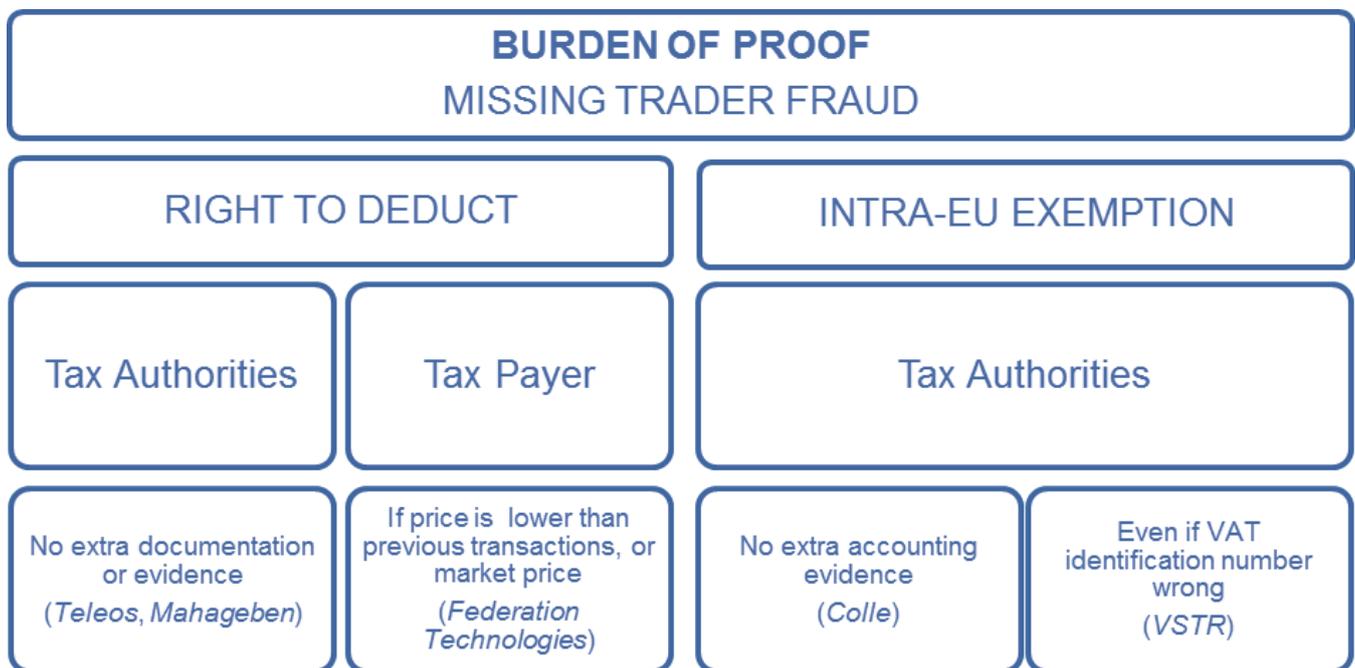


‘The global economic crisis had a significant impact in the UK surcharges and penalties system, intensifying the process towards a much tougher regime.’

Professor Rita de la Feria

The EU Court’s Approach to Fraud

This shift from tackling fraud to tackling the revenue costs of fraud has resulted in a staggering increase in litigation. At the EU level, the jurisprudence of the Court of Justice of the European Union (CJEU) confirms concerns over the legitimacy of this shift, with the Court consistently siding with the taxpayer. This can be demonstrated by looking at its approach to burden of proof in fraud cases.



The approach to Burden of Proof

The CJEU’s creation in *Kittel and Recolta Recycling* of the “knew or should have known” test to determine third party liability for fraud, has given rise to significant litigation as to who has the burden of proof. As demonstrated in the diagram above, both in missing-trader fraud cases, and false invoices cases, the Court has consistently reiterated that the burden of proof falls upon the tax authorities; the onus of proof will only shift to the taxpayer where the price paid is lower than that paid in previous transactions, or lower than its market price (*Federation of Technologies*).

Prof Rita de la Feria is the Chair of Tax Law at Durham Law School. She has published widely on tax issues, with a particular interest in tax avoidance, VAT, and corporate income tax.

rita.delaferia@durham.ac.uk

Twitter: @delaferiaR

References

R de la Feria, ‘VAT Anti-Fraud Policy, Third Party Liability, and the Rule of Law’ (Working Paper)

R de la Feria and P Tanawong, ‘Surcharges and Penalties in Tax Law - UK National Report’, EATLP 2015 Conference

This research has been presented in several cities across Europe: Lisbon, Milan, Berlin, Helsinki, Newcastle, Trier, Riga, Sofia, Bilbao. This included presentations to the Finish Tax Authorities, HMRC, Basque Tax Authorities and the Bulgarian Judiciary.

Please cite this document as:

R de la Feria, ‘Anti Tax Fraud Policy: Tackling Fraud Proportionally and Effectively’ (2015) Durham Law School Briefing Document, Durham University .