

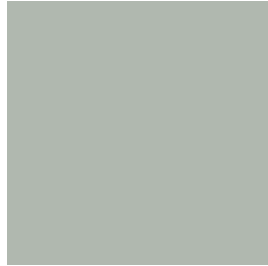
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POTENTIAL FOR LARGE VAT PAYMENTS: *Charities and Not for Profit*



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With the recent conclusion of the VAT case of Fleming (t/a Bodycraft) and Her Majesty's Revenue and Customs (HMRC) and Condé Nast Publications and HM Revenue & Customs (HMRC), charities and other not-for-profit organisations now have the opportunity to reclaim overpaid output VAT and under claimed input VAT dating back potentially to the inception of VAT in 1973.

This long-running case concerned Fleming and Condé Nast's attempt to reclaim VAT previously unrecovered in relation to a luxury car and staff expenses respectively. Both claims dated back to well before the 1997 introduction of a three-year time limit for such claims.

The Lords ruling against HMRC affirmed the earlier Court of Appeal decision in favour of the taxpayer. In both Fleming and Condé Nast the House of Lords held that the "three year cap" (a time limit of three years in which to make a claim) introduced in 1997 did not adhere to principles of EC law.

UK VAT legislation introducing a "cap" for making claims was not found, in its own right, to contravene EC law, providing it was reasonable and taxpayers had an adequate period of time to lodge claims. UK legislation did not contain such a provision (referred to as "adequate transitional period") and was therefore found to be incompatible with EC legislation. The result is that claims dating back to 1973 can now be made.

Many existing claimants were keenly awaiting the outcome of the House of

Lords case. Following the Court of Appeal decision, HMRC would only settle claims subject to the claimant signing a 'clawback agreement'. This obliged the claimant to pay back to HMRC, with interest, any VAT successfully received in the event that the House of Lords overturns the Court of Appeal decision in favour of HMRC.

Indeed, the threat of this potential clawback had been a major reason why more organisations have been reluctant to pursue VAT claims up to now.

Opportunities for Charities & Not-for Profit Organisations

Although the ruling applies across the board to a potentially wide range of businesses, there may be particular scope for charities and other not-for-profit organisations to reclaim overpaid or under recovered VAT.

The cost of fundraising for unrestricted income may be an area of particular opportunity, following the 2005 High Court decision in favour of The Children's Society in its case against HMRC. Following this case, a proportion of VAT incurred in raising unrestricted funds can now be recovered.

We advised The Children's Society in their landmark victory, and are now expecting to assist at least 50 other major charities with VAT claims in the light of the Fleming and Condé Nast decision.

Window of Opportunity?

Charities and Not For Profit Organisations are advised to act quickly. The 'window of opportunity' in which to bring cases



relating to retrospective claims is likely to be limited. Following the House of Lords decision, it is likely that a time limit will be set for the submission of claims dating back to between 1973 and 1997 – and while this has not yet been done, it is conceivable that the time limit could be as little as six months.

This decision is therefore a unique opportunity for charities and not-for-profit organisations. What is important to note is that claims arising out of this decision will carry not only the entitlement to recover VAT but also a claim for interest on the total rebate. This decision, therefore, creates an excellent opportunity to benefit from, what could be, a significant VAT windfall.

For more information contact:

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