European Union

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The Sad History of Carbon Carousels

Carousel fraud is no longer confined to transactions involving goods. The recent incidence of carousel fraud in the market for CO_2 emission rights demonstrates that carousels can also involve intangibles. In this article, the author discusses the trade in CO_2 emission allowances, the carousel fraud in the carbon market and how the fraud may affect legitimate businesses operating in that market, the measures that were taken to combat the fraud, and the ideas for a more comprehensive solution to stop this type of fraud.

1. Introduction

At some point in recent history, fraudsters discovered that the carbon market offers unprecedented possibilities for VAT fraud. By using the carbon version of VAT carousel fraud, they stole an estimated EUR 5 billion from the public coffers[1] in the European Union. The carbon trade exploded. To counter the carbon carousels, the VAT Directive[2] was recently amended, enabling Member States to temporarily apply the reverse charge mechanism to carbon transactions. Even with this measure, the current EU VAT regime offers ample opportunities to set up carousel fraud.

2. Logic of the Trade in Emission Rights

The trade in emission rights is part of the worldwide strategy to counter climate change. The threat of climate change was internationally addressed in the Kyoto Protocol.[3] This protocol set binding targets for 37 industrialized countries and the European Union for reducing greenhouse gas emissions. The reduction over the five-year period between 2008 and 2012 amounts to an average of 5% as compared to the emission level in 1990. One of the tools to achieve such a reduction is the introduction of tradable rights for the emission of greenhouse gases. As carbon dioxide is the principal greenhouse gas, this trade is also referred to as "carbon trade".

In order to meet its obligations under the Kyoto Protocol,[4] the European Union introduced the European Union Emission Trading Scheme (EU ETS)[5] in January 2005. Under EU ETS, certain carbon-intensive industries[6] are required to cover their yearly CO_2 emissions with European Union Allowances (EUAs). Currently, most emission allowances are allotted for free, based on historic emissions. This so-called grandfathering will be replaced by auctions. Also, fewer EUAs will be made available in the future. Emitting CO_2 should then become more costly, triggering innovation to reduce emission levels.

Emission rights may also be obtained through emission reduction elsewhere. In this context, the Kyoto Protocol introduced two mechanisms: the Clean Development Mechanism (CDM)[7] and the Joint Implementation (JI).[8] Under CDM, approved projects in developing countries may generate Certified Emission Reductions (CERs). Under JI, approved projects in industrial countries may generate Emission Reduction Units (ERUs).[9] Each CER and ERU is equivalent to an emission reduction of one tonne of CO_2. To a certain extent, these CERs and ERUs give businesses the right to emit CO_2 under ETS.[10]

EUAs, CERs and ERUs are freely tradable. Many parties are lured into trading these commodities, not only carbon-emitting businesses with an emission allowance surplus or deficit, but also banks, investment funds, traders and speculators. Complex financial products have been developed in a largely unregulated market with a trade volume of tens of billions of euro in 2009.[11] Unfortunately, this buoyant – mostly electronic – trading place turned out to be a breeding ground for VAT carousel fraud.

3. Logic of Carousel Fraud

Carousel fraud is nothing more than stealing VAT from the tax authorities. To that end, a supplier of goods or services charges VAT on his supplies, and collects the VAT from his customers. The supplier then embezzles the amounts of VAT, instead of remitting them to the tax authorities.

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1. Press release Europol of 9 December 2009, "Carbon Credit fraud causes more than 5 billion euros damage for European Taxpayer".
2. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347 of 11 December 2006.
3. The Kyoto Protocol was adopted in Kyoto, Japan, on 11 December 1997 and entered into force on 16 February 2005.
4. The reduction for the European Union as a whole is 8%, ranging from a reduction of 28% in Luxembourg to a possible increase of the emission level in Portugal of 27%.
5. Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.
6. Including combustion plants, oil refineries, coke ovens, iron and steel plants, and factories producing cement, glass, lime, bricks, ceramics, pulp and paper. From 2012, the EU ETS will also apply to the aviation sector.
7. CDM is defined in Art. 12 of the Kyoto Protocol.
8. JI is defined in Art. 6 of the Kyoto Protocol.
9. These Joint Implementation (JI) projects are primarily carried out in economies in transition, such as Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Russian Federation, Slovakia, Slovenia, and Ukraine.
10. EUAs, CERs and ERUs are all equivalent to an emission allowance of one tonne of carbon dioxide.
11. According to the World Bank ("State and Trends of the Carbon Market 2010", Washington, May 2010), the total value of the carbon market grew in 2009 by 6% to EUR 103 billion.

At the heart of each carousel fraud is the so-called "missing trader". This is a company controlled by the "ringmaster": the person behind the fraud. The missing trader purchases goods from suppliers located abroad, in respect of which it does not need to pay VAT to its supplier, and then sells these goods to domestic customers. After having collected the VAT, the trader disappears into thin air and an empty company is all that remains for the tax authorities.

The missing trader's sole objective is to generate a massive turnover and to charge and collect as much VAT as possible within a short period of time. Hence, the fraudsters have a preference for goods that are easily tradable, expensive and easily transportable, such as computer chips or mobile telephones. As the sole purpose of the transactions is to generate taxed turnover, it may seem that some transactions are concluded at a loss. However, in reality, the fraudulent trader adds the amount of VAT (due at the standard rate, which ranges from 15% to 25%) to his profit margin.

In the Netherlands, the first VAT carousels were discovered in the 1970s. Under the then "Benelux regime",[12] VAT due on the importation of goods from Belgium or Luxembourg was no longer paid to the customs officials at the border. Instead, the importer had to account for the import VAT through his periodic VAT return and was entitled to deduct the same amount as input VAT through the same return. This "postponed-accounting" regime made it possible to obtain goods from other Benelux countries without having to pay VAT to the supplier or customs authorities. Also fraudsters in the Netherlands thus acquired "VAT-free" goods from Belgian suppliers and sold them with Dutch VAT to businesses in the Netherlands. The fraudsters collected the VAT on these supplies and did not remit the tax to the tax authorities. Goods were often traded (and transported) between the same parties over and over again. The circular movement of the goods gave the fraud its name: carousel fraud.

With the introduction of the "transitional[13] VAT regime" in 1993, the Benelux carousel fraud model spread throughout the European Union. Fraudsters could purchase goods free of VAT in any other EU Member State. The transitional regime paved the way for an explosion of various types of carousel fraud, often referred to as missing-trader intra-Community fraud or MTIC.

A basic intra-Community carousel fraud consists of three parties: party A in Member State 1, and parties B and C in Member State 2. Party A supplies goods to party B. As the goods are transported to B in another Member State, A's supply is zero rated. In turn, party B supplies the goods to party C and charges the VAT of Member State 2.

In this scenario, party B is the missing trader; he collects the VAT from C but does not remit it to the tax authorities in Member State 2. Finally, party C supplies the goods to A at the zero rate because the goods are transported back to Member State 1. The goods are then ready for another revolution of the carousel. In this scheme, the missing trader (B) will usually sell the goods at a loss, enabling C and A to make a nominal profit. The transactions between A, B and C can be repeated ad infinitum.

Originally, VAT carousels involved low-volume, high-value goods which were easily tradable, such as mobile telephones or computer chips. However, fraud with intangibles is more profitable because it does not involve transport cost. CO_2 emission rights proved well suited to this end.

4. VAT on Trade in Emission Allowances

When the EU ETS was designed, little attention was given to VAT. Most Member States agreed that the transfer of emission rights was subject to VAT in the same manner as transfers of intellectual and industrial property rights, such as copyrights, patents, licences and trade marks. In 2004, the delegations in the VAT Committee agreed unanimously that:

> The transfer of greenhouse-gas-emission allowances, as described in Art. 12 of Directive 2003/87[14] [...], when made for consideration by a taxable person, is a taxable supply of services falling within the scope of Art. 9(2)(e) of Directive 77/388/EEC. None of the exemptions provided for in Art. 13 of Directive 77/388 can be applied to these transfers.[15]

Transfers of emission allowances between parties established in the same Member State were thus subject to VAT, whereas cross-border transfers were subject to VAT in the customer's Member State. In the latter case, the customer had to account for VAT under the reverse charge mechanism. However, the tax authorities could not effectively control compliance with that obligation. The combination of a VAT-free purchase and a taxed subsequent supply made the trade in emission allowances susceptible to carousel fraud.

5. Gearing Up Carbon Carousels

Some time ago, particular traders started buying carbon allowances from suppliers in other Member States (without VAT) and selling them to domestic customers at very attractive prices. Since those traders were only interested in generating as much trade as possible, they were willing to buy the allowances at relatively high prices and sell them at relatively low prices. In an electronic market place, such a pricing policy ensures a huge trade volume in the blink of an eye – and that was what happened in the market for emission rights: the trade volume rose steeply. Based on statistical evidence, Frunza, Guégan and Lassoudiere concluded that:

12. Under the Benelux regime, cross-border supplies of goods between parties in Belgium, the Netherlands and Luxembourg (Benelux) were accompanied by a special form, "Benelux 50".
13. Because of the reluctance of EU Member States to agree on a fundamental change to the VAT system, the four-year "transition period", which was to expire on 31 December 1996, may never end.
14. See note 5.
15. Working Paper No. 443-Rev. 1, No. TAXUD/1625/04-Rev. 1. Arts. 9(2)(e) and 13 of Directive 77/388 (the Sixth Directive) corresponded with, respectively, Art. 56(1) (text until 2010) and Arts. 132 to 136 of the current VAT Directive.

> […] a trading "epiphenomena" occurred between August 2008 and June 2009. This "hidden trading" modified significantly the behaviour of the carbon market, its price level, as well as its relationship to other commodities, such as oil and energy. The epiphenomena was pushed by high trading volumes and ceased after the VAT ban on carbon allowances. The link between the hidden trading pattern and VAT carousel fraud is obvious and the estimated loss for the French government is at least EUR 1.3 billion, given our estimations.[16]

6. Carousels Discovered – Member States Responded

In March 2009, the Dutch tax authorities received information on possible carousel fraud involving emission allowances. Until that time, the carbon market had never been considered a risk for VAT fraud. Nonetheless, the national tax authorities began investigating the matter.

Carousels were soon discovered. In June 2009, the environmental trading exchange BlueNext was closed for several days and was reopened after the French authorities introduced a VAT exemption for the transfer of emission allowances, which prevented missing traders from charging VAT on their domestic supplies. The French carousels thus stopped turning. Fearing that the fraud would migrate to other Member States, the authorities in the Netherlands introduced the optional reverse charge mechanism for carbon trade.[17] Under the reverse charge mechanism, the supplier cannot charge VAT to his customer, which also means that the supplier cannot embezzle the tax.

The UK authorities introduced the zero rate for carbon transactions with effect from 31 July 2009.[18] Later that year, Denmark[19] and Spain[20] also changed their VAT rules to eradicate carbon carousels on their territories. Belgium followed in January 2010.[21] In March 2010, Norway introduced the reverse charge mechanism for transfers of emission allowances.[22]

The VAT Directive did not allow any of these emergency measures. However, an amendment to the Directive was on its way.

7. Response of the European Union

In October 2009, the European Commission tabled a proposal[23] to change the VAT Directive to the effect of enabling Member States to introduce the reverse charge mechanism for carbon trade. Under the proposal, Member States could also extend the scope of the reverse charge mechanism to transactions involving other fraud-sensitive products (mobile telephones, computer components, precious metals and perfume). In the meeting of the Ecofin Council in December 2009, political agreement was only reached on the application of the reverse charge mechanism to transfers of emission rights.

On 16 March 2010, the European Council formally adopted Directive 2010/23[24] introducing the optional reverse charge mechanism on a temporary basis[25] for certain forms of carbon trade, i.e. transactions involving emission rights as defined in EU ETS Directive 2003/87[26] and "other units that may be used by operators for compliance with the same Directive".[27] The scope of the reverse charge mechanism is thus limited to trade in EUAs, CERs and ERUs.[28]

It can be expected that most Member States will introduce the reverse charge mechanism in due course. Germany and Luxembourg introduced that mechanism with effect from 1 July 2010.[29] In the United Kingdom, the zero rate for transfers of emission rights will be replaced by the reverse charge mechanism on 1 November 2010. Also outside the European Union the VAT treatment of carbon trade changed as a reaction to fraud. For instance, with effect from 1 July 2010 the Swiss tax authorities take the position that trade in emission rights is exempt from VAT as a supply of securities.[30] Prior to that date, such transactions were subject to VAT.

The reverse charge mechanism will stop carousel fraud involving specific emission allowances, but the measure is only effective if all EU Member States apply it. Fraudsters will easily move to Member States where the reverse charge does not apply, such as Italy, Poland and the Czech Republic.[31] In addition, fraudsters may continue their fraudulent activities in respect of emission rights that are not covered by the reverse charge mechanism, such as voluntary emission rights (VERs) or move to

16. M. Frunza, D. Guégan and A. Lassoudiere, "Statistical Evidence of Tax Fraud on the Carbon Allowances Market", http://www.tn.refer.org/CEAFE/Papiers_CEAFE10/MacroII/guegan.pdf.
17. Decision No. DGB2009/3897M: *Omzetbelasting; overdracht CO_2 emissierechten* (Turnover tax; transfer of CO_2 emission rights).
18. See: http://www.hm-treasury.gov.uk/press_73_09.htm.
19. A. Seager, "Copenhagen summit: Denmark rushes in laws to stop carbon trading scam". Climate change summit host embarrassed as criminals make most of lax laws to pocket VAT on emissions trading, guardian.co.uk, Thursday 3 December 2009 19.52 GMT.
20. See "Spain introduces VAT fraud measure", http://www.pointcarbon.com/news/1.1263083.
21. Under a Royal Decree which was published in the Official Gazette of 18 January 2010, the mandatory reverse charge mechanism was introduced for supplies of CO_2 emission certificates to businesses established and registered for VAT in Belgium.
22. The Norwegian VAT Act was changed with effect from 26 March 2010, introducing the reverse charge mechanism for domestically traded emission allowances. See http://www.skatteetaten.no/en/Artikler/2010/Emission-allowances–Changes-in-the-Norwegian-VAT-Act–Reverse-charge-mechanism-applied-to-domestically-traded-emission-allowances/.
23. Proposal for a Council Directive amending Directive 2006/112/EC as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud, COM(2009) 511 final.
24. Council Directive 2010/23/EU of 16 March 2010 amending Directive 2006/112/EC on the common system of value added tax, as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain services susceptible to fraud, OJ L 72/1 of 20 March 2010.
25. The special measure applies until 30 June 2015.
26. See note 5.
27. See Art. 199a of the VAT Directive.
28. See section 2. of this article.
29. *Gesetz zur Umsetzung steuerlicher EU-Vorgaben sowie zur Änderung steuerlicher Vorschriften* (Act aimed at transposition of EU tax rules and amendment of tax regulations), Act of 5 March 2010.
30. *Traitement fiscal en matière de TVA des droits d'émission de CO_2, Informations sur les Infos TVA 04 et 05, Modification de la pratique dès le 1er juillet 2010* (VAT treatment of CO_2 emission rights, Information on VAT Infos 04 and 05, change of practice from 1 July 2010).
31. See the recent article: http://www.utilityweek.co.uk/news/europe/cez-suspects-carbon-trading-ca.php.

other products traded on the same exchanges, such as natural gas or electricity.[32] Application of the reverse charge mechanism to specific items will – at best – offer a temporary solution. It will shift the problem to another sector, not solve it.

In practice, carousel fraud can be set up with all possible goods or services. Recently, a massive carousel fraud was discovered in Italy. In that case, VAT was defrauded through trade in telecommunications services relating to the voice-over-Internet protocol (VoIP).[33] The VAT loss for the Italian tax authorities in this case is estimated at EUR 400 million. Fraud is not likely to stop there.

8. VAT Liabilities for Carbon Traders?

The occurrence of carousel fraud is not without risks for legitimate parties operating in the affected market. Under the judgment of the Court of Justice of the European Union (ECJ) in *Kittel*,[34] parties that are unwittingly involved in a VAT carousel may lose their right to deduct input VAT in respect of the fraudulent transactions. In this respect, the ECJ decided that a national court must refuse deduction of VAT where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT.[35]

Tax authorities must therefore refuse deduction or refund of VAT in respect of any transaction that is connected with VAT fraud, provided that "objective factors" demonstrate that the trader in question was aware or should have been aware of the fraud. In theory, all parties in a trade chain could lose their right to deduct input VAT, which could have the effect that, in the end, the tax authorities collect even more VAT than was defrauded.

In *Kittel,* the ECJ also shed some light on the VAT position of the missing trader. According to the ECJ, the objective criteria which form the basis of the concepts of "supply of goods effected by a taxable person acting as such" and "economic activity" are not met where tax is evaded by the taxable person himself. Apparently, missing traders do not carry out economic activities and their supplies fall outside the scope of VAT, which implies that the amounts they charge to their customers as "VAT" are not VAT at all. The missing traders' customers therefore cannot deduct the "VAT" paid on their purchases.

However, traders would not be confronted with a loss of the right to deduct input VAT if they have taken every precaution which could be reasonably required to ensure that their transactions are not connected with fraud:

> […] traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on the legality of those transactions without the risk of losing their right to deduct the input VAT […].[36]

The ECJ referred to such a precautious trader as a taxable person "who did not and could not know that the transaction concerned was connected with a fraud committed by the seller". Taxable persons who do not meet this test, cannot deduct the amounts of "VAT" paid to a missing trader, simply because these amounts are not VAT.

The above judgment of the ECJ has the following effects on the VAT position of a taxable person.

Where they purchase goods or services from a missing trader, taxable persons cannot deduct the VAT charged to them, unless they can demonstrate that they took every precaution which could reasonably be required to ensure that their transactions are not connected with fraud. Unfortunately, there is no standard set of precautions that taxable persons must take in order to secure their rights. What is *reasonable* depends on the facts and circumstances of each individual transaction.

Where taxable persons purchase goods or services from a party who is not a missing trader, the transaction may nonetheless be *connected* with VAT fraud. Such a connection should be found to exist if, in the absence of fraud, the transaction would not have occurred. If goods or services are acquired from a missing trader, the connection with fraud is obvious. Such a connection may also be presumed to exist if the purchased goods or services were sold at a preceding stage, or will be sold at a subsequent stage, by a missing trader.

In order to deny a taxable person the right to deduct VAT, the tax authorities must be able to demonstrate that a connection exists between the transaction and VAT fraud. Once the authorities have established such a connection, they may refuse deduction of VAT by any trader who knew or should have known that he was participating in such a "connected" transaction. This knowledge should be based on "objective factors". The ECJ did not provide further instructions in this respect. A sensible approach was recently followed by the UK Court of Appeal (Civil Division):

> The test in *Kittel* is simple and should not be over-refined. It embraces not only those who know of the connection but also those who "should have known". Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraud and if it turns out that the transaction was connected with fraudulent evasion of VAT, then he should have known of that fact. […]

32. The UK tax authorities recently claimed to have prevented an attempt of fraudsters to set up a carousel in the wholesale markets for electricity and natural gas. The British energy regulator Ofgem introduced a new licence application procedure "prompted by concerns about the potential risk of VAT fraud in European energy markets" (www.ofgem.gov.uk). See also the press release of the European Energy Exchange of 11 May 2010: *EEX fordert Ausdehnung des Reverse Charge Verfahrens auf den Handel mit Strom und Erdgas* (EEX demands extension of the reverse charge mechanism to trade in electricity and natural gas).
33. See Richard T. Ainsworth, "VoIP MTIC – VAT fraud in Voice-over-Internet Protocol", 57 *Tax Notes International* 1079 of 22 March 2010.
34. ECJ judgment of 6 July 2006 in *Axel Kittel and Recolta Recycling SPRL v. Belgian State*, Joined Cases C-439/04 and C-440/04, [2006] ECR I-6161.
35. Id, Para. 59.
36. Id, Para. 51.

> If he has the means of knowledge available and chooses not to deploy it, he knows that, if found out, he will not be entitled to deduct. If he chooses to ignore obvious inferences from the facts and circumstances in which he has been trading, he will not be entitled to deduct.[37]

According to the ECJ, the right to deduct VAT is a right derived from EU law. Under *Kittel,* an additional condition for deduction applies. If that condition is not met, courts *must* reject VAT claims:

> By contrast, where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct.[38]

As the ECJ ruled in *Denkavit*,[39] its interpretation of EU law has retroactive effect:

> The interpretation which, […], the Court of Justice gives to a rule of EU law clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force.

Consequently, national VAT legislation under which taxable persons are entitled to deduct VAT, despite the fact that they knew or should have known that they were participating in a transaction connected with fraud and have not taken every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, is invalid.

9. Next Steps

Throughout the years, various ideas have been proposed to make the current VAT regime more fraud proof.[40] Some of these proposed measures are aimed at changing the VAT treatment of intra-Community supplies of goods. Carousels with intangibles are not affected by such measures.

Introduction of a general reverse charge mechanism for domestic business-to-business supplies of goods and services will certainly stop carousel fraud. However, a general reverse charge mechanism may give rise to other forms of fraud. This measure is also politically unacceptable.

Carousel fraud is attractive to fraudsters and harmful to the tax authorities because legitimate businesses recover VAT that has not been paid to the tax authorities. In a manner of speaking, the tax authorities are subsidizing fraudulent trade.

Under the current regime, the customer's right to deduct VAT is linked to the supplier's *obligation* to pay the VAT, not to the supplier's compliance with his obligation. Introduction of a link between deduction and actual payment of VAT would stamp out carousel fraud.

Interestingly, a possible link between deduction and actual payment of VAT has been considered before. Prior to the introduction of VAT in the European Union, the pros and cons of various turnover taxes were analysed. A possible link between, on the one hand, payment of VAT (by the supplier) and, on the other hand, deduction of the same VAT (by its customer) was addressed in the reports of Sub-groups A, B, and C of Working Group 1 (the so-called ABC reports[41]), which were published in 1962. In its report, Sub-group C observed that:

> […] in order to prevent certain fraudulent practices, it would be desirable that the deduction be dependent on the effective payment of tax by the first seller but, in practice, this would seem very difficult to achieve.[42]

Since, at that time, it was generally believed that it was practically impossible to achieve a direct link between payment and deduction of VAT, this idea received little attention. However, after nearly half a century of rapid, at times tempestuous, technological developments, this "old" idea deserves further thought. Technologies that are currently used in the credit card industry are in principle capable of ensuring a direct link between payment and deduction of VAT,[43] albeit that the technological solution is based on the principle that both the supplier's liability to remit the VAT to the tax authorities and the customer's right to deduct that VAT arise at the time of payment of the price for the transaction, not at the time of issue of the related invoice. In addition, the payment must be made by electronic means. The technological solution can be introduced whenever the individual Member States are ready to do so. It could even be introduced sector by sector within an individual Member State, and it could also have the effect of reducing the administrative burden of the VAT system on businesses.

10. Conclusions

Carousel fraud is no longer confined to transactions involving goods. The recent incidence of carousel fraud in the market for emission rights demonstrates that carousels can also involve intangibles. Traders operating in a market affected by fraud may be confronted with loss of their right to deduct VAT, if they "knew or should have known" of the fraud. In the end, carousel fraud is a considerable loss for

37. Judgment of the UK Court of Appeal (Civil Division) of 12 May 2010 in *Mobilx Ltd v. HMRC, HMRC v. Blue Sphere Global Ltd (BSG) and Calltel Telecom Ltd & Anr v. HMRC*, [2010] EWCA Civ 517, Paras. 59 and 61.
38. ECJ judgment in *Kittel*, see note 34, Para. 62.
39. ECJ judgment of 27 March 1980 in *Amministrazione delle finanze dello Statov.Denkavit Italiana*, Case 61/79, [1980] ECR 1205, Para. 2.
40. See for an overview, R.T. Ainsworth, *MTIC (Carousel)Fraud: twelve ways forward; two ways "preferred" – has the technology-based administrative solution been rejected?*, Working Paper Series, Law and Economics Working Paper No. 08-10, Boston University School of Law.
41. Reports of Sub-groups A, B and C of Working Group No. 1, which were set up to examine the different possibilities for harmonization of turnover taxes, January 1962, unofficially translated into English by the IBFD, Amsterdam, May 1963. The Sub-groups were composed of representatives of the tax authorities of the then six Member States. Sub-group C had been charged with studying the possibility of adopting a common tax levied at the production stage combined with a separate tax levied at the retail stage, or a common tax on added value, combined, if occasion should arise, with a tax at the retail stage in the six Member States, and with examining to what extent the setting up of such a system would be in accordance with the aims of the Commission.
42. Id., p. 57.
43. See Charles Jennings, "The EU VAT System – Time for a New Approach?", *International VAT Monitor* 4 (2010), p. 257.

society as a whole and for naive businesses that find themselves caught in a fraudster's trap.

The introduction of a link between actual payment and deduction of VAT will stop this type of fraud but will be likely to require substantial investments. Given the amounts that are at stake (the tax authorities could have done much with the EUR 5 billion they lost in several months in 2008/09) technical possibilities that are capable of solving this problem should be given proper attention.