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### **Civilization and Balance in the courts - Telecommunications (Knowledge and means of knowledge)**

In courts a level of common sense is required in the application of establishing a principle, carefully the facts of each case, by theoretical and conceptual arguments. Exaggerated claims, whether for schemes of tax avoidance or for openness in government, should be realistic and rooted in principle.

If fully recognised the need for the law to change in appropriate circumstances, the desirability of "cautious moves within established principle", and the authority of parliament is supplemented by a genuine sympathy for and understanding of administrators and others who unexpectedly find themselves before the courts in cases, because the judiciary has a little understanding of the ways in which government works from the inside.

Bringing clarity of thought and lucidity of expression should be a focus of challenging areas of the law. Battles about terminology, I believe them to distract rather than illuminate, and that the word nullity brings with it "the difficult distinction between what is void and what is voidable, and what is, should know or should have known, and I certainly do not wish to recognise that the distinction exists or to analyse it if it does".

It is important for clarity and lucidity should be displayed often in the judiciary, and vigorously in the legislative proceedings, a "good arbitration system is a vital part of our whole system of justice".

"Knowledge" and "Means of knowledge" is interpreted in the UK courts as "Should Know or Should have known", and I will in this course explain what the courts means by "Objective Factors" . What is important to note and differentiate is, How far should the "objective factors" be applied,? and the answer - it depends on circumstances of each case as it was held in Optigen (C-354/03) "each transaction must therefore be regarded on its own merits and the character of a particular transaction in the chain cannot be altered by earlier or subsequent events".

In the recent House of Lords report, the Paymaster General assured that, as presently worded, the clause enshrines the principle that, "If the exporter is UK VAT registered and buys goods for the purpose of the business, it is the suppliers responsibility to account for the VAT. If the supplier fails to do so, there will be no liability on the exporter. The house of lords also held, in many ways it has found the most difficult issue to assess is whether the safeguards to protect the innocent trader are sufficient, given the practical difficulties drawn to their attention. The house of lords **recommend** that further consideration should be given to the proposition that the supplier/exporter be given the right of appeal to the courts on a "**reasonable excuse**" basis, namely that he has taken all reasonable steps to ensure that the conditions have been met. A further confirmation from the house of lords states, as regards to the nature of the appeal rights, we have looked carefully at the representations of private sectors to the effect that it is **inappropriate**, given the nature of the proposed power, to adopt the standard **Wednesbury test** - that it is down to the taxpayer to show HMRC behaved unreasonably in making a direction. The house of lords accepts that, provided an **innocent appellant is in a position to introduce evidence as to whom he has sold to and from whom he is purchasing, together with batch numbers, he would be, as HMRC assured the house of lords, in**

***a position to introduce satisfactory arguments as to whether HMRC's actions are proportionate, without any need for a reversal of onus of proof.***

Generally, the word "knowledge" has a very inclusive and a vast array of knowledge representation forms, and every one of them is useful for some purpose or the other. Thus, the more important questions may not be what is and isn't knowledge, but given some knowledge, questions such as the following:

For what purposes can it be used? When is it applicable? Is it true? According to who? Under what circumstances? Who might find this knowledge useful? Is it expressed clearly enough? Are there other units of knowledge that may be useful in conjunction with this one? How long should we expect this knowledge to stay relevant? How might have this knowledge been acquired, and from where might we acquire more like it? What background might you need to make sense of it? and so forth.

The point, I suppose, is that like most words that point to complex ideas, understanding the word "knowledge" requires that we consider its many contexts of use, and the issues that show up in those contexts.

The knowing organization : How organizations use information to construct meaning, create knowledge and make decisions

In decision making, understanding and knowledge are focused on the selection of and commitment to an appropriate course of action. By holistically managing its sensemaking, knowledge building and decision-making processes, the Knowing Organization will have the necessary understanding and knowledge to act wisely and decisively.

The current dilemma surrounding the Taxpayers is the commissioner's interpretation and adaption of Axel Kittel (C-439/04). As the Court held at paragraph 24 of the judgment in Case C-4/94 *BLP Group* [1995] ECR I-983, requiring the tax authorities to carry out inquiries to determine the intention of the taxable person would be contrary to the objectives of the common system of VAT of ensuring legal certainty and facilitating the measures necessary for the application of VAT by having regard, save in exceptional cases, to the objective character of the transaction concerned.

A fortiori, requiring the tax authorities, in order to determine whether a given transaction constitutes a supply by a taxable person acting as such and an economic activity, to take account of the intention of a trader other than the taxable person concerned involved in the same chain of supply and/or the possible fraudulent nature of another transaction in the chain, prior or subsequent to the transaction carried out by that taxable person, of which that taxable person had no knowledge and no means of knowledge, would be contrary to those objectives (*Optigen*, paragraph 46).

"Is a Malice aforethought in the transaction established by proof beyond reasonable doubt that when entering a transaction which led to the tax loss in a chain of supply or that transaction, the person knew that it was highly probable that, act would result an MTIC Loss or circulations of goods.

As person who has implemented his duties of care before and after the transaction, can play no direct part in the assessment of "Should know or "Should have known" as the person has demonstrated the particular area of responsibility

which it carried out before and after the transaction. In my opinion "Should know or "Should have known confers no protection upon a purchaser from a thief, even when a purchaser has been diligent into acquiring goods would ever been able to discover that his vendor was a thief. But a subsequent purchaser would be protected, since he would be unlikely to be aware of any circumstances that would put him on enquiry whether his vendor's vendor had stolen the goods. A fortiori, one should think how would it be possible a purchaser would know the thief was three transactions back down the chain of sales, when the purchaser is diligent in person who did not have actual awareness of a fact that his vendor's vendor was a thief.

Manifestly, Knowledge (Should know or Should have known), cannot be attributed to a person or a trader, if they did performed their responsibilities by not turning a blind eye. If he carried out all necessary measures and was diligent in person than knowledge cannot be attributable to him.

Therefore, it is necessary to prove a particular state of mind on the part of the person rather than just assessing the conduct of the person against an objective standard."where there is an issue of involuntary tax loss, the resolution of the issue depends, not upon some objective assessment of the conduct of the person alone, but upon an assessment of "his state of mind at the time of the transaction", in other words, It would be for the National Courts to determine into whether he possessed the necessary Knowledge at the material time, namely a "complete disregard of performing Due diligence checks on potential business transactions. But it is, in my view, erroneous to suppose that the actual state of mind of a person assumed of not causing a VAT loss should be ignored and guilt or innocence determined solely on the basis of proof that the conduct in question fell below an objectively set standard.

It is ambiguous to apply "knowledge and means of knowledge" based on assumptions and propositions about the knowledge possessed by the trader in the telecoms industry because in order to implement the test of knowledge one should be certain how knowledge was acquired and communicated not forgetting about the acquisition of knowledge itself.

If "**Extended Verifications**" are stretched beyond the limits, the answer has and will soon prove to turn on the assumptions rather than foresight. In the test of knowledge what is relevant is not whether a person as such is or is not a part of the chain of transactions but which or his actions stand in balance relationships to each other during the transactions. It cannot be assumed but it is a fact that a person carried out all relevant due diligence checks and took all precautions to safeguard himself to protect his company has demonstrated stability and care, and this clearly demonstrates a relationship between actions of a person during a transaction. It is also important to remember that the data obtained from a person are facts the things they know or believed by him to exist, and not, strictly speaking objective facts. It is because of the relationship between actions and objective facts we deduce are necessarily a priori valid and that it is necessary to preserve the consistency of the argument of "knowledge and means of knowledge".

There is a need to identify a particular person or a VAT registered company before a company can be found to have caused a Tax loss. "What the Commissioners do not show to the National Courts, is that the particulars of a transaction came to the knowledge of the commissioners and without that information, the knowledge cannot be attached to the person at all regardless of its purpose or cause.

A person cannot be branded with a "Part of the overall scheme", if a balance of connections does not exist as a person demonstrates individualism and his plans were not executed simultaneously but independently. This means that the plans of different persons must in a special sense be compatible in order for his action to comprise of relationship or knowledge.

It is assumed that the telecoms market is not a "Perfect Market", but that is just pure logic of choice and it would again become a priori true, but for such a procedure justification consists based on assumption that a situation in the real world is similar to what we assumed it to be.

The **grey market** (or **gray market**) refers to the flow of new goods through distribution channels other than those authorized or intended by the manufacturer or producer. Only *new* products fall under the legal, accepted definition of *grey market*.

Unlike those on the black market, grey market goods are not illegal. Instead, they are being sold outside of normal distribution channels by companies which may have no relationship with the producer of the goods. Frequently this form of parallel import occurs when the price of an item is significantly higher in one country than another or the currency is stronger in one country than another. This situation commonly occurs with cigarettes and electronic equipment such as cameras, mobile phones and other items. Entrepreneurs buy the product where it is available cheaply, often at wholesale, import it legally to the target market and sell it at a price which provides a profit .

The grey market is an example of the economic practice called arbitrage.

The term "bootlegging" is also often applied to the production or distribution of counterfeit or pirated goods, of which mobile phones are certainly not pirated or counterfeit as the purpose of communication would be defeated and so would it's International warranty and consumer regulations be void.

Because of the nature of grey markets, it is difficult or impossible to track the precise numbers of grey market sales.

for Example. On securities markets, grey market has a different meaning. It refers to the buying and selling of securities to be issued in the future and, therefore not yet circulating. This typically occurs some days before an auction of government bonds or bills and that trading is subject to the effective issue of those securities. Sometimes this is taken as a forecast of the prices that markets expect for future issues.

The wider aspect of the problem of knowledge and means of knowledge is how different commodities can be obtained and used and under what conditions they are actually obtained and used, and that is why subjective data to the different persons correspond to the objective facts.

How can the combination of fragments of knowledge existing in different minds bring about results which, if they were brought about deliberately, would require knowledge on the part of the directing mind which no single person can possess ? We have no reason to believe knowledge exists if there is no balance relative to knowledge which a person or people will acquire in the course of their economic activity, and it would go as far as to account for the fact unless a peculiar blindness role is played by a person or people. The most important point is rather that we should become aware of what questions of fact are on which the

applicability of our argument to the real world depends, or, to put the same thing in other words, at what point our argument, when it is applied to phenomena of the real world, becomes subject to Verification.

Knowledge is more than what is usually described as skill, and the division of knowledge of which the ECJ referred in Kittel is meant the division of labor. To put it shortly, "Skill" refers only to knowledge of which a person makes use in his trade, while further knowledge about which we must know something in order to be able to say anything about the process in the chain is the knowledge of alternative possibilities of action of which he or the person makes no direct use. In short, A person cannot be branded as part of an overall scheme or having knowledge or means of knowledge as he did not have the capacity of knowledge to predict a tax loss in his transactions.. "Forecasting or predicting a tax loss in a chain of supply or a transaction is often like searching for a black cat in an unlit room, that may not even be there".

I am certain that most of what I have said has been common place. But from time to time it is probably necessary to detach one's self from the technicalities of the argument and to ask quite naively what it is all about. If I have only shown not only that in some respects the answer to this question is not obvious but that occasionally we even do not quite know what it is, I have succeeded in my purpose.

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