

Tribunal Decision – “Trader is one of the ringleaders”

Please contact CTM if you have any questions regarding this Newsletter.



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Overleaf:

Tribunal decision
continued

Calltell Telecom accused of being involved in Fraud

Calltell Telecom Limited and Opto Telelinks (Europe) Limited have received significant criticism from the Tribunal Chairman in the most recent “means of knowledge” appeal.

The decision is lengthy and not easy to digest, so we have attempted to break it down in to the areas traders are interested in. However, please see the link below for the full version:

<http://www.financeandtaxtribunals.gov.uk/judgmentfiles/j3356/20266.doc>

What did the decision relate to:

1. Whether the trader knew or should have known about fraud in their supply chains.
2. Even though there was no direct tax loss in some supply chains, was the importer part of an overall scheme to defraud.

Point 1 relates to whether Calltel conducted enough worthwhile due diligence, or actually knew of the fraud. Point 2 relates to a contra trader; on this occasion an importer who paid the VAT on the transactions in question, but had defaulted in a separate period.

It maybe best to head straight for the conclusion and give you a flavour of what the Tribunal thought of the director who gave evidence.

“Mr Gohir was not an innocent swept into a fraud committed by someone else. On the contrary, we are satisfied that he took great care to distance himself from the fraud, which he knew was being committed. We are quite sure by his demeanour and from his untruthful evidence, that Mr Gohir was under no illusion about the nature of the trade and think the Commissioners are right to contend that he was one of the ringleaders”.

The reasons for reaching such an aggressive conclusion include:

- It did not believe that the trader has to purchase direct from a defaulting trader, before they lose their right to reclaim input tax (VAT).
- If the trader knew that they were engaged in a transaction that formed part of a chain whose purpose was to evade tax, he will forfeit his right to deduct input tax.
- A trader who takes every precaution which could reasonably be required of him to ensure that his transactions are not connected with fraud has the right to reclaim their VAT.
- Customs have to prove that at least one trader in the supply chain intended to commit fraud from the outset and that the transaction chain was designed purely for fraud.



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Below are some reasons why the Tribunal came to such an aggressive decision:

- The Tribunal believed that the director was untruthful throughout his evidence. For example, they did not believe that Calltell bought UK specification phones and converted every one into EU specification phones in one day. Mr Gohir had tried to convince the Tribunal that each phone had been connected to a laptop and new software downloaded, although he did not appear to know how this actually worked. The Tribunal argued that, even if there were only 1,000 phones, it would take 33 hours to achieve.
- Trading partners were all new; both suppliers and customers.
- Due Diligence was undertaken long after trading commenced, although limited checks were conducted before the periods in question.
- Calltell had signed a Customs Code of Conduct, detailing what checks needed to be in place prior to trading; these were not adhered to. A copy can be found on the last two pages of the decision.
- A director of two companies in the EU, sold from one of his companies to Opto, who sold to Calltel, who sold back to the EU directors other company, for a higher price – all within one day. It was alleged that there was no commercial reason for these transactions and that all parties were involved solely for the purpose of fraud.
- Customs had notified Calltell of a four month period in 2004 that had resulted in 100% tax loss, yet due diligence was not enhanced.
- Although the defaulting traders in some chains failed to account for output tax in a separate period and, therefore, there was no tax loss, the Tribunal concluded that the transactions were designed for the purposes of fraud.

From what we can see from the Tribunals decision, it is clear that they had little doubt that both companies were knowingly involved in the fraud.

Every element of their trading and due diligence procedures were severely criticised and, if what we read is true, rightly so.

We had hoped to take more away from the first decision, but it is very difficult to advise companies on their chances of success when the directors allegedly lied, or were evasive, or declined to answer questions for much of their evidence.

We are aware that Customs wanted the first two or three decisions to be made on the worst offenders, in their eyes and, therefore, it may be equally hard to make a meaningful assessment until a company with better procedures receives a Tribunal decision. If the tribunal believes the director is not being truthful, it severely taints the rest of the case, particularly any documentation generated by the director, for example due diligence.

As further decisions are made, we will provide a précis for each one, but please feel to contact us, in the meantime, if you have any questions.