

VAT refund opportunity

Following a landmark defeat for HM Revenue and Customs (HMRC) in the House of Lords, an opportunity to obtain a refund of VAT incurred prior to 1 May 1997 now exists. However, any claims should be submitted as soon as possible, as HMRC will be seeking to impose a tight deadline.

Background

On 1 May 1997, HMRC introduced new legislation to prevent businesses claiming input VAT (i.e. VAT on business expenditure) more than three years after it had been incurred. Prior to the introduction of the 'three year cap', no time limit for claiming input VAT had existed.

HMRC imposed the new rules without warning. Businesses which would have had a valid claim prior to 1 May 1997, found that their entitlement had disappeared overnight. The reason for changing the rules in this way was that, following defeat in a number of significant VAT appeal cases, HMRC was expecting a flood of large VAT refund claims, which it wanted to minimise.

House of Lords decision

On 23 January 2008, the House of Lords published its long awaited decision in the cases of HMRC v Michael Fleming and Conde Nast. Both appeals concerned the validity of the three year capping rules for input VAT claims.

In both appeals, the Court found that the introduction of the three year cap without warning, was contrary to EU law. Consequently, until such time as HMRC formally provide a reasonable transitional period in which businesses can submit claims, the three year cap for input VAT incurred prior to 1 May 1997 does not apply.

Refund claims

At the time of writing, HMRC has yet to give a response to the Court's decision. HMRC will need to announce a transitional period in which affected businesses can submit claims. It is expected that the transitional period will be at least three months

from a current date. However, this is not certain and HMRC will be looking for ways in which to limit their exposure. Interest payments alone could run to many tens of millions of pounds.

Any business which has unclaimed input VAT incurred prior to 1 May 1997, should consider submitting a claim to HMRC as soon as possible. Clearly, claims can only be made for input VAT that the business would have been entitled to claim at the time (for example, VAT incurred in respect of non-business expenditure would not be reclaimable). Our VAT team will be happy to advise on making a claim.

However, the decision in Fleming and Conde Nast is not the end of the story. There is still much on-going litigation concerning the three year capping rules, including an appeal in relation to whether the three year cap is also invalid for input VAT incurred post 1 May 1997. Businesses may therefore wish to submit 'protective' claims for unclaimed input VAT incurred since 1 May 1997.

Output VAT

The three year cap in respect of claims for over paid output VAT was the subject of separate litigation a few years ago. Similarly, it was found that the three year cap in respect of output VAT claims was also invalid. HMRC believe that, having allowed a transitional period, this matter has now been settled and that no further output VAT claims can be made. However, there is further litigation taking place on this matter, with the opportunity for output VAT claims potentially being re-opened at some point in the future. Businesses may therefore wish to submit 'protective' claims for overpaid output VAT.



Any business which has unclaimed input VAT incurred prior to 1 May 1997, should consider submitting a claim to HMRC, as soon as possible.

Summary

In summary, an opportunity to obtain a refund of unclaimed input VAT incurred prior to 1 May 1997 now exists, but only for a limited time. Our VAT team will be happy to discuss with you the possibility of making a claim.

In respect of all other claims for input and output VAT which is more than three years old, there could still be an opportunity to make a claim, depending on the outcome of other VAT appeals. Again, our VAT team will be happy to discuss with you the possibility of submitting a protective claim.

For more information, contact your usual Moore Stephens partner, or log on to www.moorestephens.co.uk

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