

When is a repayment supplement due for VAT purposes? *Alliance & Leicester PLC*

The VAT tribunal has recently given its decision in the case of *Alliance & Leicester plc* which concerned whether the taxpayer was entitled to a repayment supplement on an amount claimed in a VAT return, and which was ultimately paid following some inquiries from (the then) Customs & Excise ('Customs' throughout this article, but now HM Revenue & Customs).

Background – conditions for repayment supplement

The conditions for the payment of a repayment supplement can be found in s79 of the VAT Act 1994 (VATA), and are broadly as follows:

- The return to which the claim relates must have been made in time;
- No written instruction directing that a payment should be made to the taxpayer should be made within the 'relevant period' (on which more below); and
- The amount claimed must not exceed the actual amount due by the higher of 5 percent or £250.

For the purposes of the second test, the 'relevant period' is defined as 30 days from the later of the day after the last day of the accounting period to which the return relates and the date on which the return is received by Customs. There are, however, additional conditions which allow for the '30 day' clock to be stopped for periods 'referable to the raising and answering of any reasonable inquiry relating to the ...return' (s79(3)(i) VATA) and for certain other reasons. It is the precise meaning of this 'stop the clock' provision that is in point in this case.

Background – the case

The repayment claimed by the taxpayer (in the region of £2.3 million) related to its VAT return for March 2004, which was submitted on 7 May 2004. At the time at which the return was submitted the taxpayer was undergoing a routine VAT audit and officers of Customs were looking at the partial exemption special method which it used, over which they had some concerns. Following submission of the March 2004 VAT return, there was communication between Customs and the taxpayer both on the more general subjects and then more particularly on the content of the March 2004 return itself. Customs agreed to pay the taxpayer a slightly reduced amount on 14 June 2004, some 41 days after the return had been received. The taxpayer sought payment of repayment supplement in relation to the delay.

Customs contended that repayment supplement was not due because of the 'stop the clock' provision in s79(3) VATA.

The two issues to be decided were, therefore, as follows:

- Did the repayment meet all the conditions for repayment supplement (leaving aside the applicability of the 'stop the clock' provision);
- If yes, taking into account any periods for which the clock was stopped, did the 'relevant period' exceed the allowed 30 days?

On the first point, Customs had initially argued that the taxpayer did not meet the other conditions, as the return had not been filed by its due date (30 April 2004) but was instead received on 7 May. They had, however, subsequently chosen not to take this point. As far as the other two conditions were concerned, the amount of the final agreed repayment was within the prescribed 5 percent of the original claim and the 41-day period between arrival of the return and instructions for payment clearly exceeded the 30 day limit.

The final question to be decided, therefore, was whether Customs' queries about the return and other matters would trigger the 'stop the clock' provision to reduce the relevant period to 30 days or less.

The Tribunal's findings

The Tribunal first considered the meaning of the words 'reasonable inquiry' as used in s79(3) VATA. Based on previous case law, it concluded, the provisions allowing for repayment supplement to be available were intended as a 'spur to efficiency' to Customs to ensure prompt processing of repayment claims. Consequently, the 'inquiry' referred to must be a specific one into the particular return for which the repayment is due rather than any more general issues (such as, here, any concerns over the partial exemption special method used by the taxpayer).

The wording "raising and answering of any reasonable inquiry" indicated, said the Tribunal, that the inquiry was not in the nature of an investigation which would properly concluded by a report, but should be understood in the sense of questions for the taxpayer to answer.

In this particular case there had been several requests for information which might have constituted the start of 'inquiries'. Customs contended that the 'inquiries' should be said to commence on 18 May, when the officer dealing with the case had requested information on the March return (together with information on some other returns). This request, though, was for an electronic copy of information which had already been provided on paper. The March return was separately selected for a 'pre-payment credibility query' on 25 May, and the taxpayer was notified of this on 27 May. The Customs officer held a meeting with personnel from the taxpayer on 25 May and requested further information on the return on 26 May.

The stopping point for any 'inquiry' was equally disputed. Customs' contention here was that it was at the point when the Customs' officer was satisfied as to the amount of the repayment (14 June). The officer in question, though, had written to the taxpayer on 28 May noting that the requested information had been provided, and, for some of the period between 28 May and 14 June had been on annual leave.

The timing of the 'stop the clock' provision is detailed in s79(4) VATA which provides that the period:

- “(a) begins with the date on which the Commissioners first consider it necessary to make such an inquiry and
- (b) ends with the date on which the Commissioners –
- (i) satisfy themselves that they have received a complete answer to the inquiry...”

The Tribunal found that, given the definition of 'reasonable inquiry' required by case law, the 'inquiries' into the March 2004 VAT return were limited to the additional information requested on 25 and 26 May. The wider concerns on the partial exemption special method did not qualify, and neither did the request for information on the March return on 18 May, as this was not for information which was not already in the possession of Customs officers. It was possible, therefore, that the date on which it was first considered necessary to make an enquiry was as late as 25 May. Nor did the Tribunal accept the end date suggested by Customs for their inquiries. The legislation did not require Customs to be fully satisfied that the amount to be repaid was correct; but rather to be satisfied that the taxpayer had answered the inquiries satisfactorily. In this case, the Customs officer had indicated that the relevant information had been provided on 28 May, although he had not been able to further satisfy himself as to the amount of the repayment until 14 June, partly because of his annual leave.

The Tribunal repeatedly emphasised the role of the repayment supplement provisions in helping to ensure the prompt processing of repayment claims. The normal work of verifying the amount to be repaid was, in its view, intended to take place within the 30 day period – all that should be excluded in calculating that period was the gathering of additional information. Furthermore, the

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responsibility to meet the 30 day target did not rest on individual officers of Customs, but on the department as a whole. Consequently the fact that one individual had been on annual leave should not extend the 'stop the clock' period.

The period for which the clock was stopped under s79(3) was therefore considerably less than the eleven days which would be needed to prevent repayment supplement from being due.

Why is this important?

The findings in this case give some indication of how the provisions relating to 'relevant inquiries' should be interpreted for repayment supplement purposes. The Tribunal was firm on the intention of the supplement as a spur to Customs and the limits which could be placed on the definition of 'inquiry' for these purposes. This was emphasised still further by the comments on collective responsibility for the meeting of the 30-day deadline:

"if [Customs] are to avoid being required to pay a repayment supplement, they must devote sufficient resources to the processing of returns in that timescale. It is no more than they demand of taxpayers in the context of the default surcharge regime".

The clarification provided by the Tribunal's findings here may be relevant to others seeking repayment supplement or considering whether repayment supplement might be available.