



**HM Revenue
& Customs**

National Compliance

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Date
Our Ref
Your Ref

Dear Sir,

NOTIFICATION OF DECISION TO DENY INPUT TAX

This letter is issued without prejudice to the outcome of continuing enquiries.

I refer to Community law doctrine of abuse, as recognised by the ECJ in a number of cases *Emsland-Starke GmbH v Hauptzollamt Hamburg-Jonas* (C-110/99), *IS Fini* (C-32/03) *Optigen Limited, Fulcrum Electronics Limited and Bond House Systems Limited* (C-354/03, C-355/03 and C484/03), *Halifax* (C-255/02) and *Axel Kittel, Recolta Recycling SPRL v Belgian State* (C-439/04 and C440/04). The decision in the case of *Axel Kittel/Recolta Recycling SPRL* recognised that where a taxable person knows, or should have known of the possible fraudulent nature of transactions in the chain of supply of which it forms part, the right to deduct input tax should be denied.

Community law therefore precludes the recovery of input tax where the trader's transactions form part of an overall scheme to defraud the revenue and where there are features of the trader's transactions (such as the pattern of trading), or conduct on the part of the trader which suggest that the trader deliberately or recklessly ignored factors which indicate or may indicate that the transactions they entered into may have formed part of such an overall scheme.

I am satisfied that the transactions set out in the attached appendix form part of an overall scheme to defraud the revenue. I am also satisfied that there are features of those transactions, and conduct on your part, which demonstrate that you knew or should have

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INVESTOR IN PEOPLE



known that this was the case, in that you either deliberately, or recklessly, ignored factors which indicated that these transactions may have formed part of such an overall scheme.

Accordingly I deny you the right to deduct the input tax claimed in respect of these transactions.



This decision affects input tax claimed on the purchase of mobile phones in periods 04/06 and 05/06. This totals £6,579,106.64. This is without prejudice to further enquiries being made into all other periods for which returns have been submitted and repayments made or to other deals undertaken in the above periods.

In the making of my decision I have taken into account the following information and features of dealing evident from reviewing the activities of _____ over a period of time:

Knowledge of MTIC fraud

1. On 31st March 2002 a letter was sent from our Redhill office highlighting the risks in the type of wholesale trade _____ was entering into and the need to take appropriate precautions.
2. On 11th April 2003 _____, Officer, sent a letter enclosing three budget notices and two consultation documents including joint and several liability. These concerned MTIC fraud.
3. On 23rd May 2005 a visit was carried out to your premises and _____ was issued with Notice 726 and due diligence was discussed with him.
4. There have been numerous other letters and face to face meetings with HMRC officers where MTIC and carousel fraud have been discussed.

I therefore conclude that, when entering into the transactions that made up the two returns in question, you had sufficient knowledge which should have prompted you to take steps to ensure that no aspect of the transactions was connected with MTIC fraud.

Precautions taken



5. Whilst certain "due diligence" checks were undertaken by _____, including:
 - the receipt of letters of Introduction;
 - the receipt of VAT certificates;
 - the receipt of Certificates of Incorporation;

the scope of these checks was very limited.



6. The due diligence checks undertaken, therefore, appear designed to give the impression that precautions were taken, but in substance the checks were inadequate to ensure that, on the balance of probabilities, the transactions were not connected with MTIC fraud.

Other matters

7. [redacted] regularly exported to Switzerland from June 2005 to January 2006. You ceased exporting there soon after the joint action, taken by Customs' authorities in the UK, France and Switzerland, exposed the artificial supply chains. You were notified of this by myself in May 2006. Two of the three companies, who supplied goods to be exported to Switzerland, were [redacted] Ltd and [redacted] Ltd, your suppliers in the 04/06 and 05/06 VAT returns. You therefore continued to trade with suppliers who you knew were previously involved in artificially contrived supply chains.

8. Of the deals that make up the 04/06 and 05/06 returns all were characterised by tax losses at the start of the supply chains.

9. Considering that you made sales of £40,000,000.00 in the periods in question I note that you have not visited the premises of your EU customers or met anybody from these companies. Again, I would expect a normal commercial business, entering into such high value transactions, to have met with their customer.

10. You did not obtain trade or credit references for you customers. Once more, I would expect a normal commercial business, involved in transactions of such high value, to ensure that it had reliable, independent third party credit checks and to obtain trade and credit references from customers before executing deals.

11. You have no written contracts or agreements with your customers. Again, I would expect a normal commercial business, making supplies of such large amounts, to ensure that it had proper agreements with both its suppliers and his customers to ensure that any and all legal obligations between the parties are fully and clearly set out in case of difficulties.

12. You failed to carry out any 'Redhill clearance checks' on your two suppliers.

13. You have failed to produce any insurance documents or paperwork for any of your exports. With regard to the 04/06 and 05/06 VAT returns you exported nearly £40,000,000.00 of goods but have provided no evidence that these goods were insured. It seems highly improbable that, in a normal commercial environment, goods of such high value would not be adequately insured to cover any damage or theft.

You have the right of appeal against this decision to the VAT & Duties Tribunal and any appeal must be made within 30 days of the date of this letter.

If you have any further queries please do not hesitate to contact me.

Yours faithfully

Higher Officer,