

Dealing with Tax Fraud in the UK

A view from the tax courts

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Tax Tribunal Judge

Tax Tribunals

- Jurisdiction – Tribunals Courts & Enforcement Act 2007 and SI 2008/2684
- Tax statutes give jurisdiction eg TMA 1970 Part V
- Refined by case law eg ***Oxfam v Revenue & Customs Commissioners*** [2009] EWHC 3078 (Ch)
- No limit on size, type of case

MTIC type cases

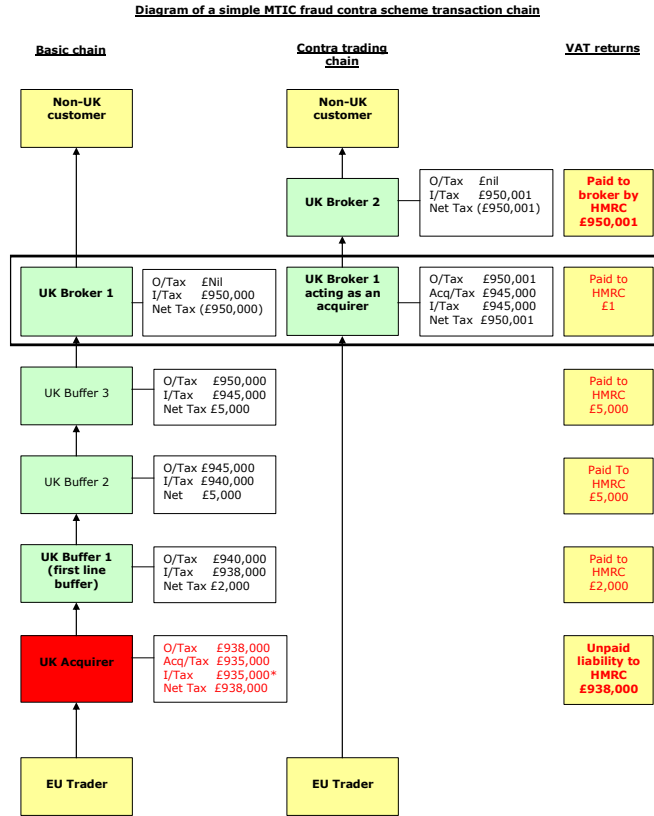
- MTIC = “Missing Trader Inter Community”

- VAT – based on EU rules;



- Asymmetry between input and output tax

A simple version (!)



* This is the acquisition tax which is also treated as input tax (there is no VAT on acquisitions).

MTIC fraud

- Criminal – Interpol – organised gangs
- Size – approx 60bn Euros per year
- Complexity – document heavy, multiple small deals making up one claim
- In the tax courts – 10 per year, four weeks each – large use of judicial time



MTIC fraud - process

- Individuals involved charged with fraud in UK criminal court
- Company assessed for outstanding VAT and penalties in tax tribunal
- Remit of tax tribunal – civil – BUT
- Test “*knew or should have known that was involved with fraudulent deals*”


MTIC - Process

- Does this involved allegation of dishonesty ?
- Specific legal safeguards if YES –
- See *Prizeflex Limited v HMRC* [2016] 0436 TCC
- Fraud must be “particularised” – *Armitage v Nurse* [1998] Ch 241 CA
- European Convention on Human Rights – Article 6 (3) – special rules for criminal trials

MTIC - Evidence

- Is evidence of criminal conviction allowed ?
- Tribunal Rules – flexible “*The Tribunal may admit evidence whether or not that evidence would be admissible in a civil trial in the UK*”
- BUT – overriding provisions –
 - **Rehabilitation of Offenders Act 1974**
 - **Spent convictions –**
 - **Evidence of character, if not of fact**
 - **Can justice be done without reference to this ?**

Other examples –Excise Duties

- Cigarettes imported without paying duty – can be seized – 
- Mandatory to apply to criminal (Magistrates Court) as step one
- If miss this step – Tax Tribunal, civil courts, can't help – AT ALL, even in respect of CIVIL appeal against claim for the unpaid duty
- See *Race v HMRC [2014] UKUT 0331 TCC*

Other examples – Customs Duty

- Legal analysis –
- If no appeal to magistrates, cigarettes DEEMED forfeited –rights of appeal in Tax Tribunal lost
- Despite – ECHR Sched 3 para 5
- *“First-tier Tribunal could no more re-determine, in the appeal against the Penalty Assessment, a factual issue which was a necessary consequence of the statutory deeming provision than it could re-determine a factual issue decided by a court in condemnation proceedings. The issue of import for personal use, assuming purchase in a Member State, has been determined by the statutory deeming.” Race [39]*

Conclusions



- Is there a better way ?
 - Could the criminal and the civil claims be run in tandem ?
 - Should the criminal evidence be automatically available to civil court ?
 - Should the test of culpability be applied in the same way ?