



## VAT Update - High Court ruling – HMRC may have to pay compound interest

### Background

Following a recent High Court ruling, it may be necessary for HM Revenue & Customs (HMRC) to pay compound interest on claims for VAT refunds, where the overpayment is due to the incorrect implementation of EU VAT legislation by HMRC.

A number of motor dealers have taken a case to the courts, claiming that they should be entitled to payment of compound interest on VAT claims. The case was taken as a Group Litigation Order (GLO), where a number of claimants get together and take a single case to court, where the individual cases cover the same basic facts and points of law. The claimants had already received a refund of the VAT they had overpaid plus simple interest, so this case was only concerned with the compound interest issue.

HMRC has always accepted that interest is payable on certain overpayments of VAT, but the UK law only provides for simple interest. Where the claims go back many years, even to 1973 in some cases, payment of compound interest would make a huge difference to the amount received by the businesses which had overpaid VAT.

### High Court ruling

Although the claimants in this case have lost, this was because of the timing of their claim and not the basic principle at stake.

The Judge has ruled that in principle HMRC is obliged to pay compound interest where the overpayment of VAT was due to HMRC's breach of EU law.

### Next steps

The legal representatives of the GLO claimants have already stated that they are taking their case to the new Tax Tribunal (which replaced the VAT Tribunal and the Special Commissioners from 1 April 2009) where the time limits are more favourable. This case is due to be heard on 6 June 2009. In addition, an appeal against the High Court ruling may also be made, so the matter is far from being resolved.

### How does this affect the NHS?

As you may be aware, many NHS bodies have submitted VAT claims under the Fleming and Conde Nast cases and many of these claims go back to 1973. Most claimants will already have stated their claim to interest as well as the actual VAT overpayment and if it is decided that compound interest is due, any payback will increase significantly.

### Conclusion

If you would like to discuss how this case may affect you please contact your usual VAT Advisor or VAT Liaison's Tax Helpline 0800 700 652.