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The significance of HMRC v Atlantic Electronics

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Monty Jivraj from Jeffrey Green Russell Solicitors explains how the firm's recent upper tier tribunal win over HMRC will lessen the risks for those who want to challenge tax rulings.

For years HMRC has targeted the mobile phone industry in its campaign against so-called "MTIC Fraud" (aka carousel fraud). By shifting the burden on the private sector the tax department's crackdown has had a significant impact on wholesalers and distributors who buy and sell leading phone brands such as Apple, Nokia, HTC and BlackBerry.

The mobile phone industry has a long history of suffering at the hands of HMRC particularly, when HMRC officers take up to six years to complete extended verifications and deny the businesses their right to deduct input tax. These actions by HMRC drain businesses financially and cripple their ability to defend their right to access justice.

We at Jeffrey Green Russell felt it was important to ensure HMRC's actions were proportionate and did not damage innocent businesses activities. Preventing tax avoidance through extended verification schemes is inefficient and represents an unsustainable use of HMRC's resources that imposes a significant burden on businesses.

After the case of HMRC v Atlantic Electronics reached the upper tier tribunal, the Chamber President, Mr Justice Warren, dismissed an appeal by HMRC to disapply Rule 10 of the 2009 Rules which were invoked by the judge in the lower tribunal case. Under Rule 10, the tribunal can make a cost order in only three situations: where the case involved wasted costs; where one of the parties acted unreasonably; or if it was deemed a complex case (with an opt-out option for the taxpayer if they didn't want to face the risk).

Mr Justice Warren held: "The right to opt out from costs is a recognition of the fact that different taxpayers may have different approaches to risk in the context of access to justice. For one taxpayer, a risk of exposure to costs, at the level which might be expected to be incurred in a complex case, if he loses, is one which he is not prepared to take and would, for him, represent a denial of access to justice. For another taxpayer, an inability to recover such costs if he wins is unacceptable and would, for him, represent an equal denial of access to justice".

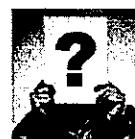
JGR senior partner Phillip Cohen commented: "The taxpayer is seldom best served when fighting against the Crown. Taxpayers and businesses should be able to play on a level playing field when contesting HMRC".

The judgement in Atlantic Electronics Limited should encourage businesses and individual taxpayers to have access to justice, fight for their right on a level platform. Businesses or taxpayers should not be deterred from fighting against HMRC, a well-resourced body, in such harsh economic conditions— particularly when the onus is on HMRC to disclose early details as those described in the last three finance bills. It is unfair that businesses and taxpayers should be exposed to risks and be deterred from taking their cases to the Tribunal because of a fear of paying HMRC costs if they lose.

The ruling in Atlantic Electronics has eliminated the costs risk for many businesses and taxpayers when fighting HMRC. The basic principle should be that each party will bear its own costs if they lose.

Following Atlantic Electronics Limited businesses and individual taxpayers can start to fight back. Many millions of pounds have been withheld over the past six years - now it is time to fight back.

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