

VAT denied for trader with excellent procedures in place

Please contact CTM, or your advisor, 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:

Can you do anything except wait?

Assessments raised for earlier periods

VAT can be reclaimed on freight forwarder invoices.

What hope is there for other companies?

In our last edition, we discussed a company that had excellent deal and due diligence procedures in place and who were expecting an imminent decision.

This week they received notification that they will have their VAT, totalling over £2 million, disallowed. In order for you to compare your systems, we have listed the due diligence and trading procedures adopted by this company, below, and you should note that they have many years experience in the mobile phone industry:

1. Own site due diligence visits conducted prior to trading.
2. Positive third party due diligence reports received prior to trading.
3. Full written analysis of the above two visits completed.
4. EU customers met prior to trading.
5. Credit reference and Companies House reports received prior to trading.
6. Directors' identity and home address evidenced prior to trading.
7. References followed up, including those from accountants.
8. Full Terms & Conditions drawn up by in-house accountant.
9. All UK suppliers and EU customers verified at Redhill prior to trading.
10. IMEI's received for each consignment and a system implemented to ensure goods have not been purchased previously.
11. Goods fully insured.
12. Purchased stock often split and sold to multiple customers.
13. All suppliers have a proven track record of trading in mobile phones, and in large volumes.
14. Ceased trading as soon as they received notice of a defaulting trader in their supply chains.

The reasons given for denial are:

- Stock was purchased and sold on the same day.
- Others in the supply chain purchased and sold on the same day.
- Remarkable consistency in mark-up on all stock (Note this is not true).
- There was no commercial risk, as payment was obtained from the customer prior to payment to the supplier.
- No Terms & Conditions in place (Note this is not true).
- Due diligence on suppliers is inadequate for trading in this industry.

All companies will now be able to compare their procedures with those listed above, and you will have a very good idea of what your fate might be. It is now clear that Customs are determined to ensure that most, if not all, traders will have to fight for their VAT through the Tribunal system.



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.

Next Edition:

Further Decisions

Tribunal Developments

Other Relevant Industry News

Can you do anything except wait?

We do not recommend Judicial Review action, as we believe you will receive a decision prior to your day in court. We understand, through discussions with Customs and evidence from traders, that it now takes as long as four months to receive a decision *after* your Officer submits the report to the Policy Team.

Some companies that have recently received a negative decision have found that Customs have retained some, or all, of their due diligence and deal documentation. We advise all traders to ensure that, if Customs have uplifted original deal or due diligence documents and not provided copies, they should request that copies are made available immediately. Do not wait for a decision, as it can take some time to receive and may delay your appeal.

Assessments raised for earlier periods

Not only are Customs denying VAT on the outstanding periods, but they are denying VAT on earlier periods that have already been repaid, and are raising an assessment.

In such letters they point out that repayments made for earlier periods were made 'without prejudice' and that further enquiries had raised additional concerns.

This could significantly affect companies that have money or assets still in the business. If assets are in the name of the company, Customs can, and will, enforce action to recover the debt.

If an assessment is raised you cannot appeal to the Tribunal unless you pay the assessment in full, or can evidence significant hardship. It may then require a hardship hearing in the Tribunal to determine if the company is indeed without funds. If you have funds to pay the assessment, you will have to do so.

VAT can be reclaimed on freight forwarder invoices

You should contact your Officer if you haven't received payment of the VAT on freight forwarder invoices. Customs have rightly agreed that, if there is no doubt about the legitimacy of the service provided by the freight forwarder, and the freight forwarder has paid the output tax, VAT will be paid to all traders.

We have discovered that many companies have not even received the VAT back on office expenses and business overheads. We advise that you request this be paid immediately, but ensure that Customs have all relevant invoices.

These payments could go a long way to paying for subsequent Tribunal action. Please contact us, or your advisor, if you are having problems obtaining these payments.