

Six Year Limitation Period for all Direct Tax Claims

The Government is taking action to ensure that the limitation period for recovery of direct tax paid by mistake of law is six years from the date of payment. This follows a recent House of Lords decision and restores the balance of interests secured by such a limitation.

Legislation will be introduced in the 2007 Finance Bill to ensure that section 32(1)(c) of the Limitation Act 1980, in so far as it provides for England and Wales an extended period for bringing actions for relief from the consequences of mistakes of law, does not apply to direct tax matters. The effect will be to limit the period for recovery of tax paid by mistake of law to six years.

The legislation will apply to any action involving mistake of law in relation to a direct tax matter brought before 8 September 2003, except where a claimant is subject to a final judgment given by the Courts before 6 December 2006, or to a group litigation order which has the effect of making such a judgment binding on them. Provision is also made for any judgments between now and the date on which the Finance Bill receives Royal Assent to be varied to the extent necessary to comply with the legislation, and for any necessary repayments to be made.

For actions brought on or after 8 September 2003, Section 320 of the Finance Act 2004 already has this effect.

The legislation will apply to England and Wales. No parallel provision is needed for Scotland or Northern Ireland in the absence of relevant actions to which the legislation would apply.

A copy of the draft legislation is attached.

For many years there has been a symmetry in the tax system with the right to claim repayment of tax balanced by the right of the revenue authorities to recover outstanding tax for similar periods. The Government believe that this is in the wider public interest and will be considering, in the light of developments, whether for the future any other legislative action may be needed to maintain this balance.

1 Limitation period in old actions for mistake of law relating to direct tax

- (1) Section 32(1)(c) of the Limitation Act 1980 (c. 58) (extended period for bringing action in case of mistake) does not apply in relation to any action brought before 8th September 2003 for relief from the consequences of a mistake of law relating to a taxation matter under the care and management of the Commissioners of Inland Revenue.
- (2) Subsection (1) has effect regardless of how the grounds on which the action was brought were expressed and of whether it was also brought otherwise than for such relief.
- (3) But subsection (1) does not have effect in relation to an action, or so much of an action as relates to a cause of action, if –
 - (a) the action, or cause of action, has been the subject of a judgment of the House of Lords given before 6th December 2006 as to the application of section 32(1)(c) in relation to such relief, or
 - (b) the parties to the action are, in accordance with a group litigation order, bound in relation to the action, or cause of action, by a judgment of the House of Lords in another action given before that date as to the application of section 32(1)(c) in relation to such relief.
- (4) If the judgment of any court was given on or after 6th December 2006 but before the day on which this Act is passed, the judgment is to be taken to have been what it would have been had subsections (1) to (3) been in force at all times since the action was brought (and any defence of limitation which would have been available had been raised).
- (5) And any payment made to satisfy a liability under the judgment which (in consequence of subsection (4)) is to be taken not to have been imposed is repayable (with interest from the date of the payment).
- (6) In this section –
 - “group litigation order” means an order of a court providing for the case management of actions which give rise to common or related issues of fact or law, and
 - “judgment” includes order (and “given” includes made).