
RECLAIMING INCOME TAX, CAPITAL GAINS TAX AND CORPORATION TAX OVERPAYMENTS

Who is likely to be affected?

1. Income tax, capital gains tax (CGT) and corporation tax (CT) payers.

General description of the measure

2. Legislation will be introduced in Finance Bill 2009 to provide a means of reclaiming overpayments of income tax, CGT and CT where there is no other statutory route. It will replace any non-statutory claims.
3. The legislation also amends the error or mistake relief rules to provide additional taxpayer safeguards.

Operative date

4. The measure will have effect for claims made on or after 1 April 2010.

Current law and proposed revisions

5. Sections 33 and 33A of the Taxes Management Act 1970 and paragraph 51 of Schedule 18 to the Finance Act 1998 enable taxpayers to reclaim tax where an assessment is excessive due to a mistake in the claimant's tax return.
6. When they receive a claim, HM Revenue & Customs (HMRC) must determine what amount, if any, is just and reasonable to repay, taking into account all the relevant circumstances.
7. The time limits for claiming repayments are currently from five years and ten months to six years from the end of the period for which the return was made. From 1 April 2010 they must be claimed within four years.
8. No repayment is given where the return followed the general practice at the time it was made, or where the mistake is governed by another statutory claim.

9. The measure will remove the requirement that the overpayment must be the result of a mistake in a return and that it must be made under an assessment.
10. The measure will also make explicit that HMRC are not liable to repay an amount except as provided by the measure or another provision of the Taxes Acts.
11. It will enable claimants to determine the amount to be repaid, subject to HMRC's right to enquire into a claim within the enquiry window for claims, normally 12 to 15 months, and to recover any related underpayments.
12. As claimants will determine the amount to be repaid, the rules regarding when and on what grounds a claim can be made will be set out in the new legislation.
13. The current restrictions on the right of appeal will be removed, allowing an appeal to the courts on the same grounds as appeals against other matters.

Further advice

14. If you have any questions about this change, please contact Nick Mosley on 0151 703 8986 (email: nick.mosley@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk