HMRC had the power to make.

584. Paragraph 22 of schedule 41 provides:

(1) Where a penalty under any of paragraphs 1, 2, 3(1) and 4 is payable by a company for a deliberate act or failure which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as HMRC may specify by written notice to the officer.

(2) Sub-paragraph (1) does not allow HMRC to recover more than 100% of a penalty.

(3) In the application of sub-paragraph (1) to a body corporate other than a limited liability partnership "*officer*" means—

(a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006. …

(4) In the application of sub-paragraph (1) in any other case "officer" means—

(a) a director,

(b) a manager,

(c) a secretary, and

(d) any other person managing or purporting to manage any of the company's affairs.

Section 251 of the Companies Act 2006 defines as "shadow director" as "a person in accordance with whose directions or instructions the directors of the company are accustomed to act."

585. In addition to the schedule 41 Finance Act 2008 penalties, a penalty is payable under paragraph 1 of schedule 24 to the Finance Act 2007, issued in the present case as an alternative to the schedule 41 penalty, where an inaccurate document was given to HMRC which

understates a liability to tax and that inaccuracy was deliberate or careless. Schedule 24 contains similar provisions to schedule 41 in relation to reductions of the quality of disclosure and the liability of a director or someone who manages the company's affairs.

586. As noted above (at paragraph 543) because the failure by SA to notify HMRC of its liability to register for VAT occurred on 1 December 2004 schedule 41 Finance Act penalties do not apply and the applicable penalties arise under ss 60 and 61 VATA. Under s 60 VATA a person that has dishonestly taken action or omitted to take action "for the purposes of evading VAT" is shall be liable to a penalty equal to the amount of VAT evaded. However, in the present case HMRC have not sought to penalise SA but have issued a penalty against Mr Malde personally relying on s 61 VATA. This provides:

> (1) Where it appears to the Commissioners—
>
> > (a) that a body corporate is liable to a penalty under section 60, and
> >
> > (b) that the conduct giving rise to that penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer of the body corporate (a "named officer"),the Commissioners may serve a notice under this section on the body corporate and on the named officer.
>
> (2) A notice under this section shall state—
>
> > (a) the amount of the penalty referred to in subsection (1)(a) above ("the basic penalty"), and
> >
> > (b) that the Commissioners propose, in accordance with this section, to recover from the named officer such portion (which may be the whole) of the basic penalty as is specified in the notice.
>
> (3) Where a notice is served under this section, the portion of the basic penalty specified in the notice shall be recoverable from the named officer as if he were personally liable under section 60 to a penalty which corresponds to that portion; and the amount of that penalty may be assessed and notified to him accordingly under section 76
>
> (4) Where a notice is served under this section—
>
> > (a) the amount which, under section 76, may be assessed as the amount due by way of penalty from which the body corporate shall be only so much (if any) of the basic penalty as is not assessed on and notified to a named officer by virtue of subsection (3) above
> >
> > (b) the body corporate shall be treated as discharged from liability for so much of the basic penalty as is so assessed and notified.
>
> (5) No appeal shall lie against a notice under this section as such but—
>
> > (a) where a body corporate is assessed as mentioned in subsection (4)(a) above, the body corporate may appeal against the Commissioners' decision as to its liability to a penalty and against the amount of the basic penalty as if it were specified in the assessment; and
> >
> > (b) where an assessment is made on a named officer by virtue of subsection (3) above, the named officer may appeal against the Commissioners' decision that the conduct of the body corporate referred to in subsection (1)(b) above is, in whole or part, attributable to his dishonesty and against their decision as to the portion of the penalty which the Commissioners propose to recover from him.

> (6) In this section a "managing officer", in relation to a body corporate means any manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity or as a director; and where the affairs of a body corporate are managed by its members, this section shall apply in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate.

587. A notice under s 61 VATA was served on Mr Malde by HMRC (Mr Birdi) on 8 December 2016 (see paragraph 544, above). Section 83(1)(n) VATA provides for a right of appeal against a penalty issued under s 60 VATA or s 61 VATA.

ISSUES

588. Before we turn to the issues, as set out in paragraph 4 above, it is necessary to consider the burden of proof, which was addressed by Mr Webster for the appellants but not Mr McGuinness for HMRC, and also the order in which we should determine the issues.

589. However, we must first deal with an issue that arose during the closing submissions when Mr Webster submitted that the claim by Mr Foster that it was not until July 2014 that he, Mr Foster, had become aware of what he described in his letter to Mr Malde of 29 January 2014 as "irrefutable evidence" linking Mr Malde to SA's FBME account in Cyprus was "demonstrably false" by reference to that 29 January 2014 letter. This is because included as an attachment to that letter in the hearing bundle are documents, relating to SA, which show Mr Malde as its director and sole shareholder and bear a Turner Little stamp dated 29 July 2004. Clearly if such documents were attached to the letter of 29 January 2014 they must have been in Mr Foster's possession before then contradicting his evidence that he was not aware of a link between Mr Malde and SA until July 2014.

590. Mr McGuinness responding referred to the section of the 29 January 2014 letter under the heading "Sintra SA/Sintra Global Inc" which we have set out in part above (see paragraph 356). Having taken us through each of the enclosures/attachments and noting the consistency of the enclosure with the observation in the letter, he submitted that that there had been an error in photocopying the documents to which Mr Webster had referred and that the documents were included in the hearing bundle as enclosures to the letter in error. This, he said, was immediately obvious having considered the other enclosures to the letter which are as described in the body of the letter as opposed to the documents concerned for which the letter has no description. Mr McGuinness fairly accepted that HMRC was to blame for this error as it was HMRC that produced the exhibit and prepared the hearing bundle. He also reminded us that Mr Turner had said that he was first contacted by Mr Foster on 24 April 2015 and that Mr Turner's and Mr Foster's evidence was that Mr Foster he had obtained files relating to SA, Global and Amirantes on 15 May 2015 some 15 months or so after he had written the letter to Mr Malde.

591. Mr Webster, rightly, accepts that none of this was put to Mr Foster in cross-examination who had not been taken to the documents concerned. Mr Webster was quite frank that this was something that had only been discovered relatively late in the case. However, even though the documents were not included within a specific attachment the 29 January 2014 letter did refer to documents being "appended" and, giving the word "append" its natural meaning, was, he says, sufficient to include the Turner Little documents.

592. We accept that these documents were included where they were in the hearing bundle in error. In our view not only is this the most logical explanation for their presence there but it is not possible for these documents to have been in Mr Foster's possession before he met with Mr Turner and obtained them from him.

Burden of Proof

593. In tax appeals the general position, as is clear from the decision of the Court of Appeal in *Awards Drinks Limited v HMRC* [2021] 1590 at [13] (citing Carnwath LJ, as he then was, at [69] in *Khan (t/a Greyhound Cleaners) v HMRC* [2006] STC 1167), is that it is for the taxpayer to establish the correct amount of tax due and that this burden of proof does not change merely because allegations of fraud may be involved (see eg *Brady (Inspector of Taxes) v Group Lotus Car Companies plc* [1987] STC 635 at 642… per Mustill LJ).

594. However, there are cases in which a connection to fraud is an essential element of the basis of assessment, such as MTIC appeals on the basis of the *Kittel* principle, in which HMRC bear the burden of proof. In addition, in any case where fraud or dishonesty is pleaded with full particularity, as in the present case, HMRC adopts the burden of proof in relation to those allegations which should not be made without evidence by which the allegations can apparently be justified. As Carnwath LJ put it in *Khan (t/a Greyhound Cleaners) v HMRC*:

> "73. The ordinary presumption, therefore, is that it is for the Appellant to prove his case. That approach seems to me to be the correct starting-point in relation to the other categories of appeals with which we are concerned under s 83 [VATA], including the appeal against a civil penalty. The burden rests with the Appellant except where the statute has expressly or impliedly provided otherwise. Thus, the burden of proof clearly rests on Customs to prove intention to evade VAT and dishonesty. In addition, in most cases proof of intention to evade is likely to depend partly on proof of the fact of evasion, and for that purpose Customs will need to satisfy at least the tribunal that the threshold has been exceeded. But, as to the precise calculation of the amount of tax due, in my view, the burden rests on the Appellant for all purposes.
>
> 74. This view is reinforced by a number of considerations:
>
> (i) It is the Appellant who knows, or ought to know, the true facts.
>
> (ii) Section 60(7) makes express provision placing the burden on Customs in relation to specified matters. This suggests that the draftsman saw it as an exception to the ordinary rule, and seems inconsistent with an implied burden on Customs in respect of other matters.
>
> (iii) The distinction is also readily defensible as a matter of principle. Mr Young [counsel for the Appellant] relied on 'the presumption of innocence' under art 6 of the Convention, but he was unable to refer us to any directly relevant authority. The presumption clearly justifies placing the burden of proof on Customs in respect of tax evasion and dishonesty; but once that burden has been satisfied, a different approach may properly be applied (compare *R v Rezvi* [2002] UKHL 1, [2003] 1 AC 1099, [2002] 1 All ER 801, in relation to confiscation orders in criminal proceedings).
>
> (iv) In relation to the calculation of tax due the subject-matter of the assessment and penalty appeals is identical. This link is given specific recognition by section 76(5) (allowing combination in one assessment). It would be surprising if the Act required different rules to be applied in each case.
>
> (v) Section 73(9) provides that the assessed amount, subject to any appeal, is 'deemed to be an amount of VAT due …'. In a case where either there was no appeal against the assessment, or the penalty proceedings followed the conclusion of any such appeal, this provision would appear to preclude any attempt to reopen the assessment for the

> purpose of assessing the penalty. The subsection does not apply directly where, as here, the penalty appeal is combined with an appeal against the assessment, and the assessment has not therefore become final, but it indicates another link between the two procedures. (I do not see the provision as necessarily confined to enforcement, as Mr Young argues. Nor in the present context do I need to spend time on his argument that this interpretation could cause unfairness in proceedings against a third party under section 61, although I note that under that provision there appears to be a general power to mitigate the penalty.)
>
> (vi) To reverse the burden of proof would make the penalty regime unworkable in many cases. In a case such as the present, a 'best of judgment' assessment is needed precisely because the potential taxpayer has failed to keep proper records, so that positive proof in the sense required in the ordinary civil courts is not possible. The assessment may be no more than an exercise in informed guesswork. Indeed to put the burden on Customs would tend to favour those who have kept no records at all, as against those who have kept records, which are merely inadequate, but may be enough to give rise to an inference on the balance of probabilities."

595. In contrast to the general rule for tax assessments, it has also long been accepted that HMRC bears the burden of proving that a person is liable to a penalty (see eg *King v Walden* [2001] STC 822 at [71] and *Massey v HMRC* [2016] STC at [58]). In penalty proceedings, which are punitive and do not concern liability to tax, and which engage Article 6 ECHR (right to a fair trial), the normal common law on burden of proof applies, ie that the person who makes the allegation must prove it. It is therefore for HMRC to prove the default which is the trigger for the penalty.

596. Accordingly, in general terms, given the nature of these appeals, the burden of proof falls on HMRC to establish the allegations before the Tribunal and the liabilities to penalties. We deal with the issue of the quantum, where there is a difference between the parties on the approach to be adopted, separately below given that it is one of the issues that the parties agree requires to be determined.

597. As for the standard of proof, it is the civil standard, the balance of probabilities, that applies (see *Re B* [2009] 1 AC 1). As Lady Hale, giving the judgment of the Supreme Court in *Re S-B* (Children) [2010] 1 AC 678 said, at [34]:

> "… there is no necessary connection between the seriousness of an allegation and the improbability that it has taken place. The test is the balance of probabilities, nothing more and nothing less."

Order of Issues

598. Although the parties have agreed the issues that need to be determined in these appeals they part company in regard to the order in which these issues should be considered.

599. For the appellants, Mr Webster contends that we should consider SA and Global diverted and sold alcohol in the United Kingdom (the "Place of Supply Issue") first. He makes the point that if we find in favour of Global and Mr Malde on this issue the other issues fall away and need not be determined. However, Mr McGuinness, for HMRC, submits that we should not determine whether, as Mr Webster contends, the Pace of Supply Issue before first determining whether Mr Malde was the controlling mind behind those companies pointing out that if Mr Malde was found not to be the controlling mind of the companies he would succeed in his appeals and it would not be necessary to consider whether SA diverted alcohol into the United Kingdom.

600. Additionally, Mr McGuinness contends that if Mr Malde, who has put himself forward relying on the power of attorney (see above) as the person entitled to represent and pursue these appeals in relation to Global (which is the undisputed successor and carrying on the same business as SA), was in control of SA and Global he would be in a position to produce trading records for both companies but has chosen not to do so.

601. This, Mr McGuinness says, is a very relevant consideration to the determination of the Place of Supply issue and the quantum of the best of judgment assessment that was made by Mr Foster on the material he had, particularly in relation to the arguments advanced on behalf of the appellants regarding lack, or paucity, of evidence. He says that should we determine that Mr Malde did control SA and Global it should "significantly influence" our decision as he has chosen not to place before the Tribunal evidence to which, by virtue of his position of control, he had access.

602. To do otherwise would, he submits, be tantamount to a fraudster's charter because, if we decide against Mr Malde on the issue of control, the logical consequence would be that he has deliberately chosen not to put the SA and Global material before the Tribunal which, Mr McGuinness argues, is more likely to support HMRC's case and rather than Mr Malde's or Global's.

603. Mr Webster, however, contends that there are two significant issues with such an approach. The first is that it effectively reverses the burden of proof; and the second is the circularity of the argument raised by HMRC in that if we were to find he controlled SA and Global it would be Mr Malde's choice not to produce the records of the respective companies with the inference to be drawn that his failure to do so would show that the companies did make supplies in the United Kingdom. Mr Webster says that this undermines Mr Malde's primary defence – that he did not control the companies and cannot produce any trading records – and that it would be neither fair nor appropriate to proceed on such a basis.

604. Additionally, Mr Webster submits, that where a company is controlled and where it trades from are separate issues and there is no logical connection. As such even if we were to find that Mr Malde did control SA and Global it would not assist us in determining whether their supplies were made in the United Kingdom.

605. Having given the matter some thought, we accept Mr Webster's submission regarding the reversal of the burden of proof. Having come to such a conclusion and given Mr Webster's secondary point, concerning the circularity of HMRC's argument, was a matter raised by the Tribunal (Ms Hunter) during the oral closing submissions, we have decided to consider the Place of Supply Issue before that of control of SA and Global. An advantage of such an approach is that a finding that neither SA nor Global made any supplies in the United Kingdom would be determinative whereas as finding that Mr Malde did not control either company would limit, but not completely eliminate, consideration of the Place of Supply and Quantum issues.

Place of Supply

606. As Mr Webster put it in his oral closing submissions:

> "… the place of supply argument needs to be deconstructed a bit because, again, there are two quite separate issues. One is, were goods that were smuggled into the UK supplied in the UK? Well, the answer, of course, is yes, they were supplied in the UK by somebody, but when we look at the place of supply issue, we are not looking at that issue; what we are looking at is: what is Sintra's [ie SA's and Global's] place of supply?

It is therefore not disputed that the alcohol smuggled into the United Kingdom was supplied in the United Kingdom. As such, the issue for us to determine is whether that alcohol was smuggled into and supplied in the United Kingdom by SA and subsequently Global.

607. In doing so it is not necessary for us to determine how either SA or Global acquired that alcohol. Notwithstanding the differences between them regarding the accuracy of the supply chains relied upon by Mr Foster in his affidavit to the High Court and in this case, it is, as Mr McGuinness contends and Mr Webster appears to accept, irrelevant how SA or Global became in possession of its stock. Our concern is what happened to that stock once it was in the possession of SA and Global.

608. Mr McGuinness contends that there is relevant evidence that it was supplied by SA and then Global in the United Kingdom, elements of which perhaps would not be conclusive but cumulatively are of "considerable weight". These include:

(1) All steps to incorporate SA and Global were taken in the UK;

(2) All instructions to incorporate the companies and to open bank accounts were given by a United Kingdom resident, Mr Malde;

(3) Mr Malde's home address appeared as the business address on a bank application by Global;

(4) The principal business accounts of SA and Global were in sterling;

(5) The evidence suggests reveals that all purchases and sales, in so far as can be ascertained from the evidence, of both SA and Global were made in sterling;

609. Mr McGuinness argues that both SA and Global received "significant" payments from United Kingdom companies. It is, he says, obviously more apparent in respect of Global, where there are more complete and detailed bank records. Payments were made to Global via Hobbs and Alexsis, companies that featured in Operation Banjax, and those payments are clearly, given the convictions that were obtained in Banjax, payments for goods that had been smuggled into the United Kingdom and slaughtered in the United Kingdom.

610. He also contends that it is clear from the "Luton" scenario in Operation Rust and SMS messages and evidence in Operation Epsom that the OCG retained control and ownership of goods in the United Kingdom and that they had not already been sold. We would agree. However, even if the OCG did retain control and ownership of the alcohol in the United Kingdom it does not assist or provide an answer to the question whether SA or Global was the entity used by the OCG or whether it was those companies that smuggled the alcohol into the United Kingdom.

611. Mr Webster contends that the model advanced by HMRC is an artificial one as the officers involved viewed this as an operation by Mr Malde and were unclear as to which entity was making supplies in the United Kingdom. He says that the selection of SA and Global was born out of necessity and convenience. Like Hercule Poirot in Agatha Christie's *Death on the Nile*, Mr Webster says of HMRC:

> "They conceive a certain theory, and everything has to fit into that theory. If one little fact will not fit it, they throw it aside. But it is always the little facts which will not fit in that are significant."

It is those "little facts" which do "not fit" the case advanced by HMRC that Mr Webster says are significant and should not be summarily discarded. In particular he contends that a careful consideration of the material shows that HMRC have adopted a blinkered approach leading to a simplistic and false analysis.

612. It is clear, he says, that others were in control of the various frauds and that, whilst SA and subsequently Global were involved in the transaction chains, the concentration of HMRC's investigation upon Mr Malde, SA and Global has blinded the officers involved to the true ramifications of an overall view of the evidence.

613. Mr Webster submits that HMRC have not understood the true nature of the activity involved in Operation Rust and failed to adjust their thinking when the Operations Banjax and Epsom material was made available. He contends that HMRC were wedded, and remained wedded, to a particular view of the evidence and have been guilty of the well-recognised trap of seeing the evidence through their theory, as opposed to forming, or adjusting, their theory as the evidence emerges.

614. Mr Webster also criticises HMRC for ignoring the fact that the consignee, responsible for the duty as soon as the alcohol departs from a duty suspension arrangement, was Corkteck and for failing to explain or "ever advance a plausible explanation" why it was not Corkteck that should be liable. He reminds us that it was Corkteck named as consignee and importer on every load to be sent to the United Kingdom and that it was accepted by Mr Bailey that in order for the mirror load theory to work it was necessary for each load to have the appropriate documentation. Mr Webster posed the question: since every one of those loads must have had papers showing Corkteck as the importer and since it is said that Mr Malde was the controlling mind why did HMRC choose SA and/or Global as the taxable entities?

615. If HMRC's analysis is right, Mr Webster submits, it is only the loads which were intercepted, or the ARC ran out, that were eventually delivered to Corkteck. Why, he asks, does that make SA and/or Global the importer?

616. However, as Mr McGuinness says, there was no evidence before us that Corkteck was the supplier of smuggled alcohol into the United Kingdom. Neither, he says, is there evidence that the money went to Corkteck. HMRC's case is that Corkteck appeared on the paperwork as the consignee because, in order for the smuggling operation to work, there has to be an EMCS record with a unique ARC number.

617. On HMRC's case, there are two reasons for the EMCS paperwork with an individual ARC. First, if there is an interception at the border the paperwork can be produced so that it effectively becomes the cover load with all loads which are not stopped being intended to be smuggled into the United Kingdom and sent to slaughter sites for onward distribution. The second reason for Corkteck being the consignee is that each EMCS and individual ARC number has a limited shelf-life and that details of the date of despatch etc will be reported to the authorities and will, if there has been no interception, be have to closed off.

618. Mr McGuinness submits that this is a price that the smugglers have to be prepared to pay as it is the reality of the situation and that is why that, in reality, the supply in respect of the smuggled alcohol takes place by the entity that has smuggled the goods into the United Kingdom from the continent. As such the place of supply for the smuggled goods is he submits "undoubtedly" the United Kingdom, which is after the intended destination of those goods as far as the smugglers are concerned.

619. In the present case Mr McGuinness says that there were no sales to Corkteck. Goods smuggled were not going to Corkteck – it is only if a load was intercepted at the border that, because the paperwork would have come to the attention of the authorities and as Corkteck was the named consignee, it would have gone to Corkteck. The only other situation in which goods would have gone to Corkteck was when an ARC was nearing the end of its shelf-life and needs to be "closed off". However, other than in those circumstances the load will not go to Corkteck but to a slaughter site.

620. Mr Webster contends that the fact that goods were delivered well within the lifetime of an ARC (see above) "substantially" undermines the cover/mirror load theory advanced by HMRC which has no explanation of why loads would have been delivered to Corkteck on occasions less than 24 hours after despatch from consigning bond.

621. In addition Mr Webster contends that HMRC's case does not take account of the seals on the containers as described by Mr Bailey (see above). Mr Webster says that the theory of cover/mirror loads, if correct, would require that multiple identical seals be attached to the each of the loads sent under cover of the same ARC/CMR and that it is far from clear how that would be possible, in practical terms, given that the seals are uniquely numbered. The only other way to avoid the issue, Mr Webster submits, would be for the consignor not to include the seal number on the CMR, running the risk of raising the suspicion of the UKBF. However, there is no evidence in this case of any concern being raised by UKBF at the border about the absence of seals on loads, or the number on the seal not according with the paperwork.

622. Mr McGuinness, however, make the "obvious" point that the existence of inward alcohol diversion fraud is not disputed and that any issue with seals must be overcome otherwise the fraud would not be possible. In the case of illegitimate transportations of goods, inward diversion requires not only a smuggler, but it also requires a complicit sending warehouse, as seals are put onto the goods at the time or before they leave the sending warehouse. As such, he says, what should happen in a legitimate transportation of goods clearly does not happen in cases of the inward diversion of alcohol. In addition, either a complicit haulier or a complicit driver is required. (See probe evidence in Operation Epsom (above) in which there was actually discussion about whether green light, red light. So, whoever is at the border has to either flag up, either put the green light or the red light on, so the driver himself must be complicit.)

623. He therefore submits that, notwithstanding the issue of seals, it is clear that smuggling is taking place and the evidence that smuggling was taking place is compelling.

624. We should also mention the difference between the parties with regard to Operation Banjax. Mr Webster contends that the Banjax OCG was, in addition to providing the paperwork for the fraud, also itself responsible for the smuggling of the alcohol concerned, something to which Ms Myers had agreed in evidence (see paragraph 434, above). Mr McGuinness, relying on the sentencing remarks at the conclusion of the first Banjax trial (see paragraph 420, above), submits that none of the Banjax defendants were involved in the "large-scale movement of smuggled" alcohol but provided the "paper transactions" to "clean the stock" so that it appeared to have been "purchased legitimately".

625. Although we agree with Mr Webster that it is necessary to exercise some degree of caution in placing reliance on the movement of money we do not necessarily accept that it cannot "bear that weight on the facts of this case" notwithstanding that, in Banjax, great pains were taken to disguise money flows and their origins.

SA

626. With regard to SA it is not disputed that it was supplied with alcohol by York Wines between 2004 and 2007. Bank transfers from SA to York Wines in the sum of £3.3 million are, as Mr Webster and Mr Gurney put it in their written closing submissions "strong evidence to support that conclusion." However, this raises an issue, separate from the Place of Supply Issue with which we are concerned here, as to whether the York Wines' SAGE records establish, as HMRC contend, SA purchased a further £25 million from York Wines during that period

627. Accordingly, the question for us is whether the alcohol concerned was supplied by SA, as the appellants contend, to cash and carries in France or, as HMRC say, diverted into the United Kingdom and supplied there.

628. HMRC contend that there is no evidence of payments to SA by the cash and carries. However, as Mr Webster submits, there is no bank account evidence before 2009 that identifies the source of the payments and in the absence of such narratives in SA's bank statements it is not possible to identify source of funds but, he says, "there is nothing inconsistent with them having come from French cash and carries who purchased the alcohol from SA". Mr Webster also points to an absence of evidence regarding the existence or otherwise of the cash and carries and contrasts this with the evidence of Mr Bailey (at paragraph 23, above) who considered it important to visit them rather than make assumptions about what was there.

629. The reliability and accuracy of York Wines' records was called into question by Mr Simmonite, who said this issue was raised during the PN160 meeting in December 2015 and again shortly after assessments were issued, leading Mr Webster to submit that these records are likely to have been a fraudulent creation to conceal a fraud, rather than a genuine record of a fraud and, as such, "simply cannot be relied upon". However, Mr McGuinness contends that there is more evidence of York Wines selling goods to SA than just the SAGE records. He refers to the FBME bank statements of SA and evidence of the entries in the York Wines cashbooks in addition to, for some periods, annotations on the York Wines' bank statements and records from the Wybo bonded warehouse in France.

630. Mr McGuinness also relies on the references to "Bruno" in the probe evidence in Operation Rust and Operation Banjax in support of SA being the importer of alcohol into the United Kingdom on the basis that Mr Malde is, despite his denial, the "Bruno" concerned. He submits that it fits with the trade between SA and York Wines and although it is possible that the business York Wines was conducting with SA was not being conducted with a person called Bruno it was something of a coincidence that the person who incorporated SA, the person who opened the SA bank account with FBME and the person who remained the sole signatory of that bank account throughout the entire period from 2004 to 2012 is commonly known as Bruno and there were multiple references by persons connected with the company that were doing extensive business with SA that mention of the name "Bruno".

631. Mr Webster emphasised Mr Malde's denial that the Bruno mentioned in the probe evidence was him and suggested that there were other possible identities for Bruno, eg although abbreviated to DAB the full name of the Italian warehouse company is DAB Di Arruzzoli Bruno (see paragraph 309, above). He also made the point that the reference in the probe evidence to "Kev works on £500 a load" cannot support HMRC's allegation that this is not part of the fraud of which Mr Burrage was convicted and the reference to Bruno paying £500 a load when it is suggested by the later message (of 29 September 2008) that "Bruno owes him half a million". However, we agree with Mr McGuinness who submits that the reference to £500 is more likely to be Mr Burrage's profit per load which would clearly have a far greater value than £500 and would not be inconsistent with £500,000 being due to York Wines from SA.

632. Having carefully considered the evidence relating to telephone numbers, with the exception of that ending 8800, we would agree with HMRC that these could be attributed to Mr Malde. This is certainly the case with the telephone number ending 1608. In our view it cannot be mere coincidence that the SMS messages from one of the mobile telephones provides an exact match to the cash payments made by Mr Malde on behalf of Park Royal to Golden Harvest (see paragraphs 425 and 427, above).

633. However, we do not consider this to be the case with the 8800 number, which was used to send messages to Mr Burrage regarding the movement of alcohol including orders for Galac (see paragraph 293, above).

634. This is because the telephone numbers stored in the handset seized from Mr Burrage in the Operation Rust investigation include a telephone number for "Bruno" ending 9837 (a

number Mr Malde agrees was his) but identifies the 8800 number as belonging to "Bro". As a handwritten note found at Mr Burrage's home also recorded the 9837 number as being for "Bruno" it would appear that this was the name that Mr Burrage used for Mr Malde rather than Bro or some other iteration, therefore making it unlikely that the 8800 number can be attributed to Mr Malde.

635. However, even if Mr Malde was the Bruno, Bro, Brn, Brun or Burno N, the names linked to the telephone numbers to which we have referred (see paragraphs 201 – 211, above) and was involved in smuggling alcohol into the United Kingdom it does not follow that he did so through SA or that it was SA that diverted and sold that alcohol in the United Kingdom.

636. Although Mr Webster contends that there is "simply no evidence" that any of the goods were ever owned by, or even in the possession of, SA we do not agree. Not only was there evidence of payments to SA from United Kingdom traders, Lexus, FNB and Alas Balas (see paragraph 283, above) but when goods were seized by UKBF, in the case of seizures 1 – 3 in the table at paragraph 159, above) SA claimed ownership of those goods and initiated restoration proceedings for their recovery. This is consistent with the evidence of Mr Bailey that it would be the owner of the goods that would "take that litigation forward" (see paragraph 175, above).

637. In our view such an assertion of ownership following the seizure of alcohol by UKBF together with the acceptance that, between 2004 and 2011, SA was a direct supplier of alcohol to Corkteck in the United Kingdom (see paragraph 267, above) is sufficient for us to find that, on balance, SA was the owner of the alcohol that had been smuggled into and supplied in the United Kingdom and that it should therefore have been registered for VAT.

Global

638. In their written closing submissions Mr Webster and Mr Gurney say:

> "Perhaps the clearest evidence of the destination of the alcohol supplied by Global are the payments received from its customers. Putting to one side the funds received from Adrena, which are alleged to relate to the cover loads and which supplies are accepted to have occurred in the EU, Global received substantial sums from the following UK incorporated companies: Ramstrad; Alexsis; Hobbs; Corkteck; Best Buys; Sea Inn Foods; and Universe.
>
> It is the Respondents' case that those payments represent the flow of funds to Global in relation to the alcohol it had supplied, which had eventually been slaughtered in the United Kingdom. The Appellants do not challenge that suggestion, which seems likely, from the evidence before the Tribunal. However, the crucial issue is the location of the supplies of alcohol for which payment was made."

We agree that that this is indeed the crucial issue given that, as described above, there were undisputed payments to Global from those companies.

639. At one point in his oral closing submissions Mr McGuinness appeared to suggest that if Global had made the decision to smuggle alcohol into the United Kingdom there could not be any commercial arm's length transaction between Global and any other company, either Adrena or a cash and carry in Calais, as any such transaction would be a sham as this would be the smuggling enterprise in operation. He says the Banjax convictions and the money flows that have been proven to have taken place are "potent evidence" that Global was a smuggler of alcohol that it supplied, not by some innocent intermediary, in the United Kingdom for which it received payments.

640. When asked by the Tribunal whether by his submission Mr McGuinness meant that, once a decision had been made to smuggle alcohol, any other sale with another company was a sham

and should be ignored with the effect that we should find that the goods had been smuggled and sold by Global in the United Kingdom, Mr McGuinness said that there was no evidence of any sale by Global on the continent. He asked rhetorically – what evidence is there that Global sold the goods on the continent? Where is the evidence that Global sold to someone who then immediately themselves or via another intermediary smuggled the goods into the United Kingdom?

641. He did however, refer to evidence that he said corroborated that the Global was owner of the alcohol saying:

> "… moving on now from the SA period to the Global period – when there were seizures during the Global period, the claim to ownership of the seized goods did not come from a another entity, it came in each case from Adrena, which, as you know, it is HMRC's case is effectively a company that is controlled by Global, and hence by Mr Malde. So, the proof of the pudding is in the eating. If, as sometimes happens, goods smuggled do not make it in and they are intercepted and then seized, surely one would expect to see the owner of the goods come forward and seek their return? In the earlier period it was always SA, and in the later period it was always Adrena, for the simple reason that Adrena was being used for the purposes of the cover loads."

642. However, as Mr Webster submits, even if Global was knowingly involved in illegality by selling alcohol in the European Union to United Kingdom traders, or to an OCG that Global knew intended to smuggle those goods, that is not enough. It is a too broad brush approach. Although HMRC contend that Mr Malde controlled SA and Global and through them Golden Apple, Galac and Adrena and made non-commercial arrangements, in that he is effectively selling to himself, as Mr Webster contends, the choice of SA and Global as the taxable entities is dependent upon a decision to ignore the involvement of the other corporate entities and the reality is that either Golden Apple, Galac and Adrena existed and played their role or, contrary to the evidence, they had no legal existence and can therefore be disregarded.

643. While there is no evidence before us as to the company law of any of the jurisdictions in which these various companies were established or operated, there is no suggestion that the theory of the effect of incorporation is different and no evidence to support that either. Therefore, it is necessary to treat the various corporate entities as having their own legal identity which cannot be disregarded. Accordingly, and applying the same process as we did with SA, it would appear that Adrena, not Global, owned the alcohol seized in the United Kingdom and that it supplied the alcohol that was sold.

644. As such, and in the absence of evidence that Global was the owner of the goods that were supplied in the United Kingdom we are unable to find that it was liable to be registered for VAT.

Control

645. Having concluded that although SA did supply alcohol in the United Kingdom but that Global did not, it is only necessary for us to consider whether Mr Malde was the controlling mind behind SA as only it, and not Global, would have been liable to register for VAT in the United Kingdom.

646. As Mr McGuinness submits, it is clear from the evidence the corporate structure of SA is simple. It had a single director, Mr Malde, a single secretary, Mr Malde, and the holder of its one issued share was Mr Malde. There is nothing before us, other than Mr Malde's assertion, to indicate that he ever relinquished his position as director or transferred his shareholding either to Ms Sounumpol or anyone else. Indeed the documents in evidence show that Mr Malde was responsible for the formation of and incorporation of SA, the opening of its bank accounts

and the operation of those accounts. Mr Webster, who points to the absence of evidence of Mr Malde being involved in SA's trading (something accepted by Mr Foster) accepts, as he must on the evidence, that Mr Malde set up SA and, as he put it, had some dealings with the bank accounts but submits that it does not automatically follow that Mr Malde was controlling SA. That he says is a matter of assessing Mr Malde's evidence and drawing conclusions from it.

647. It is clear from our observations regarding the evidence of Mr Malde (see paragraphs 83 and following, above) that we were not particularly impressed with the evidence he gave. Mr Malde who had been a director and shareholder of Corkteck, Corkteck International, Anpa, Park Royal and TPM and been involved with the other businesses described above from the later 1990s to date, cannot in anyway be considered a naïve businessman. His explanation of why he said that he had "no idea" of who the director of SA was when asked during his HMRC interview on 10 December 2013 (see paragraph 461, above) clearly demonstrates this to be the case.

648. We consider that Mr Malde's experience with the various companies and businesses would have made him well aware of the nature of the role and duties of a director and that, as such, he would have known that unless he was in a position to do so Turner Little would not have accepted instruction from him with regard to the formation of SA, the opening of its bank account or for the purposes of the formation of Global, SA's successor which Mr Malde regarded as the "same company" as SA (see paragraph 92, above).

649. There is no doubt that he became the sole director and shareholder of SA on 10 June 2004 and there is no evidence, other than Mr Malde's own assertion, which in our view lacks credibility and does not accord with the evidence, that he ever relinquished his role or transferred the share. His involvement in the operation of SA's FBME account by giving instructions to the bank, something he accepted (see paragraphs 230 – 231, above), would not in our judgment have been possible if Mr Malde did not control of SA. This is irrespective of the role, if any, played by Ms Sounumpol or Mr Carre.

650. Given our conclusion that SA was controlled by Mr Malde, although HMRC question the existence of Ms Sounumpol, it is not necessary for us to determine whether or not this is the case. We should also make clear that in reaching our decision in relation to control we did not take any account of the circumstances leading to the report by the Turner Little report to the NCA following telephone conversation between Mr McIntyre and the EPB Senior Banking Consultant (see paragraph 389, above).

Quantum

651. Having concluded that SA, but not Global, had diverted alcohol into the United Kingdom where it was supplied, we are only concerned with the quantum of the DLN issued under s 61 VATA as all other penalties relate to alleged supplies by Global. The quantum of that penalty was, as we have previously referred (see paragraph 543, above) based on the assessment made under s 73 VATA against which SA did not appeal.

652. Under s 73 VATA HMRC may, if it appears to them that there has been a failure to account for VAT or excise duty, assess the amount due "to the best of their judgment" and notify the person concerned accordingly. We have already in this decision, under "Burden of Proof", referred to the observation of Carnwath LJ In *Khan (t/a Greyhound Cleaners)*, in relation to the burden of proof and his view that it was for the appellant to establish "the precise calculation of the amount of tax due" "for all purposes" including penalties.

653. The link between assessments and penalties was considered by the Court of Appeal in *Ali (t/a Vakas Balti) v HMRC* [2007] STC 618. At [17] Lloyd LJ explained that:

> "A civil evasion penalty is a sanction for dishonest conduct, rather than for failure to pay tax which is due. Hence, a penalty may be imposed even if no tax has been lost. This is clear from s 60(3)(a) with the words '(if any)', and from s 70(4)(b) which deals with mitigation, and has the effect that it is not relevant by way of mitigation that no or no substantial amount of tax has been lost, and indeed from s 60(1) itself with its words 'or sought to be evaded'"

654. Having referred, at [44], to paragraph 74(iv) and (v) of the passage from *Khan* cited above and noted that the issue in *Khan* concerned the burden of proof, Lloyd LJ said, at [45]:

> "On this appeal the question of the relationship between the two sets of provisions is directly in point. Clearly, as Carnwath LJ said, there are links. Equally clearly a tax assessment cannot be 'reopened', in the sense of liability for tax being put again in issue, just because a penalty assessment is made, unless circumstances such as those mentioned in s 73(6)(b) exist in which an additional assessment to tax can be made. It is also clear that, although tax and penalty assessments may be made simultaneously, or at much the same time, and may be appealed together, they can also be made separately and successively, being the subject of quite different time limits, and may be appealed separately and in succession."

He continued at [51]:

> "There is no express provision in the 1994 Act [VATA] which links the amount of tax evaded, for the purposes of s 60, to the amount of tax found to be due, upon a return (if any), an assessment and (if there is one) an appeal."

655. Mr Webster contends that *Vakas* establishes that, as a matter of law, the issue of a penalty is quite independent from the issue of liability to an assessment, and that it is not dealing with tax due, but it is dealing with a separate issue of a penalty being sui generis, and in those circumstances, the Tribunal's duty is to look itself at the amount of VAT evaded.

656. However, we agree with Mr McGuinness that *Vakas* is not an authority that supports the proposition that there is no place for best judgment in the determination that the Tribunal has to make. As Mr McGuinness submits, it is clear from the facts of that case that it was concerned with whether HMRC could issue a penalty for an amount in excess of an assessment when the time limit to issue a new assessment for a higher amount had expired. The fact that HMRC could not, because they were out of time, pursue the tax assessment upon which the penalty had been based, was not a reason for HMRC to be precluded from pursuing the penalty based on that higher amount. Accordingly, the "best judgment" principles are applicable to determine the quantum of the penalty.

657. In *Van Boeckel v Customs and Excise Commissioners* [1981] STC 290 Woolf J (as he then was) said, at 292-293:

> "… it is important to come to a conclusion as to what are the obligations placed on the commissioners in order properly to come to a view as to the amount of tax due, to the best of their judgment. As to this the very use of the word "judgment" makes it clear that the commissioners are required to make a value judgment on the material which is before them. Clearly they must perform that function honestly and bona fide. It would be a misuse of power if the commissioners were to decide on a figure which they knew was, or thought was, in excess of the amount which could possibly be payable, and then leave it to the taxpayer to seek on appeal to reduce that assessment.
>
> Secondly, there must be some material before the commissioners on which they can base their judgment. If there is no material at all it would be impossible to form a judgment as to what tax is due.

> Thirdly, it should be recognised, particularly bearing in mind the primary obligation, to which I have made reference, of the taxpayer to make a return himself, that the commissioners should not be required to do the work of the taxpayer in order to form a conclusion as to the amount of tax which, to the best of their judgment, is due. In the very nature of things frequently the relevant information will be readily available to the taxpayer, but it will be very difficult for the commissioners to obtain that information without carrying out exhaustive investigations. In my view, the use of the words "best of their judgment" does not envisage the burden being placed on the commissioners of carrying out exhaustive investigations. **What the words "best of their judgment" envisage, in my view, is that the commissioners will fairly consider all material placed before them and, on that material, come to a decision which is reasonable and not arbitrary as to the amount of tax which is due**. As long as there is some material on which the commissioners can reasonably act then they are not required to carry investigations which may or may not result in further material being placed before them." (emphasis added).

658. Further guidance was given by the Court of Appeal in *Pegasus Birds Limited v Customs and Excise Commissioners* [2004] STC 1509. Having noted, at [23], that even if there had been a breach of the "best of their judgment" requirement in relation to some element of the assessment, it did not follow that the whole assessment should be set aside, Carnwath LJ said, at [29]:

> "In my view, the Tribunal, faced with a 'best of their judgment' challenge, should not automatically treat it as an appeal against the assessment as such, rather than against the amount. Even if the process of assessment is found defective in some respect applying the *Rahman (2)* test, the question remains whether the defect is so serious or fundamental that justice requires the whole assessment to be set aside, or whether justice can be done simply by correcting the amount to what the tribunal finds to be a fair figure on the evidence before it. In the latter case, the tribunal is not required to treat the assessment as a nullity, but should amend it accordingly."

659. He continued, at [38], to set out guidance for the Tribunal when faced with "best of their judgment" arguments in future cases. This included that the Tribunal's primary task was to find the correct amount of tax and in all, "but very exceptional cases" not allow it to be diverted into an attack on HMRC's exercise of judgment at the time of the assessment. But where there was a challenge to the assessment as a whole on "best of their judgment grounds" it was essential that this was clearly and fully stated before the commencement of the hearing.

660. In relation to a "best of their judgment" assessment, Chadwick LJ at [75] of *Pegasus Birds* said:

> "For my part, I would accept that an assessment made on behalf of the Commissioners by an officer who had, consciously or unconsciously, 'closed his mind' to any material which did not fit his case, would not be an assessment of an amount due to the best of their judgment. The exercise of judgment, based on the evaluation of material, requires that the task be approached with an open mind. That does not, of course, mean that the officer is required to accept all that the taxpayer tells him; or to accept that all of the material that the taxpayer produces is genuine. As Carnwath LJ has observed, in the present case the Commissioners were entitled to be highly sceptical of information coming from a convicted fraudster. The officer is entitled to reject material on the basis that, on evaluation, he does not regard it as credible; **but he must not reject material on the basis that, before evaluation, he has**

> **closed his mind to the possibility that it might be credible**." (emphasis added)

661. In the present case, as was clear from their written opening submissions, the appellants set out their challenge to Mr Foster's "best of their judgment" assessments long before the commencement of the hearing, indeed this was questioned by Mr Simmonite in the 2014 Report (see paragraph 538, above). Accordingly, the first question for us is whether Mr Foster rejected material available to him on the basis that he had closed his mind to the possibility that it might be credible or, to adopt the words of Woolf J, did Mr Foster "fairly consider all material" before him when making the assessment against SA?

662. Although he failed to engage with, or even consider, the critical analysis of the York Wines SAGE records undertaken by Mr Simmonite, as this information post-dated the assessment, it cannot have a bearing on whether it was made to the best of his judgement. However, the same cannot be said to the York Wines bank statements. Mr Foster confirmed in evidence were in his, or at the very least his team's, possession at the time he made the assessment against SA. As he said, he did not look at these bank statements as it was "something that didn't occur to me at the time."

663. Mr Foster, whose evidence that he "was mindful of the nature of a best judgment assessment" shows that he was clearly aware of the *Van Boeckel* criteria when he said that he did not "choose" not look at the bank statements and that it was not a case of "looking at them and ignoring them" (see paragraph 534, above), must have made a deliberate decision not to have taken the York Wines bank statements into account. To say otherwise, as he did, is in our view yet another example of the combative, evasive and obstructive nature of how he gave evidence. In any event it is clear that, no matter how it is described, he simply did not "fairly consider" all the material in his possession no matter how relevant it was and did not even consider its credibility but, having reached a conclusion in relation to the assessment schedule decided to stick with it come what may.

664. Given the seriousness of Mr Foster's failure to consider or even evaluate the material before him, it must follow that not only can the assessment against SA not have been made to the best of his judgment but that had it been appealed by SA it would have been necessary, in the interests of justice, for it to have been set aside. As Mr McGuinness fairly accepted, if we came to such a conclusion, because the assessment was the foundation for the s 61 VATA penalty our decision in relation to the assessment would necessarily feed into that separate determination with the result that the appeal, by Mr Malde, against the penalty under s 61 VATA must succeed.

Whether PLN issued within time

665. Given our conclusions in relation to the other issues in this case it is not necessary for us to determine this issue.

CONCLUSIONS ON APPEALS

666. Therefore, for the reasons above, these appeals are determined as follows:

(1) Global's appeal (under reference TC/2015/04975), against HMRC's decision that it was liable to be registered for VAT between 1 April 2012 and 30 June 2015, is ALLOWED;

(2) Global's appeal (under reference TC/2015/04972), against the penalty imposed for its failure notify HMRC of its liability to register for VAT for the period from 1 April 2012 to 30 June 2014, is ALLOWED.

(3) Mr Malde's appeal (under reference TC/2015/04978), against the PLN issued on 16 July 2015 in respect of the penalty issued to Global (to which paragraph 666(2), above refers) making him 100% liable for the Penalty, is ALLOWED;

(4) Mr Malde's appeal (under reference TC/2017/08345), against the PLN issued on 11 October 2017 making him 100% liable for a penalty issued against Global on 21 December 2017 for the handling of goods subject to unpaid excise duty, is ALLOWED;

(5) Mr Malde's appeal (under reference TC/2018/01710), against the PLN issued on 21 December 2017, making him 100% liable for a company penalty issued against Global on 21 December 2017 for the handling of goods subject to unpaid excise duty, is ALLOWED; and

(6) Mr Malde's appeal (under reference TC/2017/0711), against the DLN, dated 8 December 2016 making him 100% liable for the payment of a civil evasion penalty charged against SA as a result of its alleged dishonest failure to notify HMRC of its liability to be registered for VAT and submit VAT returns, is ALLOWED.

667. Finally, we would adopt the following observation of Mr Webster and Mr Gurney from their closing written submissions on behalf the appellants that:

> "… there can be no criticism of the fact that the Respondents' decided to investigate Mr Malde, given his role in the formation of the offshore entities and their bank accounts. They generated suspicion, and that suspicion was amplified by Mr Malde's reluctance to volunteer information (born, as it was, out of distrust of HMRC resulting from previous problems with them). The problem is that much of the above demonstrates – and clearly demonstrates, in our submission – that suspicion generated a fixed view as to the involvement of Mr Malde and a determination to make him pay which blinded the officers to the defects in their analysis. A fixed view was arrived at, despite the difficulties with the evidence, and has been persisted with from relatively early in the investigation.

To this we would add that had HMRC, and Mr Foster in particular, taken a less myopic approach to this case, particularly with regard to Mr Malde, from the commencement of their investigations we may well have reached entirely different conclusions.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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

JOHN BROOKS
TRIBUNAL JUDGE

Release date: 05TH OCTOBER 2022