

Customs – “Verification process in the UK is nearly complete”

CTM Limited provides legal assistance to traders regarding appeals to Tribunal and the High Court. Our broad skill base also enables us to provide detailed and relevant advice on a whole range of topics, including VAT and due diligence.



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 before being recruited as an indirect tax advisor at KPMG. He formed CTM in 2005 and now manages all Tribunals and appeals to the High Court.

Overleaf:

Corporation/PAYE Tax
Suspended

“An Overall Scheme
to Defraud”

Mobilx Victory Short
Lived

Reasons for VAT
Refusals

“Defaulting Trader
Letters Inaccurate”

Extended Verification – Are Most Decisions Imminent?

2006 has been a challenging year, to say the least, for most businesses trading in high value products. Our clients even include large businesses that have purchased direct from manufactures and, yet, their VAT still remains withheld. However, some subtle changes are in the air and there are signs that a large proportion of the extended verification may be drawing to a close.

Our sources within HM Revenue & Customs (“Customs”) inform us that most of the earlier decisions will be made between now and the end of March and repayments, where appropriate, will be made in the new financial year.

It is no coincidence that CTM is now receiving correspondence from Customs that convey the feeling that the end is in sight. The phrases “our verification process within the UK is nearly complete and a decision will be made soon” and “we will not allow the results of EU enquiries to delay our decision” are now all too common place. Some clients have even been informed within the last week that Customs Officers have submitted reports to the Policy Team for a decision.

As decisions are imminent, it is vital that all traders review their systems one final time and make sure that Customs have every piece of paper and every bit of information that is positive. Do not simply provide Customs with the answers they want or only with documents that they request, and don't forget that a great deal of due diligence is in your head. If needs be, write it down and get it to them. We have conducted many on-site reviews of company systems and the information that is most often not presented to Customs includes:

- The number of times suppliers or customers have been met.
- The length of time a supplier or customer has been known.
- Samples of stock taken.
- Verbal references or recommendations.
- Visits to, or knowledge of, freight forwarders.
- The traders experience in the industry, including previous companies.
- The traders knowledge of the products traded/product research.

Finally, if you intend to continue trading, we strongly recommend that you:

1. Conduct thorough visits to all your trading partners, both in the UK and overseas, and make detailed notes.
2. Establish a system so that, even in the heat of trading, all necessary due diligence is in place for every deal.

If you have any comments that you think would be of interest to us regarding the above, or the topics overleaf, we would like to hear from you.



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 and has been employed as a due diligence and VAT specialist for CTM since 2005.

Next Edition:

Further Customs Decisions

Tribunal Results

High Court Decisions

CTM Due Diligence Manual

Other Relevant Industry News

Corporation/PAYE Tax Suspended

Traders are finding that HM Revenue & Customs ("HMRC") are not satisfied with simply withholding their VAT repayments for a year, they want to twist the knife and demand Corporation and PAYE taxes on top. Although some companies have had luck in suspending such payments, many others are facing recovery action from the HMRC Debt Recovery teams.

As a result of CTM's efforts to fight this action, HMRC have suspended payment of such taxes for our clients. Our success lay in obtaining a letter from the Chairman of Customs suspending action in respect of one clients' Corporation/PAYE Tax. We not only used the letter successfully to assist other clients, but also uncovered legal precedent for this.

"An Overall Scheme to Defraud"

A phrase all too common when Customs can find no VAT loss in a UK supply chain. Instead of accepting that not every supply chain is fraudulent, they claim that the importer is a "Contra Trader" (offsetting import VAT against input tax) and is simply importing in order to fund fraudulent exports. It means that, if the legitimate importer in your supply chain has also purchased from within UK, and fraud exists in these totally separate supply chains, then the "means of knowledge" test will be applied to your transactions. CTM has evidence of refusals under these circumstances and these will soon be challenged in the Tribunal, and rightly so.

Mobilx Victory Short Lived

In August 2006, Mobilx appealed to the Tribunal, prior to any decision being made, in order to force Customs' hand. Customs asked for the appeal to be struck out, but, during a preliminary hearing, the Tribunal Chairman found in favour of the trader and ordered Customs to produce a statement of their case within 30 days. However, this victory was short lived as Customs appealed this decision to the High Court. The case continues.

Many of CTM's clients followed suit and some have hearings in the Tribunal as early as next week. In addition to the Mobilx argument, CTM is using a number of separate arguments to force Customs into a decision. We will update you when we know the outcome.

Main Reasons For VAT Refusals

Some traders have now had their VAT refused due to poor due diligence, unusual trading patterns or simply because they pushed for Judicial Review ("JR") too early. It appears that Customs will not make payment before the financial year end and any company forcing a decision through JR will almost certainly receive a negative one.

The main reason that is evident on all refusals is in the event that Customs have informed a trader of fraud in a supply chain and that trader continues to purchase from the same supplier. However, this is not indefensible and our Barristers are holding consultations with traders when defending similar cases.

Other reasons cited by HMRC are: A VAT loss has occurred in every transaction chain ■ A lack of experience on behalf of the Directors ■ Consistent profit margins on every deal ■ All transactions being back-to-back, with deals rarely split ■ Lack of commercial checks on suppliers or customers ■ Not recording serial numbers when requested to do so.

Defaulting Trader Letters Inaccurate

We notified many traders in October that Customs were writing letters stating that *full* supply chains had been verified and defaulting traders identified. After mounting a sustained campaign challenging Customs on this point, we have received many admissions that the supply chain verifications have not all been as Customs would want you to believe.

You should challenge your Officer to confirm that he has reached the importer on every occasion and that he has evidence of importation. CTM has evidenced on many occasions that Officers are ceasing their verification at the slightest hint of difficulty when there is, in fact, no VAT loss at all. Our supply chain verifications have uncovered some very interesting facts.