

De Voil Indirect Tax Intelligence /2012/Issue 195, August/Articles/The changing face of MTIC fraud - De Voil Indirect Tax Intelligence, 195 (22)



De Voil Indirect Tax Intelligence
De Voil Indirect Tax Intelligence, 195 (22)

1 August 2012

The changing face of MTIC fraud

Missing trader intra-Community VAT fraud

Malcolm McFarlin

Phil Rimmer

are Directors at M&R Tax Advisers Ltd. and can be contacted on either 07590 047544 or 07590 047545 and malcolm@mandrtaxadvisers.com or phil@mandrtaxadvisers.com

Hammad Baig

is a Tribunal Advocate and legal consultant and can be contacted on either 07946 878708 or baig.hammad@gmail.com

© Reed Elsevier (UK) Ltd 2012

Within our previous article in April 2012's issue 191, we propounded an alternative model to explain both the apparent circular movement of funds between and around businesses within the supply chains and other more general characteristics of Missing Trader Intra-Community VAT fraud (hereinafter "MTIC" fraud). We submitted that this alternative model demonstrated how the fraud may be perpetuated without the knowledge (actual or deemed) of certain traders involved in the supply chains.

Within this article, we continue our exploration of MTIC fraud by discussing developments in the fraud since the days of the proliferation of carousel fraud in mobile telephone and computer component wholesaling; and the steps HMRC are taking to attempt to prevent it from expanding into other industries.

We reiterate that MTIC fraud has troubled the tax authorities of most European Union Member States, taking a toll in revenues in the sum of billions of pounds a year, even to the extent of affecting the balance of payments between these countries.

Traditionally, HMRC referred to MTIC fraud as generating a tax loss which involved the movement of goods around the EU. However, towards the latter days of the mobile telephone carousel fraud in the early to mid-2000s, the fraud had crossed EU boundaries to other destinations such as Dubai. This enabled the audit trail for consignments of mobile phones to become “clouded” since HMRC experienced difficulties in conducting overseas enquiries within non-EU countries. In essence, HMRC suspected that non-EU countries were being used as temporary “landing points” for mobile phones before they were exported back into the EU. HMRC are now undertaking enquiries in other high value trade sectors such as the export of prestige motor vehicles outside the EU to such countries as Thailand and Singapore, with a view to establishing whether MTIC fraud has arisen.

A motor dealer who predominantly buys vehicles in the UK for export outside the EU will normally seek a VAT refund of the input tax incurred in his purchase. The export of the vehicles can be zero-rated for VAT purposes provided certain criteria are met, as laid down by the regulations. There is no single document that can be relied upon by an exporter to justify the zero-rating of the sale. HMRC refer to there being a “basket of documents” to evidence export. HMRC's Public Notice 703 states that a supplier must ensure that he has proof of export readily available for HMRC, that it must be obtained within an appropriate time

De Voil Indirect Tax Intelligence, 195 (22) at 23

limit and that it be retained for six years. Proof of export consists of:

- *Official evidence* — that is, produced by HMRC, eg. Goods Departed Messages (“GDM”) which are generated by the New Export System (“NES”). Alternatively, official evidence may be in the form of a Single Administrative Document (“SAD”) endorsed by HMRC at the point of exit from the EU; or by confirmation of the electronic discharge of an NCTS (“New Computerised Transit System”) movement.
- *Commercial evidence* - eg. authenticated sea-waybills or air-waybills; International Consignment Notes; master air-waybills or bills of lading; certificates of shipment, containing the full details of the consignment and how it left the EU; CMRs fully completed by the consignor, the haulier and the receiving consignee; or Freight Transport Association (“FTA”) own account transport documents fully completed and signed by the receiving customer.

HMRC state that equal weight is given to official and commercial evidence but both must be supported by supplementary evidence. A supplier must hold sufficient evidence to prove that a transaction has taken place and that the transaction relates to the goods physically exported. HMRC consider that accounting records are likely to include some or all of the following:

- Customer's order.
- Sales contract.
- Inter-company correspondence.
- Copy of export sales invoice.
- Advice note.
- Consignment note.

- Packing list.
- Insurance and freight charge documentation.
- Evidence of payment.
- Evidence of the receipt of the goods abroad.

HMRC go on to specify that the evidence obtained as proof of export, whether official or commercial, or in support thereof, must clearly identify the supplier; the consignor (where different from the supplier); the customer; the goods; an accurate value; the export destination; and the mode of transport and route of the export movement.

It is therefore clear that there is a very extensive “shopping list” of items which intending exporters are required to obtain. Equally, there are plentiful issues available for HMRC to raise in relation to exports should they wish to delay the repayment of the exporter's VAT claim through conducting an extended verification of that claim on the basis of possible MTIC fraud within the supply chain. Most commercial correspondence nowadays is conducted via electronic mail, which may often be voluminous; and HMRC have the power to insist on reviewing all such inter-company correspondence. The production of such documentation is often very time consuming and can lead to delays on both sides (HMRC and the exporter), in preparing this documentation for HMRC review and in HMRC satisfying themselves as to the authenticity of the export.

Additionally, as part of the extended verification of exports, HMRC may also wish to take the following action:

- To undertake foreign enquiries, which will delay matters further since significant further time may be required for the relevant overseas authorities to conduct an investigation and respond.
- To undertake a physical examination of a sample of goods.
- To obtain expert assistance relating, for example, to the valuation of the goods being exported.

The examination of evidence of export by HMRC is only one side of the coin. HMRC will also, of course, propose to undertake supply chain checks to ensure that there are no missing or defaulting traders within the supply chain. In our experience in representing clients in these matters, this process can be extremely slow and laborious. It is not the case that the single HMRC “exporter Officer”

De Voil Indirect Tax Intelligence, 195 (22) at 24

responsible for inspecting the exporter's VAT records will conduct and complete his own enquiries throughout the supply chain.

The exporter Officer inspecting the records will note the details of purchase from the exporter's supplier. The Officer will then send a reference to the HMRC Officer responsible for the trader in the geographical location where the supplier is based. The exporter Officer will ask the responsible Officer to audit the supplier for further details, such as date of payment; details of the supplier's supplier; and to confirm that VAT has been accounted for and paid by the supplier. This process will then be repeated down the supply chain until the exporter Officer has satisfied himself that the relevant output tax and input tax has been accounted for throughout the supply chain and that there has been no VAT loss. The HMRC process of sending out references and reviewing information received is not conducted by electronic mail since HMRC do not yet have confidence in the security of messages sent electronically. Instead, it is undertaken by HMRC's internal post system; painfully slow, often taking in the region of two weeks for a communication to be sent and received by different offices, even where they are located in the same vicinity.

A key issue often raised by HMRC with the exporter is the question of due diligence conducted upon his trading partners. Those readers familiar with HMRC's extended verifications and ultimate denials of input tax repayment claims in the days of the mobile phone and computer components carousel frauds will be familiar with the requirement for businesses to conduct due diligence upon their suppliers and customers. HMRC warned traders dealing in certain goods that they may be liable to "joint and several liability" VAT assessments if it could be demonstrated that (a) a transaction took place within a supply chain where VAT was unpaid by another supplier and (b) HMRC could demonstrate that the trader either knew or ought to have known that VAT would go unpaid. This legislation was aimed only at those businesses which dealt in certain specified goods, such as mobile phones and computer equipment. It is interesting to note that HMRC have not yet extended the joint and several liability provisions to other trade sectors such as the export of vehicles; but nevertheless they still review the level of due diligence undertaken by businesses within these trade sectors. HMRC imply that the absence of, or alleged failings in, the due diligence undertaken by a business is a cause for concern and a further justification for the delay of a VAT repayment claim.

It is evident that the entire HMRC verification process can be an enormously frustrating experience for the exporter, who is very much at HMRC's mercy. We are aware that some businesses have now had their monthly VAT repayments, running into millions of pounds, withheld for nearly a year, while ongoing enquiries apparently continue.