

Significant VAT refund opportunities

HMRC concedes on 3 year capping

Claims invited for overpaid output tax in addition to underclaimed input tax

HM Revenue and Customs (HMRC) has issued Revenue & Customs Brief 07/08 inviting taxpayers to submit retrospective claims for VAT overpaid prior to the introduction of the current three-year cap. All affected businesses should now identify, quantify and submit their claims as soon as possible.

Have you made your claim?

Fleming and Conde Nast

There is currently an opportunity in the UK to make late claims for UK VAT overpaid prior to 1 May 1997.

Over the course of 1996 and 1997, HMRC introduced a three-year restriction on claims for repayment of overpaid VAT and late claims for input tax. There have been a number of cases which have successfully challenged the validity of this three-year cap. The House of Lords (the highest UK appellate court) ruled in the combined cases of Fleming and Condé Nast that the introduction of the three-year cap had not had an adequate transitional period and, as such, VAT overpaid prior to the introduction of the flawed legislation remained uncapped. Businesses which had failed to claim input VAT before the capping legislation was introduced had been unfairly and retrospectively deprived of the right to claim it belatedly: an adequate period of transitional relief should have been allowed for businesses to ensure that they had claimed all input VAT before the capping legislation took effect.

As a result HMRC is inviting UK taxpayers to submit claims for:

- overpaid output tax occurring in accounting periods between 1 April 1973 to 4 December 1996; and
- under declared input tax occurring in accounting periods between 1 April 1973 to 1 May 1997.

HMRC announcement

Revenue & Customs Brief 07/08, available on HMRC's website <http://www.hmrc.gov.uk/briefs/vat> , announces that:

- HMRC accepts that the judgment applies equally to businesses who overpaid output VAT, as there was a similar failure to properly introduce a period of transitional relief;
- claims may now be made for input VAT underclaimed in periods ending before 1 May 1997;
- claims may also be made for output VAT overpaid in periods ending before 4 December 1996;
- three-year capping still applies to input and output VAT claims after those dates;
- claims already submitted will be paid subject to verification.

Deadline 31 March 2009

With the 31 March 2009 deadline for submitting Fleming VAT refund claims less than two months away, now is the time to act to review the opportunities for your business and submit claims. We have dealt with many businesses which initially believed they could not make a claim - but that on further investigation have gone on to make a claim. To help dispel some of the misconceptions which had been holding these businesses back, we have outlined some of their key concerns below, and our response.

Availability of records

There is no need to have records for the period before 1997. HMRC only require taxpayers to have records for the period for the last 6 years. HMRC accept claims based on a variety of sources or based on extrapolations from more recent data.

No personal experience of the claim period

This is often not required. We have submitted a number of claims based either on information provided by a variety of people in an organisation or on extrapolated data.

Difficulty in producing a 100% accurate claim

Typically, it is often simply not possible to submit a 100% accurate claim and much time and effort can be expended seeking to prepare such a claim. Many claims are made on the basis of estimations using data from various sources or extrapolations. HMRC are comfortable with this.

Types of claims being made

A wide range of claims are possible both industry specific and also generic. Even a minor oversight can result in a significant claim once multiplied by a number of years. Interest is also payable on claims and can be as much as the VAT itself.

Relationship with HMRC

HMRC have publicly invited businesses to submit claims and therefore submitting a claim in itself should not impact your relationship with HMRC. Keeping HMRC Customer Relation Manager's informed of any claims is good practice.

What should you do now?

- All affected businesses should begin identifying, quantifying and submitting their claims. This may be timeconsuming, given that claims will be for periods ending over ten years ago, and businesses should not wait for the above issues to be resolved;
- Businesses which have already submitted claims which have been held pending Fleming should contact HMRC's « Fleming » Claims Team to ensure that their claims are now being processed for payment;
- Such businesses should also ensure that their claims covered the entire period available or submit further claims;
- Businesses which have had claims rejected or « capped » at any time should revisit and if necessary, resubmit them;
- Businesses which have not submitted claims should review historic VAT files and declarations. Whilst errors may not have been apparent at the time in question, claims may exist due to more recent developments, e.g. where supplies previously thought to be taxable are now accepted by HMRC to be exempt;
- Where primary records are no longer available, businesses should seek to find a means whereby claims can be extrapolated from more recent data;

- Some claimants may no longer be VAT registered, but this should not affect their entitlement to submit retrospective claims;
- Businesses previously registered as part of a VAT Group registration should consider their entitlement to any refund secured by the group;
- Claimants who have paid significant amounts of default interest should request that this be reconsidered;
- Businesses should consider their entitlement to claim compound interest in respect of new claims and claims already submitted, even if simple interest has already been paid. Businesses also need to consider what action they need to take to protect any entitlement.

How can PricewaterhouseCoopers help?

PricewaterhouseCoopers has considerable experience in finding, calculating and submitting claims and obtaining repayments of VAT from HMRC. In practice, we can assist you by reducing the amount of your time required to submit such claims.

Any business that has not submitted a claim should do so now!

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