Neutral Citation: **[2026] UKUT 00216 (TCC)**

Case Number: UT/2025/000051

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Rolls Building, London

Heard on: 1 May 2026
Judgment date: 09 June 2026

Before

MR JUSTICE MEADE
JUDGE AMANDA BROWN KC

Between

(1) RS GLOBAL LIMITED
(2) AKSHAY AGARWAL

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS
Respondents

<u>Representation:</u>

For the Appellants: Mr Michael Firth KC, Counsel, instructed by instructed by Morgan Rose Solicitors

For the Respondents: Mr Ben Hayhurst, Counsel, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

INTRODUCTION AND PROCEDURAL HISTORY

1. This is an appeal against one of two preliminary matters determined by the First-tier Tribunal Tax Chamber (**FTTTC**) in its judgment of 12 March 2025 (**FTT Judgment**).

2. RS Global Limited (the **First Appellant**) is predominantly a wholesaler of mobile phones. It was registered for VAT from 26 March 2007 and renders monthly VAT returns. Its business model involves buying mobile phone handsets in bulk from Europe, Asia and the UK. The stock is shipped to the First Appellant's warehouse in Wembley. So far as relevant and at all times relevant to this appeal (March 2017 – November 2019), the stock was then sold on to other resellers, online retailers and physical shops established in Europe.

3. The First Appellant claimed the VAT incurred on the purchase of the phones as input tax. It did not account for output tax on the resale of the phones on the basis that they were intracommunity supplies to businesses VAT registered for VAT in other member states.

4. Following various enquires and engagement with the First Appellant, HM Revenue & Customs (**HMRC**) identified that eight of the First Appellant's customers had participated directly in VAT fraud by failing to register and/or failing to account for VAT as the counterparty to an intracommunity transaction. HMRC formed the view that the First Appellant either knew or should have known of the VAT fraud and had failed to take every reasonable step to prevent its own participation in the fraud such that HMRC were entitled, in line with the principles determined by the Court of Justice of the European Union (**CJEU**) in *Mecsek-Gabona Kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága,* C-273/11 (***Mecsek***) to deny zero-rating on the supply (**Mecsek denial**). That decision was notified to the First Appellant on 27 October 2020.

5. On 5 November 2020, HMRC issued the associated VAT assessments charging output tax in the sum of £5,922,899.67 on supplies by the Appellant totalling £35,537,398 for the periods March 2017 to November 2019 to those counterparties. Penalties were also issued to the First Appellant, and a personal liability notice for recovery of the penalty was issued to one of the First Appellant's directors, Mr Agarwal, who is the Second Appellant.

6. The Appellants appealed to the FTTTC. Directions were followed: HMRC issued their statement of case and served their witness statements and documentary exhibits (which stand as the documents relied on in the appeal). The Appellants then made an application pursuant to Rules 8(3)(c) and (6) Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 for HMRC to be barred from further participation in the appeals and for summary determination of the appeal to thereby be given on the grounds that HMRC's case had no reasonable prospect of succeeding. The application was rooted in on two alternative bases:

(1) There was insufficient evidence on which to establish the necessary requirements to deny zero-rating; and

(2) On the proper interpretation of *Mecsek* and section 55A Value Added Tax Act 1994 **(VATA**) any VAT due as a result of the Mecsek denial, was not the liability of the Appellant (**Reverse Charge Issue**).

7. The FTTTC refused to bar HMRC and refused to allow the appeal on either basis. As regards the second ground, in summary, the FTTTC determined that the reverse charge mechanism provided for in section 55A VATA (**Section 55A**) did not apply so as to shift the liability to account for output tax on a supply subject to a Mecsek denial (in this case by the First Appellant) to the customer.

8. The Appellants sought and were granted permission to appeal in respect of the FTTTC's decision on ground 2 on the basis that there was an arguable error of law.

9. Having carefully considered the arguments of both parties we have concluded that the appeal be dismissed. As this was an appeal on a preliminary issue the matter will now return to the FTTTC which, following service of the Appellants' evidence and compliance with the other directions necessary to bring the matter to trial, will then determine whether, on the evidence, the requirements for a Mecsek denial are met.

LEGISLATIVE FRAMEWORK

10. UK VAT is charged on supplies of goods and services made by taxable persons in the UK.

11. A taxable person is defined as a person who is or is required to be registered under VATA (section 3(1)). The requirements for registration are prescribed in Schedules 1 – 3. Schedule 1A provides for the circumstances in which a business which is not established in the UK is required to be registered. In short, a non-established business is required to be registered if they make or have reasonable grounds for believing that they will, in the course or furtherance of a business, make taxable supplies in the UK. Unlike for UK-established businesses there is no registration threshold.

12. Pursuant to section 30 VATA where a taxable person supplies goods or services and the supply is zero-rated no output tax is charged on the supply, but in all other regards it is treated as a taxable supply. The effect of zero rating is thereby that the taxable person does not have to account for output tax but can claim as input tax the VAT incurred which is attributable to such supplies. Section 30(6) provides that a supply of goods is zero-rated if HMRC are satisfied that the person supplying the goods has exported them and the supply and export meets the requirements of conditions specified in regulations or by notice.

13. Section 55A provides:

> "*55A Customers to account for tax on supplies of goods or services of a kind used in missing trader fraud*
>
> (1) Subsection (3) applies if—
>
> (a) a taxable (but not a zero-rated) supply of goods … ("the relevant supply") is made to a person ("the recipient"),
>
> (b) the relevant supply is of goods … to which this section applies (see subsection (9)),
>
> (c) the relevant supply is not an excepted supply (see subsection (10)), and
>
> (d) the total value of the relevant supply, and of corresponding supplies made to the recipient in the month in which the relevant supply is made, exceeds £1,000 ("the disregarded amount").
>
> (2) For this purpose a "corresponding supply" means a taxable (but not a zero-rated) supply of goods [or services] which—
>
> (a) is a supply of goods … to which this section applies, and
>
> (b) is not an excepted supply.
>
> (3) The relevant supply, and the corresponding supplies made to the recipient in the month in which the relevant supply is made, are to be treated for the purposes of Schedules 1 and 1A—

> (a) as taxable supplies of the recipient (as well as taxable supplies of the person making them), and
>
> (b) in so far as the recipient is supplied in connection with the carrying on by him of any business, as supplies made by him in the course or furtherance of that business,
>
> but the relevant supply, and those corresponding supplies, are to be so treated only in so far as their total value exceeds the disregarded amount.
>
> …
>
> (6) If—
>
> (a) a taxable person makes a supply of goods … to a person ("the recipient") at any time,
>
> (b) the supply is of goods … to which this section applies and is not an excepted supply, and
>
> (c) the recipient is a taxable person at that time and is supplied in connection with the carrying on by him of any business,
>
> it is for the recipient, on the supplier's behalf, to account for and pay tax on the supply and not for the supplier.
>
> …
>
> (7) The relevant enforcement provisions apply for the purposes of this section, in relation to any person required under subsection (6) to account for and pay any VAT, as if that VAT were VAT on a supply made by him.
>
> (8) For this purpose "the relevant enforcement provisions" means so much of —
>
> (a) this Act and any other enactment, and
>
> (b) any subordinate legislation,
>
> as has effect for the purposes of, or in connection with the enforcement of, any obligation to account for and pay VAT.
>
> (9) For the purposes of this section, goods … are goods … to which this section applies if they are of a description specified in an order made by the Treasury.
>
> …
>
> (10) For the purposes of this section, an "excepted supply" means a supply which is of a description specified in, or determined in accordance with, provision contained in an order made by the Treasury."

14. The Value Added Tax (section 55A) (specified Goods and Excepted Supplies) Order 2007 article 3 specifies mobile phones as goods under section 55A(9). Article 4 of that order specifies that where the value of the supply of the specified goods is less than £5000 it shall be an excluded supply for the purposes of section 55A(10).

15. Section 73 VATA provides the legislative basis for raising assessments. Section 73(1) provides that where it appears to HMRC that VAT returns are incomplete or incorrect, they may assess the amount of VAT due from the person rendering the return to the best of their judgement and notify the assessment.

16. The Value Added Tax Regulations 1995 make various provisions concerning the accounting for VAT.

FTTTC JUDGMENT

17. The FTTTC treated the Reverse Charge Issue as a discrete question of law suitable for summary determination. The Appellants contended that the operation of section 55A VATA relieved it of any liability to account for VAT on the relevant supplies.

18. The Appellants' case proceeded on a binary analysis. They submitted if zero-rating was denied (on the basis of knowledge or means of knowledge of fraud under the Mecsek principle), the supplies became taxable, and in those circumstances the reverse charge mechanism in section 55A(6) applied. On that footing, the obligation to account for VAT shifted from it, as the supplier, to its customers. The Appellants argued that the statutory conditions in section 55A(6) were satisfied and that, accordingly, any VAT liability lay with the recipients of the supplies, not the First Appellant. Alternatively, they submitted that, if the supplies were indeed zero-rated, there was no error in the VAT returns and no lawful basis for assessment under section 73(1) VATA.

19. HMRC rejected that analysis as misconceived. They submitted that section 55A does not apply to an intracommunity supply of goods from a UK business. They contended that the reverse charge regime, properly construed, was said to operate within the UK and applies only to supplies made to UK taxable persons. HMRC further contended that, although the First Appellant had been denied the benefit of zero-rating under the Mecsek principle, the underlying supplies remained zero-rated for the purposes of section 55A.

20. HMRC emphasised that the recipients of the supplies were not "taxable persons" within the meaning of section 3 VATA 1994, as they were not making taxable supplies in the UK and were not liable to be registered here. It followed that the statutory precondition in section 55A(6)(c) was not met. HMRC also relied on authority and published guidance to support the proposition that the reverse charge does not apply to cross-border intracommunity supplies of this nature. Finally, HMRC submitted that the Appellants' interpretation would undermine the anti-fraud purpose of the Mecsek principle by allowing a trader knowingly participating in fraud to avoid any VAT liability.

21. The FTTTC's analysis was limited. At paragraph [107] it stated:

> "Having considered the arguments of both parties, I prefer the arguments of HMRC in relation to why the reverse charge does not apply including that, were section 55A VATA94 to operate in the way put forward by the Appellants in these circumstances, the impact of the Mecsek principle and its anti-fraud effect would be negated. I do not accept that section 55A VATA94 can be construed in the manner asserted by the Appellants."

THE ISSUES

22. The parties agreed that the first and critical issue we needed to determine concerns the legal effect of a Mecsek denial. In particular, whether such a denial: (a) alters the legal character of the supply; or (b) leaves the supply zero-rated, while denying the supplier the benefit of that treatment (**Mecsek Issue**).

23. The parties were agreed that if the legal character of the supply were altered such that it was no longer a zero-rated supply the Appellant would succeed on this appeal, and in doing so in that to the FTTTC.

24. HMRC contended that if the legal effect of a Mecsek denial was that the Appellant was simply denied the benefit of zero-rating but the supply remained a zero-rated supply section 55A would have no application, certainly at this stage in the appeal to the FTTTC. The Appellants contended that we should still determine the correct analytical interpretation of

section 55A(6) in case any of the eight counterparties were "taxable persons" for some reason other than the transactions in issue (**Section 55A Issue**).

MECSEK ISSUE

Relevant case law

25. In order to place this issue in context we consider it appropriate to briefly narrate the CJEU and domestic jurisprudence in connection with Missing Trader Intra-Community (**MTIC**) fraud. In this regard we note that at an EU level the domestic zero-rating for exports is strictly an "exemption with credit" i.e. the supply is exempt requiring no charge to output tax, but the supplier is nevertheless entitled to input tax credit on the VAT they incur which is used for the purposes of making their supplies including their exports. In this judgment for consistency, we refer to only zero-rating.

26. MTIC fraud seeks to exploit the structural features of the VAT system governing intracommunity supplies through exploitation of the zero rating for exports.

27. The history begins with *Optigen Ltd and others v CEC* C/354/03 (***Optigen***). In that case, HMRC sought to assert that supply chains with a fraudulent objective were such that they lacked economic substance and were therefore outside the scope of VAT altogether. The CJEU rejected that proposition, noting that the definitions of taxable person and supply of goods were all objective in nature and applied without regard to the purpose or results of the transactions. It determined that as regards transactions which were not themselves vitiated by fraud the transactions were to be treated as supplies for VAT purposes.

28. The next relevant case, though not one concerning MITC fraud is *Halifax plc and others v CEC* C-255/02 (***Halifax***) which concerned the VAT consequences of transactions entered into for the purposes of obtaining a tax advantage. As in *Optigen* the CJEU confirmed that such transactions fell within the scope of the VAT system because they met its objective requirements. However, it went on to hold that as the provisions of the VAT directives, and the community law principles which underpin them, cannot be relied on for abusive or fraudulent ends, where transactions have no explanation other than obtaining a tax advantage contrary to the purposes of the relevant provisions the arrangements are taxed by redefining the supply by reference to its economic substance.

29. In *Axel Kittel v État belge* C-439/04 (***Kittel***), the CJEU introduced the "knowledge" principle targeted at a denial of input tax recovery for those seeking to claim input tax on the VAT incurred on purchase of goods where, due to fraud, there was a failure to account for output tax somewhere in the chain of transactions. The CJEU concluded that a taxable person who knew or should have known that his purchase was connected with fraud was to be treated as participating in that fraud with the consequence that entitlement to input tax deduction was rightly refused despite the transaction meeting the objective criteria of the VAT system.

30. In 2009, in *Calltel Telecom Ltd v HMRC* [2009] EWHC 1981 (Ch) (***Calltel***) the High Court considered whether the *Halifax* and *Kittel* principles should apply such that a *Kittel* input tax denial be limited to the tax lost as a consequence of the supply chain fraud. In that case the taxpayer contended that the *Halifax* redefinition should apply in a *Kittel* situation such that HMRC should be entitled to collect VAT by reference to the substance of the underlying transactions without fraud. The Court confirmed that in a *Kittel* case there was no "hypothetical normal" structure to act as the comparison of substance. As such, the *Kittel* denial applied to restrict the full input tax claimed. In this context, it was considered that the principle of fiscal neutrality otherwise required within the VAT system had to "give way" to the objective of combating fraud.

31. *Mecsek* extended the *Kittel* principle to deny zero-rating in the MTIC context. Mecsek sold goods to an Italian purchaser which undertook responsibility for transporting those goods to another Member State. Mecsek relied on the export documentation received from the purchaser and did not account for output tax on the transaction. The Italian purchaser was not in fact established at the declared address, had not paid VAT, and had been removed retrospectively from the Italian VAT register. The national authority concluded that Mecsek had failed to comply with the requirements justifying treatment as an export. The CJEU reaffirmed the established conditions for zero rating in intracommunity supplies, namely that (i) the right to dispose of the goods as owner must be transferred and (ii) the vendor must establish that the goods were dispatched or transported to another Member State and have physically left the territory of the State of supply. However, the CJEU situated those requirements within the broader Directive framework of the prevention of tax evasion, avoidance and abuse. It emphasised that, in certain circumstances, that objective may justify imposing stringent obligations on suppliers rendering the right to zero-rate conditional on a requirement that the supplier acted in good faith and take every step which could reasonably be required to ensure that its transaction did not result in participation in tax fraud.

32. The next significant case is that of *Staatssecretaris van Financiën v Schoenimport 'Italmoda' Mariano Previti vof* C-131/13 (***Italmoda***). In setting the context of its decision the CJEU reiterated that preventing possible evasion, avoidance and abuse was an objective recognised by the VAT directives and that the CJEU had consistently held that EU law may not be used for abusive or fraudulent ends. It confirmed *Kittel* and *Mecsek*. It also confirmed that the prevention of evasion, avoidance and abuse, is a general principle of law requiring national courts to interpret national law so as to achieve the aim. The CJEU was clear that the application of that interpretive principle did not result in the imposition of obligations derived under the Directive and thus did not result in the impermissible application by the state of obligations under the directive which have not been adequately transposed into domestic law.

33. *Climate Corporation Emissions Trading GmbH v Finanzamt Österreich* C-641/21 (***CCET***) concerned whether the place of supply of services can be affected by knowledge or means of knowledge of a fraud. The CJEU drew a distinction between a supply of goods to which *Mecsek* applies and a supply of services vitiated by fraud. The CJEU determined that the place of supply rules form part of the infrastructure of fiscal competence which underpins the scheme to avoid conflicts of jurisdiction and thereby ensure that double taxation and non-taxation are avoided. In drawing a comparison between goods and services the CJEU noted that fiscal competence of intracommunity supplies permits zero-rating by the supplier as the corollary of acquisition accounting by the purchaser (who simultaneously accounts for output tax on the purchase and recovers input tax in the ordinary way). The CJEU expressly acknowledged dual competence which would permit the member state of dispatch of goods to take decisions as to the availability of the export zero rate independently of the related acquisition supply. A similar correlation is excluded in the case of services which are treated as supplied in a single jurisdiction.

34. *HMRC v Citibank NA* [2017] EWCA Civ 1416 (***Citibank***) was a case principally addressing what was required from HMRC in terms of their pleadings in cases where they alleged knowledge or means of knowledge of fraud in and MTIC context. However, in its analysis of that issue, the Court of Appeal noted that the distinction between *Halifax* and *Kittel* is that, in the former case, the evasion/avoidance is of the taxpayer's own tax whereas in the latter case the taxpayer is connected to such evasion/abuse through what they knew or should have known. Thus, a supply chain participant who knows or should have known of the fraud is denied the right to recover VAT even though the transaction on which input tax is claimed

and the use to which the goods are put objectively satisfy the criteria otherwise justifying input tax recovery. Input tax is denied on the basis of the abuse/fraud only.

35. The Court of Appeal judgment in *Butt v HMRC* [2019] EWCA Civ 554 (***Butt***) considered the relationship between a *Kittel* input tax denial and the imposition of penalties. Mr Butt contended that where input tax was denied under *Kittel* principles the domestic penalty provisions did not permit for the imposition of a penalty and, on the basis of Article 6 convention rights, could not be interpreted so as to provide for such imposition. The Court considered *Optigen*, *Kittel* and *Halifax*. The Court noted that those cases represented an exercise of balancing the certain application of the VAT system and the objective of preventing evasion, abuse and avoidance. In that regard the Court considered that identifying the economic substance of transactions for the purposes of collecting the right amount of tax cannot, on the proper application of the CJEU jurisprudence amount to a penalty. After considering the earlier Court of Appeal judgment in *Mobilx Ltd (in Administration) v HMRC* [2010] EWCA Civ 517, *Italmoda* and *Cussens and others v T.G.Brosnan* C-251/16 (***Cussens***) (see below) the Court narrated and confirmed that a *Kittel* denial of input tax does not depend on domestic legislation. The civil liability to tax (i.e. the repayment or denial of input tax) arises because of the requirement to construe domestic legislation consistently with EU obligations, including the prevention of evasion avoidance and abuse. As such, the Court considered that it was entirely permissible to construe the relevant penalty provisions of VATA as applying because there had been an inaccuracy in the return claiming recovery of the VAT which was not due once *Kittel* was applied.

36. There are also five cases not directly concerning MTIC fraud which are relevant to be considered:

(1) In *Twoh International BV v Staatssecretaris van Financiën* C-184/05 (***Twoh***), the CJEU confirmed that in order to ensure legal certainty, ex post facto discovery of export fraud by an innocent trader cannot result in denial of zero-rating.

(2) *Cussens* concerned abusive arrangements. The court confirmed that the interpretive *Halifax* principle "displays the general, comprehensive character … naturally inherent in general principles of EU law". As such the refusal of a right or an advantage on account of abuse or fraud does not require a specific legal basis and may therefore be relied on directly to refuse a right to exemption. In the broader context of the *Halifax* principle redefinition is required to reestablish the situation which would have prevailed in the absence of the abusive practice/evasion.

(3) *UP CAFFE d.o.o. v Ministarstvo financija Republike Hrvatske* C-171/23 (***Caffe***) arose in the context of an avoidance scheme intended to exploit the registration threshold in Croatia. The CJEU confirmed that denying the benefit of a registration threshold where the circumstances of meeting the objective requirements of that threshold are artificial does not require a specific legislative basis. The benefit of the contrived tax advantage was denied on the basis that the true economic circumstances did not meet the objective criteria for the advantage. The true economic substance was then taxed appropriately in accordance with the VAT system as a whole.

(4) In *Dobre* C-159/17 (***Dobre***) the CJEU considered the right to deduct input tax in a situation in which the trader had been deregistered for VAT for failure to render returns but was nevertheless assessed to VAT in connection with invoices issued bearing VAT. The CJEU confirmed that in such circumstances the assessments needed to be adjusted to permit an allowance for input tax recovery in order to preserve the neutrality of VAT. A failure to comply with the administrative provisions of the VAT system was not sufficient to compromise the requirement for neutrality provided that entitlement to input

tax was evidenced. However, the Court considered that where the substantive right of recovery could not be evidenced or the right to deduct was abusively or fraudulently claimed then recovery of input tax could be refused.

(5) In its recent judgment in *Impact Contracting Solutions Ltd v HMRC* [2025] EWCA Civ 623 (***Impact***) the Court of Appeal again considered the scope of HMRC's powers where a taxpayer knew or should have known of fraudulent evasion within the supply chain, on this occasion in the context of compulsory deregistration of the trader where the trader in question was also engaged in supplies unconnected with fraud (below the registration threshold). The Court held that deregistration was permissible applying *Halifax* and *Kittel* provided that it was a proportionate step in all the circumstances. The Court expressly acknowledged that those who knew or should have known of fraudulent conduct are treated as culpable and that the principles established by the CJEU jurisprudence applied not simply to input tax denial. Applying *Cussens* the Court considered that all rights and advantages under the VAT system could be removed in cases of evasion, abuse and avoidance. Thus, a taxpayer which knew or should have known of fraudulent conduct may legitimately, as a consequence of deregistration, be denied the right to recover input tax in connection with its legitimate business.

37. Although not critical to our reasoning, we also consider the judgment of the Supreme Court in *HMRC v Pendragon plc* [2015] UKSC 37 (***Pendragon***) to have some relevance; this despite not having been referred to it by either party. *Pendragon* concerned the use of a complex scheme designed to exploit legislative provisions that permit the VAT on the sale of used cars to be charged only on the margin achieved by the taxable dealer. Having determined that the arrangements were abusive the Court considered the scope of redefinition. The Court confirmed that redefinition is purely notional and is intended to deprive the taxpayer of the illegitimate advantage sought through the abusive scheme. Redefinition entitles HMRC "as between themselves and the taxpayer, to treat them for the purposes of assessing VAT as if the abusive features had not been present".

Appellants' submissions

38. The Appellants submit that, where the right to zero-rating is refused pursuant to the anti-fraud principle derived from *Mecsek* and related authorities, the legal consequence is that the supply is no longer exempt, but becomes a taxable supply subject to the ordinary charge to VAT.

39. The starting point, relying on *Twoh* and *CCET*, is said to be that zero-rating is properly characterised as a "right" under EU law. As rights under EU law cannot be invoked for abusive or fraudulent ends once the right is denied the normal VAT position absent the right is reinstated. The Appellants submit that *Mecsek* is a direct application of that principle in the context of intracommunity supplies. In *Mecsek*, the Court held that a supplier be refused the right to exemption where it knew or ought to have known that the transaction was connected with fraud, and once it is concluded that the right to zero-rating is denied the supply is taxable at the standard rate. The Appellants' position was said to be supported by *Italmoda* (at [57]–[58]) and *Cussens* at [32]–[34]), which it was claimed confirm that refusal of a VAT right is the consequence of the objective conditions not being met, and does not require an independent legal basis. It is said to follow that, where the right is refused, the supply does not satisfy the conditions for zero-rating and is therefore not zero-rated and must be a supply taxable at the standard rate.

40. Further, the Appellants rely on *Dobre* which is said to demonstrate that a failure to establish entitlement to exemption/zero rating, whether by lack of evidence or by reason of

fraud, leads to the same legal consequence: the right is denied because the substantive conditions are not met.

41. The Appellants also submit, relying on *UP Caffe*, that the legal consequence of a Mecsek denial requires a *Halifax* redefinition and that makes clear that the effect of denying a VAT advantage is to restore the position that would have prevailed in its absence i.e. taxing the supply as if it were not a zero-rated supply.

42. The Appellants emphasise that this analysis is also reflected in *Butt* where the Court of Appeal treated the denial of VAT rights as an application of the general anti-abuse principle rather than the imposition of a penalty.

43. Against that background, the Appellants reject the Respondents' contention that a Mecsek denial leaves the supply legally zero-rated while merely withholding the "benefit" of that status. It is said that the authorities, including *Mecsek* itself and *Italmoda* refer interchangeably to the denial of the "right" to exemption and do not support any distinction between "right" and "benefit".

44. Finally, the Appellants submits that the Respondents' analysis is internally incoherent. If the supply remains zero-rated, there can be no domestic charge to VAT, since zero-rated supplies are not chargeable. Conversely, if output tax is due, the supply must be taxable. The only legally coherent analysis is that, following a Mecsek denial, the supply is no longer exempt and is subject to the ordinary VAT charge.

HMRC's submissions

45. HMRC contend that a Mecsek denial does not alter the legal character of the underlying supply but merely denies the supplier the "benefit" or "advantage" of zero-rating. The supply therefore remains zero-rated as a matter of law, notwithstanding the denial. HMRC rely on the jurisprudence of the CJEU, in particular *Italmoda* in which it is stated that a taxable person may be "refused the benefit of [exemption or deduction] rights" even where the formal requirements for those rights are satisfied. HMRC emphasise that the language of "refusal of benefit" (rather than reclassification) is determinative. That conclusion is, HMRC say, supported by the CJEU judgments in *Optigen* and *Kittel* which establish that fraudulent or unlawful elements in a transaction chain do not alter the objective character of a supply and emphasise that transactions retain their character as supplies and economic activities notwithstanding fraud in the chain.

46. Further support is said to be derived from the Court of Appeal's decision in *Citibank*, which draws a distinction between the *Halifax* abuse principle and the *Kittel/Mecsek* doctrine; and *Calltel*, where the High Court held that the Halifax redefinition principle does not apply in *Kittel* cases. HMRC contend that *Impact* and *Butt* also confirm that the *Kittel/Mecsek* principle operates as a freestanding rule without changing the underlying character of the transactions. This is also said to be consistent with the statutory infrastructure as regulation 134 of the VAT Regulations 1995 (as in force at the material time) defined the relevant supplies as zero-rated with no reference to purpose and reflects the treatment of intracommunity supplies by the purchaser of the goods.

47. HMRC further submit that the Appellants' "standard-rated on denial" analysis is inconsistent with legal certainty and the proper operation of VAT as a self-assessed tax. In HMRC's submission, the customer's correct VAT treatment must be ascertainable at the time of the transaction and cannot depend on later denial of the supplier's benefit. Thus, where goods in fact move to VAT-taxable persons in another Member State, no UK VAT is chargeable to the EU customer on the supply; the customer should account for acquisition VAT

in its own Member State, and that remains so even if the supplier is later denied the benefit of zero-rating on *Mecsek* grounds.

48. Finally, HMRC submit that the Appellants' analysis would undermine the anti-fraud purpose of *Mecsek*. On HMRC's case, denying the supplier the benefit of zero-rating imposes a real fiscal consequence which deters use of the UK as a conduit for intracommunity fraud; by contrast, if denial simply shifted liability through a reverse charge, the VAT could become economically neutral as between supplier and immediate customer and thereby blunt the deterrent effect. HMRC add that not all Member States operate reverse-charge regimes (or on the same goods), so Mecsek denials serve a wider anti-fraud function.

Discussion

49. In our view the proper approach is to step back and consider the source and development of the Mecsek principle. From the cases we have reviewed and summarised we establish the following principles:

(1) The prevention of evasion, avoidance and abuse is a general principle of EU law. As the national court interpreting provisions of domestic legislation implementing the VAT Directives (as they applied in periods prior to Brexit) we are required to apply that principle ensuring that it achieves its objective and that other general principles, even the bedrock of the VAT system (fiscal neutrality), may need to "give way" where necessary to prevent evasion, abuse and avoidance (*Italmoda, Cussens, Calltel*).

(2) Consistently, the CJEU has confirmed that the *Halifax, Kittel* and *Mecsek* principles require no domestic implementing legislation such that they operate as free-standing principles aimed at preventing evasion, abuse and avoidance (*Italmoda, Cussens* and confirmed domestically in *Butt*).

(3) The application of the principles does not bring transactions entered into with a fraudulent or abusive purpose outside the scope of VAT generally (*Optigen, Kittel, Halifax*).

(4) For the purposes of preventing evasion, knowledge and means of knowledge of fraud are equated with actual fraudulent conduct (*Kittel, Citibank, Butt*).

(5) It is the objective features of a transaction that determine the fiscal competence of the Member States. Those objective features are not altered by the application of the general principle to prevent evasion, abuse and avoidance and thereby by the *Halifax, Kittel* or *Mecsek* principles. These principles apply to alter the tax consequences attributed to the objective factual characteristics (*Optigen, CCET, Kittel, Citibank*).

(6) Dual fiscal competence in intracommunity supplies is preserved notwithstanding the existence of fraud in the supply chain. The Member State of dispatch may determine entitlement to zero-rating independently of the treatment in the Member State of acquisition (*CCET*).

(7) Where *Halifax* and *Kittel* apply the taxpayer is denied the benefit of fraudulent, abusive or avoidance behaviour.

(a) In the case of *Halifax* denying the "rights and advantages" abusively claimed requires that the underlying economic substance of the underlying transactions be identified such that the true VAT position can be properly assessed. As a consequence, the position of the various participants in an abusive scheme can expect their tax position to reflect the true transactions undertaken. However, redefinition is a notional exercise which does not affect the contractual and legal transactions undertaken (*Halifax, Pendragon*).

(b) Where there is a *Kittel* denial the only "redefinition" required is to deny all rights and advantages associated with the fraudulent activity, in particular, the recovery of the input tax (*Kittel, Calltel, Butt, Impact*).

(8) Denial of VAT advantages is systemic and applies to any rights and advantages derived through the VAT system (*Italmoda, Impact, Cussens*).

(9) Legal certainly limits ex-post denial of rights and advantages in the absence of evasion, abuse and avoidance (*Twoh, CCET*).

(10) The denial of an advantage under the VAT system does not represent a penalty, it is a consequence of the application of the principle of preventing evasion, abuse and avoidance (*Kittel, Cussens, Butt*).

50. Applying these principles to the consequence of a Mecsek denial we consider that where goods have been supplied and there is relevant evidence of an intracommunity removal of the goods for the purposes of the VATA and the VAT Regulations the objective criteria for a zero-rated supply is established. Where however, the transaction is connected to fraud of which the supplier knew or should have known, a notional "redefinition" is required in order to deprive the complicit taxpayer of the advantage of not having to account for output tax on the supply. The obligation to account for output tax does not arise by virtue of a statutory charging provision but as a consequence of the freestanding principle to prevent evasion, abuse and avoidance. As stated in *Pendragon* the liability to account is a notional exercise intended to deprive the taxpayer of the illegitimate advantage which would otherwise accrue to a fraudulent taxpayer.

51. In so concluding we reject the Appellants' submission that a Mecsek denial causes the supply to become a supply taxable at the standard rate. We do not consider that zero-rating is a right under EU or domestic law. As with the other exemptions provided for under the Principal VAT Directive (**PVD**) they are not rights in the sense advanced by the Appellants. Exemption applies or it does not by reference to the objective features of the transaction. An intracommunity supply of goods will be zero-rated when the conditions for zero rating apply. A taxpayer cannot choose whether to zero-rate a supply which complies with the conditions for zero-rating. Such treatment ensures fiscal competence of the suppling and receiving Member States and the neutral imposition of VAT on the supply chain participants. The only extent to which we consider that zero-rating can be described as a right is if the term is assimilated to it giving rise to an advantageous outcome.

52. This is to be contrasted with a right to deduct input tax. The system of VAT collection and the neutrality on which VAT is founded provides for a right to recover input tax where the VAT incurred is attributed to the making of taxable supplies. However, that right must be exercised under the carefully prescribed conditions specified in EU and domestic law. No taxpayer is required to make a claim to which they are entitled. It is a matter of choice. However, where the claim arises in connection with fraudulent or abusive transactions that right is removed, denied or refused. There is no longer an element of choice.

53. In reaching our view that zero-rating is not a right, but an advantage we reject the Appellants' submissions on *Twoh* and *CCET*. At paragraph [26] and [27] in *Twoh* the CJEU considered the burden of proving entitlement to a tax derogation or exemption; whilst it used the language of such derogations or exemptions being rights we consider there is no particular significance to be placed on the choice of the word in preference to advantage, particularly in light of analysis in *Cussens*. In *CCET* [18] the CJEU drew a distinction between the "benefit of a right" to exemption and the right to a deduction of input tax. Whilst the distinction is less clearly delineated in paragraph [40] of the judgment, we consider that overall, the judgment supports our conclusion rather than the Appellants' submission.

54. More generally, we observe that as the CJEU has not been asked to consider the specific issue before us and given that the CJEU's primary language is not English we take little form the chosen language formulation in each case to which we were referred. We can discern no consistent pattern as demonstrated in the table below:

Case	Language [paragraph]
Kittel	"refuse entitlement to the right to deduct" [59]
Mecsek	"no entitlement to exemption from VAT" [54] "refusal to grant a vendor the right to the VAT exemption" [55]
Italmoda	"refuse [the right to deduct VAT] if it is shown … that that right is being relied on for fraudulent or abusive ends" [44] "right to an exemption for intracommunity supplies" [45] "no one may benefit from rights stemming from he Union's legal system for abusive or fraudulent ends, as such a refusal is the responsibility … of the national authorities and courts, irrespective of the VAT right affected by the fraud…" [46] "the specific function of the right to a VAT refund, … cannot preclude that right from being refused to a taxable person in such a situation" [47] "refuse the benefit of the rights laid down …" [49] "the refusal of the benefit of a right …" [55] "fraudulent acts cannot form the basis of a right under EU law, the refusal of a benefit …" [57] "the objective conditions required for obtaining the advantage sought, … as regards that right, have … not been satisfied" [57] "taxable person to claim a right …" [58] "refuse a benefit under the common system" [59] "obtaining a right … to oppose the refusal to grant the right" [60] "refusal of the benefit of a right" [61
Halifax	"repayment of the amounts deducted … wherever … the right to deduct has been exercised abusively" [95]
Cussens	"principle that abusive practices are prohibited is applied to the rights and advantages provided for by EU law …" [30]

55. We also reject the Appellants' contention that there should be equivalence in treatment where there is a denial of zero-rating because of a failure to evidence that the objective criteria for zero-rating have been met and a Mecsek denial. That submission is made by reference to *Dobre*. We consider that the Appellants' reading of paragraphs [35] and [36] of *Dobre* overstates what is said and is, in any event, inapposite in the context of a Mecsek denial. In *Dobre* the CJEU confirmed that the right to claim input tax is a fundamental right, ensuring

fiscal neutrality. It cannot lightly be denied but can be denied where the objective criteria of the right to claim is not met and where the claimant is complicit in a fraudulent supply chain. The case says nothing about the consequence of denial and whether they are equivalent, let alone how that might read across to a Mecsek denial.

56. We therefore have little hesitation in concluding that the effect of the Mecsek denial is to deprive the Appellants of the advantage of treating supplies which it knew or should have known were connected to fraud as zero-rated.

Decision on Mecsek Issue

57. For the reasons stated we consider that a Mecsek denial represents the denial to a supplier complicit in supply chain fraud of the benefit of zero-rating. It does not denature the supply of goods as an intracommunity supply as a zero-rated supply.

SECTION 55A ISSUE

58. Having determined the Mecsek Issue in HMRC's favour, HMRC contend that the interpretation of section 55A is entirely academic on the basis that none of the eight counterparties were registered in the UK for VAT. Further, as all of the supplies made to those counterparties were treated by the First Appellant as zero-rated supplies and a Mecsek denial does not deprive the supplies of such status the counterparties were not required to be registered for VAT by virtue of section 55A(1) – (3).

59. The Appellants contend that the issue nevertheless needs to be determined in this appeal. They contend that, on its terms section 55A(6) applies a reverse charge to any counterparty which is registered or required to be registered in the UK whether or not the supply is a zero-rated supply. In this context the Appellants contend that the requirement in subsection (6)(b) to supplies of goods "to which this section applies" imports the definition provided in subsection (9) defining the type of goods and not to the circumstances in which those goods are supplied (i.e. whether they are standard or zero rated). It submits that subsection (6)(b) does not import the limitations of subsection (1)(a). The Appellants therefore contend that if, on the evidence, the eight counterparties were, for some independent and unrelated reason, "taxable persons" meeting the requirement of subsection (6)(c) the supplies made by the First Appellant would be subject to the reverse charge.

60. Having considered carefully the terms of the judgment of the FTTTC it is clear to us that no decision was taken as to the meaning of section 55A(6)(b) or its scope. The FTT decided that recipients of supplies which had been zero-rated but which were the subject of a Mecsek denial were not thereby taxable persons meeting the requirements of section 55A(6)(c). As we agree with that conclusion and therefore, without evidence that, for reasons unconnected with the supplies which are the subject of the Mecsek denial, the counterparties were otherwise taxable persons, the interpretation of section 55A(6)(b) is academic at present.

DISPOSITION

61. For the above reasons we find that the FTTTC reached the correct conclusion and though its explanation was brief it appears that it did so for the right reasons

MEADE J
AMANDA BROWN KC

Release date: 09 June 2026