

Award of Interest
VTD19858 – Constantgreen

Constantgreen is a small property development business and builder. In July 2004 Constantgreen submitted a repayment claim for input tax incurred in respect of its work on two cottages, however this was rejected by HMRC. Constantgreen appealed to the Tribunal and a decision was handed down in November 2006 which agreed with Constantgreen i.e. that input tax should have been deductible. The current case concerns Constantgreen's application for interest on the repayments.

A portion of the input tax had been repaid in September 2004 after an agreement had been reached between HMRC and Constantgreen. A voluntary disclosure was submitted following the decision in November 2006 which showed an entitlement to input tax over several VAT quarters from September 2004 to September 2005. Two issues were considered; from what date interest became due and what rate of interest should be awarded.

Date of Interest

Constantgreen argued that interest should accrue from 16 days after the VAT return to which the input tax relates was submitted i.e. the equivalent of 10 working days. HMRC contested the claim for interest in its entirety on the grounds that, as they did not become aware of the full facts of the building work until the hearing in November 2006, the payment was therefore delayed by a failure on the taxpayers' part to provide full information in support of their claim. Furthermore, HMRC contended that the appropriate start date of interest payments, should interest be properly due, was not until 30 days after the Appeal hearing.

The Tribunal Chairman found in favour of Constantgreen in this regard, deciding that there had been no unreasonable behaviour on the part of the taxpayer which ought to delay tax repayment. Consequently, interest was due on the first amount claimed from the day when Constantgreen had been required to make payment to HMRC. Furthermore, it was held that the award of interest on the voluntary disclosure made after the Appeal, should commence 16 days from the date when the VAT returns involved were received by HMRC.

Rate of Interest

HMRC maintained that the conventional rate of base plus 1 percent was appropriate, rather than the rate of base plus 2.75 percent requested by Constantgreen on the basis that this was the rate of interest charged on their overdraft. The Chairman accepted that the overdraft had been used for other purposes, however, the principle criterion for fixing the appropriate rate under s84(4) is to determine the rate at which the taxpayer would have had to borrow money to replace the funds which were withheld. Here, the taxpayer had been deprived of £10,647 for use in its business by HMRC, therefore the Tribunal concluded that the higher rate of base plus 2.75 percent in line with their losses from having to have the overdraft was appropriate.

This is another example of the Tribunal acknowledging that simple statutory interest at the official rate is not appropriate, however, despite *Sempra* the case did not go on to consider compound interest as a method of compensating the taxpayer.

If you think that you may be affected by this decision then please contact 4 Eyes Ltd.