

The decisions are very slow, especially for CPU traders

Please contact us if you have any questions regarding this Newsletter



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Overleaf:

Trader Wins Unusual Case

Judicial Review advice

Corporation/PAYE Tax Update.

How long can this go on for?

Decisions continue to be made in small numbers, for three reasons:

1. Customs could not cope with too many appeals at the same time.
2. The Tribunals could not cope with too many appeals at the same time.
3. Customs are unsure of how many cases they will win and are continuing with their EU verification as a means of justifying the delays.

To highlight the problems; out of the 50 exporters that CTM has as clients, only 20% have had decisions, after 18 months of verification.

CTM attempted to push through appeals through the Tribunals without a decision being made, but was only partially successful. The Tribunal Chairman stated that only a formal written decision constituted an actual decision. However, it forced Customs to show their hand and 3 companies received a decision the week prior to the hearings. Customs also had to explain, in detail, the systems they have in place.

The Tribunal Chairman was totally unimpressed by the delays and bureaucracy involved after the verification process was complete. He even suggested that a Judicial Review of the system by which the Officer passes his recommendation through the Customs Technical and Policy Teams could be considered.

It is now clear that Officers state clearly on a report what they think the decision should be. Once it is received by the Technical and then Policy Teams they make a decision as to whether it should be a formal decision or whether further work is required. If they believe that they will have a difficult time winning the case, they will refer it back to the Officer for further verification, usually involving further overseas enquiries. Tracking goods across Europe, as reported in an earlier Newsletter, takes at least 9 months per country. So, if you have three EU countries involved in the chain, it could take 2 ½ years to receive a decision, plus a further six to nine months added for delays in the Technical/Policy Team.

If you are wondering whether there will be any success stories, it is impossible to say exactly what percentage will receive payment, but we have no doubt that some traders will win in tribunal and before.

Less than 5% of decisions involve CPU traders

Through viewing correspondence and speaking to our sources within Customs, it is now clear that decisions on most CPU traders will be made after examination of more Tribunal decisions. We wouldn't like to speculate as to why we have this situation, but please contact us if you would like to discuss this further.

CTM's CPU clients have received letters from Customs stating that a decision would be reached after consideration of forthcoming Tribunal hearings. Unfortunately, only the second hearing on 'means of knowledge' is underway in the London Tribunal Centre and will last for one more week. However, the decision may not be released until the new year. It is unlikely that Customs, or anyone else for that matter, will have a very good idea of how the results are going until March or April 2008 at the earliest, and CPU and some other traders should expect a very long wait. Our main concern now is that, if Customs do not feel that they will win in Tribunal, there is nothing to make them repay any company. In theory, they could simply not repay any company that doesn't force a decision in the High Court.



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Overleaf:

Access to Specialist Barrister

Teleos ECJ Decision

Further and Better Particulars

Trader Wins in Tribunal in Unusual Circumstances

A sole trader, represented by a CTM barrister, received a decision that throws up an interesting argument and may assist other traders.

The brief facts of the case:

- The Appellant claimed to have travelled to a trade fair for the first time where he sourced a supplier of software and, coincidentally, also found a customer for the software, based in Canada.
- The Appellant only had experience in the shoe industry and this was his first involvement with software.
- All consignments were linked to fraud.
- Customs didn't believe the transactions took place and that it was a sham, contrived purely for the purpose of VAT fraud.

The Tribunal found that the trader was untruthful, had no real involvement in the transactions and was merely a puppet put in place to facilitate worthless transactions. They further stated that the trader must have known this. Although Customs didn't provide a means of knowledge argument, the facts of the case were clear and the Tribunal considered whether the trader had this knowledge.

They found in favour of the trader because it was clear the goods existed and, although they were sure the trader knew they were involved in something wrong, it couldn't be proved sufficiently that they knew it was VAT fraud. This will apply to some current cases and could be used as an 'alternative' argument where it is alleged that you had knowledge of an overall scheme to defraud VAT. Please contact us if you wish to discuss this point in more detail.

Corporation Tax Update

It is now likely that companies do not have to pay outstanding Corporation Tax, even if they have not received a decision on their VAT. We are meeting with specialist accountants later this week, but initial conversations are favourable. If you are interested in this subject, or know someone who is, please contact us for further details.

Judicial Review Advice

As discussed above, there is nothing a trader can do to force Customs to make decisions without going to Judicial Review and, therefore, there is nothing to stop Customs carrying out their extended verification (if they think they will lose) for another couple of years, or more. In one recent hearing that CTM was present at, the Customs barrister stated to the Tribunal Chairman that he should look at the verification process like a criminal investigation; "they are very complex and sometimes they can take many years to complete".

The cost of a JR is approximately £20,000, even if you use a barrister experienced in JR's. This cost could be as little as £6,000 for joint applications.

Please note that, when we say there is nothing a trader can do, we mean there is no other tried and tested method that we know of. However, we are awaiting the outcome of a Court of Appeal decision where a trader is alleging the VAT is a debt. In the High Court, the Judge agreed that the trader has a case and that it should go forward to trial. If successful in the Court of Appeal, this will mean all companies can, in effect, circumvent the decision and Tribunal system and go straight for a Trial to decide if Customs should repay the VAT.

Our barristers are involved in other litigation action that is very interesting and which we will report on in due course. We have employed top level barristers for this task.

Next Edition:

Tribunal Developments

Corporation Tax Update

Other Relevant Industry News

Access to Specialist Barrister

CTM has taken on a specialist and experienced heavyweight barrister to manage its appeals. We ensure that CTM, the client and the barrister work hard as a team during all stages of the appeal and evidence gathering stages. This avoids the barrister being consulted infrequently and arriving at the Tribunal hearing having had little influence on the case. Contact can also be made direct between the client and the barrister, if necessary.

If you have received a decision and wish to consult direct with this barrister, initial consultations are free of charge.

Teleos ECJ Decision

Unfortunately this has caused a great deal of excitement that is probably a little premature. It is a case that relates to goods that were collected by the EU customer from a UK warehouse and were not actually exported. False CMR's were provided by the EU customer and the UK exporter took them at face value and zero rated its sales.

The European Court of Justice ("ECJ"), as was widely predicted, agreed with the trader's argument that they should still be able to zero rate their export, even though the goods were not exported. However, they (and others) can only do so if they all took reasonable steps and should not have been aware of the fraud. It is the same hurdle that other traders face in their means of knowledge cases.

This is of little benefit to most traders who are simply awaiting a decision on their input tax, or are fighting a means of knowledge case in Tribunal.

If you wish to discuss this case and its implications on your business, please contact us.

Further and Better Particulars

For those traders who are not using firms who employ ex Customs Investigators, we have listed two of the many sets of documents that should be requested from Customs during your evidence gathering stage.

- Documents uplifted by EU authorities during their visits to your EU customers – This could be very valuable to prove that Customs have information that goes against their own allegation. For example, if Customs are alleging that no negotiating of price took place and that it is a coincidence that the supplier had exactly the same quantity of stock that your EU customer wanted, it would be wholly wrong of Customs to be in possession of documents that prove this is not the case.
- Documents uplifted by the designated freight forwarder teams – These can show up all sorts of evidence that can counter what Customs are alleging, but be specific about what you are requesting.

Apart from the use of expert witnesses, this is the most important part of your evidence gathering and it requires a significant amount of knowledge of Customs current internal systems. If you are not specific about what document(s) you want, a) it is unlikely you will receive anything very valuable and b) a Tribunal Chairman cannot direct Customs to produce it.

Quite simply, do not assume Customs will provide any information to assist in your appeal. Quite the opposite, they will almost certainly have made numerous mistakes and deliberately overlooked evidence that go in your favour. Please call us if you would like to discuss this area or you would like to know more about what documents to request.