

## **“Fleming” claims for VAT repayments – HMRC statement**

*HMRC have recently issued the following statement on how they will be handling “Fleming” claims for the payment of overpaid output tax or under-recovered input tax.*

### **Statement**

We have received a large number of “Fleming” claims, many of which were made in the few days leading up to the expiry of the deadline. The claims vary widely in terms of the businesses making them, their basis and amounts. In aggregate, a very significant amount of money is involved. In addition, we have received other claims on the basis of the litigation that has taken place in the Scottish Equitable case. The way this large volume of claims on various issues is handled will have important implications for HMRC as well as for the claimants and their advisers.

Our objective is to decide all claims as soon as is reasonably practicable. We need to ensure that proper assurance standards are applied, not least because of the significant amount of money involved. Now that we have had the opportunity to consider some of the claims that we received in late March, and learning from the experience of dealing with claims received before that, it is clear to us that we need to devote substantial resource to consider the material that has been sent to us in support of claims. And it is also clear that it will take some time to deal with all of the claims. We are putting delivery plans in place to enable us to monitor progress and meet our objectives.

We aim to have dealt with all claims, and made payments where appropriate, by the end of March 2011. This is subject to two main qualifications.

The first qualification concerns particular cases where we need additional evidence in support of a claim. Our experience is that claimants or their advisers can sometimes take a long time to supply such material. In cases where we have clearly specified the additional evidence we need and we have allowed reasonable time for it to be supplied (which will not normally exceed three months), we cannot be held to the March 2011 aim where the additional material is not actually supplied in time. We aim to ask for information in all cases by November 2010.

The second qualification concerns particular cases where a decision cannot be taken because we are awaiting the outcome of litigation. The timetable for dealing with such claims will be determined by the timetable for the relevant litigation.

“Fleming” cases are not typical of VAT repayment claims. In particular, they can often relate to accounting periods several years in the past for which the evidence that would

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normally support a repayment claim might no longer exist. This means that claims sometimes have to be made in estimated amounts. We have published material on HMRC's internet site about the standard of evidence required for repayment claims, including claims made in estimated amounts. Because of the recent interest aroused by "Fleming" claims, we have reviewed this material and we will be revising it to address the queries we have received and to clarify some points.

Depending on the particular facts, "Fleming" payments in respect of overpaid output tax or under-recovered input tax can constitute income for the purposes of Income Tax and Corporation Tax. Where a payment contains an element of statutory interest, this element is within the scope of the loan relationship rules. These issues are discussed in Revenue and Customs Brief 14/09. A "Fleming" claimant who receives a payment should ensure that it is treated correctly for the purposes of Income Tax or Corporation Tax. HMRC has a co-ordinated compliance project to address the risk that the correct amount of tax might not be paid in this respect.

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