



## Ruling in the House of Lords could be a chance for businesses to recover VAT

By Alan Taylor

A House of Lords judgement on 23rd January, in favour of Michael Fleming trading as Bodycraft and Condé Nast Publications Ltd and against Her Majesty's Revenue and Customs (HMRC), could open the floodgates for businesses to recover VAT that has been overpaid in the past. It certainly is a significant defeat for HMRC, with potential claims estimated at £1bn.

In 1996 and 1997, the Government introduced a three year limitation period on claims for repayments of overpaid VAT, the correction of errors and late claims to input tax. The limitation, however, was introduced without a transitional period, that is a reasonable period of time in which uncapped claims could be made under the pre-existing regime. A premise which was challenged by Marks & Spencer through the European Court of Justice, who held that HMRC were in fact in breach of European Law. Following the High Street store's success, HMRC accepted there should have been a transitional period and invited, if not welcomed, businesses to submit claims. Though many were thrown out based on the fact that the claims were not in line with that of Marks & Spencers.

The latest Lord's judgement provides the chance for those businesses that believe they have a claim to recover VAT, by removing the capping rule.

In the main, those affected by the ruling are businesses that may have already lodged a claim for overpaid VAT up to December 1996 which has been rejected by HMRC; and those that think they may have overpaid VAT up to December 1996 who have not already made a claim. It is still possible for new claims to be made, by those who have not previously claimed.

Claimants may also, in addition to reclaiming any overpaid VAT, make a claim for statutory simple interest, under section 78 of the VAT act 1994. Those particularly set to benefit from a potential claim are businesses whose activities involve share issues, use of cars for demonstration purposes within the motor trade, or staff entertainment.

The window of opportunity for making claims though is more than likely to be limited with the possibly a short transition period for taxpayers to submit claims. The time scale for the transitional period will be set by Government.

Be in no doubt that HMRC, having been granted the right of appeal to the European Court of Justice will do so. An unsuccessful appeal for them will be if the Court of Appeal finds that the capping rules are not legislative. Have no fear if HMRC are unsuccessful in its appeal, legislative changes will follow that will close any loop holes, and the window of opportunity to make a claim might be closed for good.

If you have a claim that has been rejected or think you may possibly have a potential claim then it is important to seek the advice of VAT specialists.

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