

VATflash - March 2008

Charities - Is your VAT burden too high?

Have you paid too much VAT in the past or claimed too little?

Following our recent VATflashes concerning the House of Lords' decision to throw out the notorious three-year cap on back-dated VAT claims, this VATflash looks at the issues specifically affecting charities and not-for-profit organisations. If your organisation is likely to be affected, we would advise you to review your VAT position immediately or risk losing the opportunity to make a substantial VAT claim.

What issues are we talking about?

The issues can be broken down into four broad categories:

- Output VAT wrongly paid to HMRC on exempt or zero-rated activities.
- Input VAT reclaims wrongly blocked on what was thought to be an exempt activity.
- Input VAT that you either mistakenly did not claim or were prevented from reclaiming.
- VAT wrongly paid to suppliers that you were unable to reclaim through your VAT returns.

How could I have paid too much VAT?

A typical example would be where output VAT has been accounted for on membership subscriptions, where some of the benefits might actually be zero-rated or exempt, such as printed literature or sporting admissions, or even outside the scope for overseas members. For sports clubs in particular, there is an opportunity to re-visit the output VAT accounted for on membership subscriptions prior to 1990. Many museums and theatres would have accounted for output VAT on admissions. Under the cultural exemption introduced in 1996, and clarified in 2003 following a case involving London Zoo, many bodies can now reclaim output VAT accounted for on admission charges.

All these, and other overpayments, can be looked at to claim back the overpaid output tax from HMRC.

Why could I have claimed too little VAT at the time?

Typically because of partial exemption rules that unfairly restricted your input VAT claims at the time. A good example is where input VAT incurred on costs of raising funds was regarded as non-recoverable by HMRC. This was over-turned in 2005 when such costs were held to simply be carried out in support of the organisation's other activities and the input VAT fell to be a general overhead and recoverable through the normal VAT return.

More generally, many cases before the Courts have looked at the rules imposed by HMRC on the allocation of costs to specific activities for calculating the VAT returns. If you have lost input VAT unfairly, you may be entitled to make a claim for past years.

A different area to look at is where you may have paid VAT to your suppliers when what you received should have been VAT-free. A good example is printed literature, much of which should be zero-rated. If you were charged VAT wrongly and were unable to reclaim it through your VAT returns, you would have lost out unfairly.

The opportunity now exists to go back and look at past activities and VAT returns where you may find some windfalls lurking in the past.

How far back can claims go?

Potentially, all the way back to 1973, as this was when VAT was introduced. For technical reasons, claims for under-claimed input VAT are uncapped now prior to 1 May 1997, whilst claims for over-paid output VAT are uncapped prior to 4 December 1996, although later claims might still be capped.

I haven't kept all of my old records. Can I still make a claim?

Having fought the three-year cap for 11 years, the Courts have indicated that HMRC cannot use the lack of available records to refuse taxpayers who have legitimate claims. They must accept estimated claims based on available records – typically, annual accounts, old commercial documents or old tax records. Provided the claim is fundamentally valid and is compiled on a reasonable basis from available information, HMRC should accept it.

Can I expect to receive any interest on the money?

Where VAT was over-paid due to an error by HMRC, (incorrect VAT law for example) they are liable to pay interest on the claim where they have always tried to restrict this to simple interest. However, further recent cases before the UK and European Courts, have held that tax authorities are obliged to restore the taxpayer to the financial position he/she would have been in had the VAT not been overpaid, so that it reflects the actual loss to the taxpayer (ie. compound interest). HMRC is expected to resist claims for compound interest but the sums could be huge and some are already being paid out.

Following an earlier successful claim, I was paid only simple interest on top. Can this be looked at again?

Yes. Having already had the claim approved in the past means you have already won half the battle. The claim can be submitted again to seek compound interest. Clearly, for some smaller or more recent claims, the difference between simple and compound interest may not be that great and it may not be economic to pursue a further claim. However, we will be pleased to review this for you and advise on your prospects.

What is my next step?

Contact us now. With some basic information we may be able to tell you relatively quickly whether or not you have a claim. If you do have a claim, we will then discuss with you how best to extract the information, from whatever records you may have, and agree the arrangements for helping you compile your claim for submission in the correct way.

Simon Newark

VAT partner

UHY Hacker Young VAT Group