

VAT RECLAIM TRANSITION PERIOD INTRODUCED

Customs' slashing of the time period in which VAT reclaims are allowed, from six years after discovery of an overpayment, to three years, has been thrown out by the European Court of Justice. It has ruled there must be a transition period before the shorter deadline takes effect.

Before July 1996, if a company discovered it had overpaid VAT to Customs, it had six years from the date on which the overpayment was made, or six years from the date on which the company discovered the error, in which to make a claim to recover the cash. Where claims were made within six years of the date of discovery of the overpayment the company could even look back to the start of VAT in 1973.

In 1996, in the face of rising claims, the Paymaster General announced the time limit was to be slashed from six years to three. This meant amounts overpaid more than three years before the date on which a claim was made could not be recovered.

This restriction caused problems for companies which had overpaid VAT, especially because of the lack of warning Customs gave. The three-year limit was challenged by Marks & Spencer, and through the courts the matter was referred to the European Court of Justice.

The ECJ decided in July 2002 in favour of M&S, saying that the UK acted contrary to the principles of community law by retrospectively shortening the time limit on which taxpayers could exercise their rights to repayment. There should have been a transitional period – and that is now what is happening.

M&S says it is owed more than £5.5m (add interest and it climbs to £12m) on teacakes, bottled water, biscuits and gift vouchers.

But the range of businesses that could benefit is wide. It includes financial services, motor

dealers, opticians, universities and local authorities.

The good news

If your company is affected by the ECJ ruling, Customs is "inviting" claims, where:

- organisations made claims before 30 June 1997, which were capped either by Customs or by the taxpayer itself in the expectation that no more than three years would be paid
- organisations made claims before 30 June 1997, which were repaid in full and amounts more than three years old were then clawed back by Customs by means of a recovery assessment
- organisations made no claim but can demonstrate that they discovered the error before 30 June 1997
- in all cases, the overpayments of VAT were made before 4 December 1996.

The deadline for organisations making claims is now 30 June 2003 (see timetable below for explanation). Customs says that requests for an extension will be given sympathetic consideration where taxpayers can demonstrate that they are experiencing "real difficulties" in meeting the deadline.

The bad news

Customs says claims may be refused in whole or in part if it is satisfied that repayment would lead to the "unjust enrichment" of the claimant.

There are certain claims that do not fall within the scope of the pronouncements. Customs' view is

that claims made after 30 June 1997 should be subject to the three-year time limit, unless the taxpayer can demonstrate that it was aware of the overpayment before 30 June 1997. And claims relating to overpayment made after 4 December 1996 will be subject to the three-year time limit.

Details required?

Customs would like the claim in writing, including:

- a statement of the amount being claimed and the method of calculation
- the dates on which the overpayments were made
- a copy of your original claim (where appropriate)
- copies of documents and schedules supporting the claim
- the accounting period
- the reason for the claim
- any claims for interest that you are entitled to and the reasons why you consider your claim arose as the result of an error by Customs.
- Claims should only be made for the net amount overpaid.

Frank Hartley, VAT partner at Grant Thornton, says Customs' policy on repayments is unlikely to be the last word. He does not rule out the possibility of further litigation and believes there are many cases not covered by Customs' statements, where claims can be made with reasonable prospects of success.

Timetable

July 2002 – The European Court of Justice rules in Marks & Spencer's favour.

August 2002 – Customs publishes *Business Brief 22/2002* setting out how it intended to give effect to the judgement of the ECJ in the Marks & Spencer case. It went on to establish, retrospectively, a transitional period to run from 4 December 1996 until 31 March 1997 (90 days after 4 December, rounded to the end of the month).

The length of the transitional period was based on the opinion of the Advocate General in *Grundig Italiana*: a case in which the issue was whether a 90-day transitional period was reasonable, where the time limit for submitting claims to recover amounts of overpaid tax is reduced from five years to three.

24 September 2002 – Contrary to the Advocate General, the ECJ held that provisions must be made for a transitional period of at least six months in *Grundig Italiana*.

7 October 2002 – As a result of the September judgement, Customs published *Business Brief 27/2002* extending the transitional period set out in *BB 22/2002* by three months, so it is now deemed to have run until 30 June 1997.

Peter Williams.

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