

**CTM CONFIDENT OF SUCCESS IN FIRST COMPLETE TRIAL
POST COURT OF APPEAL**

CTM - ASSISTING TRADERS IN CRIMINAL AND CIVIL CASES



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Liban worked for HM Revenue & Customs for 20 years, predominately in MTIC investigations, before being recruited by **KPMG**. He formed CTM in 2005 and now manages all Tribunal and High Court appeals.

Overleaf:

Investment

HMRC Lacking Any Real Bite

CTM has finalised what is probably the first Tribunal trial after the Court of Appeal released its judgement in April. Closing submissions were made by both parties last week after a difficult two weeks for HMRC.

Highlights From the Trial:

1. HMRC switched from their position that a trader should have known that "*on the balance of probabilities*" its transactions were connected to fraud and simply repeated over and over again that the offer of goods in large quantities, allowing big profits, was "*too good to be true*". This is in line with the Court of Appeal Judgement.
2. Instead of challenging all aspects of due diligence, they simply accepted that it was good enough, but irrelevant, and did not put one single due diligence document to the trader in cross examination. The due diligence was, in fact, good, but there were some inconsistencies that would previously have been exploited; they were not even touched on.
3. They focused quite heavily on the inspection reports, believing that the only reasonable explanation for stock being offered in "fair" condition, with scuff marks, pen marks, double labels etc., was that it was connected with fraud. This area needs to be dealt with very carefully.
4. The biggest area of attack was the big picture and they tried to convince the Tribunal that the amount of goods on offer was not feasible, given the small grey market. This is also an area that needs careful handling and additional evidence.
5. Faxed timing of documents also became an issue and the director was criticised for not waiting for inspection reports before releasing stock to its customer and releasing stock to its customer before the stock had been released to it.
6. CTM had conducted a robust approach to disclosure of material by Customs and forced additional HMRC witnesses to take the stand. The Tribunal Judge directed HMRC to disclose various documents just prior to the trial that they had refused to hand over. These allowed CTM's instructed counsel, Hywel Jenkins at Outer Temple Chambers, to prove that one Officer was being untruthful regarding one key area.

Next Edition:

Further Tribunal results.

Overall, the HMRC attack lacked substance and every area was dealt with by serving solid, clear and logical explanations. We had also conducted a detailed review of the deal files, including timings of documents and it is essential that each trader knows what every single issue will be during cross examination. Such preparation is key when faced with tough questioning.

It is yet to be seen whether the Tribunal Judge will reflect what happened in the trial, but it was a very positive start, post Court of Appeal, and we had a glimpse of the problems HMRC may face when dealing with solid cases, involving good counsel, who, on this occasion, totally dominated the trial from start to finish.

We exhibited documentary evidence from 2006 advertisements on the IPT/ICB/IGT websites that showed the very same stock under appeal was being advertised on the open market and we recommend this in every case. The cooperation of the IPT was essential for this and they also assisted with proving that HMRC leant on UK banks to ensure industry wide closure of accounts, that banks had a blanket policy for this, which was nothing to do with suspicious trading patterns, and that the FCIB had been advertised through the IPT, which was the reason so many traders both here and abroad used it.

The trader in this trial had a significant boost because two previous extended verifications, involving 2005 supply chains, resulted in repayment without comment from HMRC. The HMRC Policy witness, Rod Stone, was extremely helpful when he said in evidence that a trader who is told that extended verification had been conducted and is then repaid without notification of tax losses can “legitimately” believe that no fraud was found and he should have no reason to cease trading with those suppliers.

This will mean that there must be another “reasonable explanation” other than fraud, simply because HMRC have said there is no fraud. We have found that some traders have not retained such letters and requesting disclosure of these from HMRC should always be conducted.

Investment

After the Court of Appeal, tentative signs of investors coming back into the industry are emerging. Due to the likely high demand, investors have stated that they will only consider small, low value appeals, unless there are other significant factors.

As soon as the first Tribunal Judgement has been made, where arguments regarding the Court of Appeal judgement are heard, we will let you know.