

Restitution/Compound Interest Claims

There have been a number of recent developments in respect of the ability of businesses to claim interest on a compounded basis on monies repaid (or to be repaid) to them by HM Revenue & Customs ("HMRC").

In *Sempre Metals*, the House of Lords held that, in order to give an "effective legal remedy" to taxpayers who have been deprived of the time value of money, compound interest must be paid. Since that time, a Compound Interest Group Litigation Order ("GLO") has been commenced before the High Court in London. The GLO comprises claims by a group of motor traders seeking restitution in the form of compound interest on monies repaid to them by HMRC (specifically, overpaid output VAT). Only motor traders may join this GLO.

The ability to recover compound interest is not, however, limited to motor traders and a number of compound interest claims have been issued in the High Court on behalf of various businesses from both the private and public sectors. LAVAT is working with a firm of lawyers, DLA Piper, to consider the opportunities available to the local authority sector. DLA Piper was recently instructed by Bristol City Council to pursue a compound interest claim in the High Court, following the Council's case before the VAT and Duties Tribunal which led to HMRC being ordered to repay overpaid output VAT in respect of car park excess charges. A number of public authorities are being advised in relation to monies overpaid to HMRC in areas such as statutory repair works; car park excess charges; library services; Housing Renovation Grants administration fees and domestic bulk waste. In many instances, HMRC has repaid the VAT with simple interest.

It is our view that where monies have been repaid (or are to be repaid) by HMRC to taxpayers either without interest, or with simple interest only, claims for compound interest can now be made. Subject to limitation issues (which we can advise on an individual basis), claims for compound interest potentially can date back to 1973. This means that the interest claims may be greater than, or indeed even a multiple of, the original claims.

For example, preliminary calculations suggest that an overpayment of output VAT in 1973 in the amount of £10,000 gives rise to a claim for interest calculated on a simple basis of approximately £30,000 which increases to approximately £200,000 when calculated on a compound basis.

There have been detailed discussions with HMRC, who have confirmed that they are content for issued claims to be stood over pending the outcome of the GLO. The consequence of this is that, after issue of the claim, the additional individual legal costs of pursuing the matter to the stage of a decision of the High Court in the GLO are very likely to be insignificant; they should be limited to the costs of a small amount of administrative work in terms of monitoring the GLO and liaising with HMRC.

It is our view that local authorities, who may be able to claim compound interest should claim without undue delay in order to prevent any time bars applying to their claims. The firm of lawyers with whom we work operates in Scotland (as well as in England and Wales), we are able to issue claims in the Court of Session, where that is the appropriate jurisdiction.

In order to commence a claim in the High Court, particulars of claim and a claim form must be drafted and then issued. DLA Piper will charge a fixed fee of £7,500 (plus VAT and court fees of £1,530) for undertaking all work required to this stage of the proceedings.

Please contact your usual LAVAT contact or DLA Piper.

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