

### **Three year capping provisions** *Cox's Cars Limited (19855)*

#### **Summary**

Claims need to be made in time, even if they may need to be amended at a later date with regard to precise quantification. This case provides further evidence that prompt action is required when a claim arises.

#### **Background**

At an inspection in April 2001 of the Taxpayer's by HMRC, the visiting officer noticed that the company had over declared output tax. In 2003, the Taxpayer's accountants wrote to HMRC advising that adjustments had been made on the VAT returns for the quarter ending 31 December 2002 for broadly £4,500 and for the quarter ending 31 March 2003 for broadly £19,000. The March 2003 return was selected for verification. The letter from the Appellant's accountants was treated by HMRC as a voluntary disclosure. After internal discussion in HMRC, it was agreed that the voluntary disclosure would not be processed and the claims on the returns allowed.

On a visit in January 2005, a different visiting officer looked at the calculations supporting the adjustments made by the Taxpayer. This officer discovered that the adjustment in the March 2003 return covered the period from 1 January 1998 to 31 December 2002 and had a further error in that the overpaid VAT for the 12 months ending 31 December 1999 had already been claimed in the quarter ending December 2002 return.

HMRC raised an assessment to recover the two years claims they regarded as out of time and the duplicated claim for the year ended 31 December 1999. The appeal was against this assessment on the grounds that it was out of time

The Taxpayer argued that HMRC was aware and had agreed that a composite claim could be made for all returns dating back to the quarter ended 31 March 1998, i.e. within three years of the date of the inspection. The Taxpayer further argued that HMRC was out of time for the assessment as full evidence of facts was available to HMRC at the time of the returns and HMRC had not chosen to insist on full voluntary disclosure (and validation) at which any irregularity would have been identified and corrected.

HMRC argued that it was not until the January 2005 visit that it was aware that a claim for a capped period had been included and therefore the assessment was raised within the time limit prescribed by s 73(6)(b) VAT Act 1994.

#### **Details**

The Tribunal was unable to accept that at the April 2001 visit, HMRC had agreed that repayment could be claimed running back three years from the date of the inspection.

The Tribunal considered that the letter from the Taxpayer's accountants in 2003 gave no indication that a capped period had been included in the claim. The Tribunal therefore held that HMRC only became aware of the facts during the January 2005 inspection and the assessment was therefore raised in time. The appeal was therefore dismissed.

#### **Implications**

It is crucial that any evident 'concessions' or statements made by HMRC officers during inspection visits or meetings are verified in a prompt and contemporaneous fashion. This might include providing HMRC with a prompt note of the meeting and seeking confirmation of the points that they have raised. This may then lead to clarification of any apparent misunderstandings or be able to be adduced as evidence of misdirection if the concession or statement is subsequently withdrawn. In all circumstances, it is prudent

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for businesses to plan on the basis of the law as it stands and any apparent concession or departure from the strict legal position should be regarded with healthy scepticism.

In regard to time limits and the three-year cap more generally, it is clearly necessary to submit a claim at the earliest opportunity once identified. Although a claim may take time to quantify it may be wise to submit a reasoned estimate in the first instance. If the quantum of that claim has to be later amended, that is preferable to delaying a claim such that a further period falls out of time.