

# How to protect your business from becoming involved in VAT fraud.

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## 1. Introduction

The purpose of this notice is to raise awareness of the risks of participating in transactions connected to a VAT fraud and to provide guidelines to help you avoid becoming involved in such illegal transactions. Most importantly, it also spells out the consequences of becoming involved in a set of transactions connected with a VAT fraud, even if the transactions in which you are involved are not themselves unlawful. In particular, you should be aware that you could lose your entitlement to a VAT input credit or you may be liable for Irish VAT on previously zero-rated intra-community supplies where the related transactions are connected with fraud.

The European Court of Justice in a number of cases concerning VAT fraud has held *that*:

- (a) *a taxable person who knew or ought to have known that, by his purchase of goods, he was party to a fraudulent transaction can have his right to deduct related input credits refused;*<sup>1</sup>
- (b) *a taxable person who knew or ought to have known that the transaction carried out was part of a tax fraud committed by the purchaser may be denied the right to zero-rate the intra-Community supply to that purchaser.*<sup>2</sup>

Revenue will apply the principles established in these cases where it has satisfied itself, having regard to objective factors, that the taxable person knew or ought to have known that he was participating in a transaction connected with VAT fraud.

Revenue will also apply additional penalties where appropriate.

## 2. Due Diligence

It is good business practice to undertake due diligence when entering into a business transaction, particularly with an unknown party.

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<sup>1</sup> The best known of these cases is *Kittel -v- Belgium*; *Belgium -v- Recolta Recycling SPRL* ( joint cases C-439/04 and C-440/04).

<sup>2</sup> *Mecsek-Gabona Kft* C-273/11)

In order to help you avoid being an unwitting party to a VAT fraud, we have set out examples of reasonable steps you can take to establish the integrity of your customers, suppliers and supplies.

Revenue expects that as legitimate traders you will, on an ongoing basis, assess the integrity of your supply chain and the suppliers, customers and goods within it. The following are some examples of actions that can be taken in carrying out due diligence tests when establishing a trading relationship with a supplier or a customer:

- Obtain copies of the Certificate of Incorporation, if applicable, and VAT registration certificates.
- Verify VAT registration details on the [European Union website](#) if the other party is based in another Member State;
- Obtain signed letters of introduction on headed paper.
- Obtain some form of written and trade references and follow through on these to ensure they are genuine.
- Obtain credit checks and other background checks from an independent 3rd party.
- Make personal contact with a senior officer of the prospective supplier and/or make a visit to their premises whenever possible.
- Obtain the prospective supplier's bank details in order to check whether (a) payments made by you would be made to a 3rd party or (b) in the case of an import, the supplier and the bank share the same country of residence.

NOTE: This is not an exhaustive list and Revenue recommends that these are supplemented where necessary in each of the above categories to ensure that you are not caught up in fraudulent transactions.

### **3. Risk Indicators**

You should be particularly alert to practices that deviate from normal commercial practices within your industry. To minimise your risk, you should, in addition to the due diligence checks, consider:

- The nature of the supply
- Payment arrangements and conditions
- Details of the movement of goods involved.

The following are examples of indicators that could alert you to the risk that VAT may go unpaid:

(1) Legitimacy of suppliers. For example:

- What is their history in the trade?
- Have they referred you to a customer who is willing to buy goods of the same quantity / specifications being offered by them?
- Are they offering a deal that carries no commercial risk for you – no deposit, abnormally extended credit arrangements?
- Does your supplier (or another business in the transaction chain) require you to make 3<sup>rd</sup> party payments or payments to an offshore bank account?
- Are the goods insured?
- Are they high value deals offered with no formal contractual arrangements?
- Are they high value deals offered by a newly established supplier with minimal trading history, low credit rating, etc.?
- Can this new business obtain specified goods cheaper than a long established one?

(2) Commercial viability of the transaction. For example:

- Is there a market for this type of goods (electrical goods designed for different grid voltage systems, outdated models of mobile phones, goods that do not appear compatible with the intended market)?
- Have you carried out any research to determine whether these goods as described and in quantities offered are available in your market?
- Does the quantity of goods concerned appear credible in the context of your business and the market concerned?
- Are the mark-ups within the supply chain commercially viable?
- Is there anything unusual about the method used in negotiating prices?
- Is there any commercial justification for the request for 3<sup>rd</sup> party payments for goods/services?
- How are the financing arrangements for the goods/services organised; are they normal for the business sector?

(3) Viability of the goods/services as described by your supplier. For example:

- Do the goods exist?
- Have they previously been supplied to you?
- Are the goods in good condition and not damaged?
- Is your supplier, where applicable, willing to provide, product/manufacturer's identification numbers or serial numbers?
- What warranty does your supplier offer in the event the goods are not as described?

The above checks are by no means exhaustive.

**Where Revenue has satisfied itself that a trader involved knew or should have known that a transaction was connected with fraud, it will deny the input credit relating to that transaction or deny zero-rating of the intra-community supply to identified customers, as appropriate. Furthermore, a trader who knowingly or recklessly participates in transactions connected with the fraudulent evasion of VAT anywhere in the supply chain, is jointly and severally liable for the unpaid VAT. In these cases, Revenue will notify that person accordingly and will seek payment of the VAT plus interest.<sup>3</sup> Therefore, it is up to you to be diligent in the conduct of your business and to ensure that appropriate checks are undertaken and recorded.**

**If a commercial proposition looks too good to be true it probably is and you need to undertake whatever enquiries are necessary to establish the bona fides of the transaction or transactions concerned and the trading partners involved. If you have concerns or questions about a proposed transaction, please contact your local Revenue District.**

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<sup>3</sup> Section 108C of the Value Added Tax Consolidation Act 2010