

First Tribunal Decision Has Been Reached?

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



Liban Ahmed
Director

London Office
The 401 Centre
302 Regent Street
London
W1B 3HH
Tel: 0870 405 7695

liban.ahmed
@ctmltd.com

Liban worked for HM Revenue & Customs for 20 years, predominately in VAT investigations, before being recruited as an indirect tax advisor at KPMG. He formed CTM in 2005 and now manages all Tribunal appeals.

Overleaf:

Customs to repay before hearing.

Maximising your chances of success.

Trader loses appeal in Tribunal

The first decision on means of knowledge and contra trading has been reached and CTM has been informed that the trader lost their appeal in Tribunal. We will post the full decision on our website as soon as we receive a copy. We have no more information on this subject as yet, although Officers we have spoken to have hailed it a great victory for Customs. We will comment further when we have studied the decision.

Traders' moral is taking a nose dive.

With stress and frustration levels hitting new highs, it is not surprising that companies are expecting the worst, especially as rumour and speculation of another 'Bond House' is spreading like wild fire. Will this latest action by Customs go all the way to Europe?

No, is the simple answer. Yes, Customs will refuse to repay nearly all VAT claims and, yes, traders will have to appeal to the VAT and Duties Tribunal; of this there is no doubt.

However, in a Tribunal hearing, each company will be judged on its own merits. If a Tribunal's decision goes in favour of the trader, the trader will be repaid the VAT, a 5% repayment supplement and interest. You will also receive costs. HMRC cannot simply appeal a Tribunal decision just because they don't like it.

Our sources tell us that Customs would like to win 75% of the cases and that they would view this as a great success. They believe that, of the remaining 25%, some will be repaid prior to the actual hearing and some will be lost after a hearing. This figure has come from senior figures within Customs and is further evidence that this will not go to Europe.

Having said that, it is possible that the contra trading argument will be settled in Europe. This is a complex area and, if you would like more information on this subject, we would be happy to discuss this further.

We are hearing from many companies that they believe the Tribunals will be biased towards Customs. We really do not believe this to be the case and this is also the belief of Customs themselves.

Some traders have decided not to appeal as they believe the fight is pointless. We would urge every trader to appeal any negative decision, even if they appeal themselves. You only have 30 days to appeal and this time limit is unlikely to be extended without very good reason. We can advise traders on how to keep in the system for very little or no cost, which will enable you to see what happens in the first few decisions before deciding what to do.



Matthew Blake
Senior Consultant

Nottingham Office
15 Wheeler Gate
Lace Market
Nottingham
NG1 2NA
0870 405 7695

matthew.blake
@ctmltd.com

Matthew worked for HM Revenue & Customs for 6 years as a fraud and money laundering Investigator and has been employed as a due diligence and VAT specialist for CTM since 2005. He now focuses on advising traders on appeals to Tribunal.

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Further Decisions

Tribunal Developments

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Why would Customs repay VAT before a Tribunal?

Customs will look carefully at the early decisions and will not want to enter into a costly process if they have little chance of success. Therefore, it is vital to ensure that you prepare the best possible case that will prevent a full hearing. Customs are far more likely to go all the way to a hearing if your case has not been professionally managed.

A CTM client recently received correspondence from HMRC stating that there was no timescale for a decision and that cases going through the Tribunal may produce decisions that have an impact on their case. This is a clear signal that Customs have finished the verification on many companies, but will wait until they know the results of the first few Tribunal results before making further decisions on VAT.

How a trader can maximise their chances of success

- Understand the realistic chances of success so that you are not throwing good money after bad. Although, with so much money at stake, it is difficult to see a situation when a company wouldn't fight for what is rightfully theirs.
- If you believe you have a chance of success, get the best service that you can afford. To lose in Tribunal and later wonder if you did the right thing by trying to save money, will be very hard to bear.
- Get a fixed rate. After examining your records, most companies will offer a fixed rate for a 5-day Tribunal hearing. This will ensure that you do not receive a low quote, which is then doubled once the work has started. We are hearing this from many companies.
- Simply because some firms charge large fees is no guarantee of the best service. Ensure that you are taking advice from firms that include ex Customs VAT Investigators. There are several to choose from. We can explain the reason for this in more detail, should you wish.
- Make yourself available at all times and work hard to ensure that all material is presented to your advisors in a good order.