

Budget 2008



**HM Revenue
& Customs**

BN78

12 March 2008

VAT: TRANSITIONAL PERIOD FOR CLAIMS

Who is likely to be affected?

1. Businesses registered for VAT between 1 April 1973 and 1 May 1997 who either declared more output VAT than they were liable for, or claimed less input VAT than entitled to.

General description of the measure

2. Legislation will be introduced in Finance Bill 2008 to provide a transitional period to 31 March 2009, during which eligible businesses can make VAT claims for rights that accrued before the introduction in 1996 and 1997 of the three-year time limit for claims.
3. The legislation will also correspondingly amend the powers of assessment of HM Revenue & Customs (HMRC) to ensure that assessments may be made to recover any amounts paid, which are subsequently found to have been incorrectly claimed by business.

Operative date

4. The transitional period will run to 31 March 2009.

Current law and proposed revisions

Regulation 29(1A) of the Value Added Tax Regulations 1995

5. Regulation 29(1A) provides that no claim for input tax can be made more than three years after the due date of the return, for the accounting period in which the input tax was incurred.
6. In January 2008, the House of Lords held in its judgments in *Michael Fleming (trading as Bodycraft)* and *Condé Nast Publications Ltd* that, because there was no transitional period when the three-year cap was first introduced, the three-year time limit does not have effect for any right to claim input tax that accrued before it was enacted on 1 May 1997 until an adequate transitional period has been provided.

7. This measure will give effect to the judgment of the House of Lords by providing a transitional period during which claims for input tax can be made, for accounting periods ending between 1 April 1973 and 1 May 1997, before they become subject to the three-year time limit.

Section 80(4) of the Value Added Tax Act 1994

8. Section 80 provides that where a person accounts for more output VAT than is due, they can claim it back from HMRC. Section 80(4) provides that HMRC are not liable to pay any claim made more than three years after the end of the accounting period to which it relates.
9. HMRC considers that the House of Lords' judgments in *Michael Fleming (trading as Bodycraft)* and *Condé Nast Publications Ltd* also apply to rights to claim overpaid output tax that accrued before the three-year time limit was enacted on 4 December 1996 until an adequate transitional period has been provided.
10. This measure will provide a transitional period during which claims for overdeclared output tax can be made, for accounting periods ending between 1 April 1973 and 4 December 1996, before they become subject to the three-year time limit.

Section 80(4A) of the Value Added Tax Act 1994

11. Assessments to recover amounts incorrectly paid by HMRC to businesses who claim under section 80 must be made within two years of HMRC having acquired evidence of facts, sufficient to justify the making of the assessment.
12. This measure will add a two-year time limit from the end of the accounting period in which an erroneous payment is made. This will ensure that HMRC are able to recover amounts paid out where it is later discovered repayment was mistaken.
13. This will also bring these assessment time limits into line with those for HMRC's other VAT assessment powers.

Section 73(2) of the Value Added Tax Act 1994

14. Assessments to recover amounts incorrectly paid by HMRC to businesses on input tax claims must be made within two years of the end of the accounting period in which the claim is made.
15. This measure will amend the time limit, so that it runs from the end of the accounting period in which the claim was paid, ensuring that HMRC will be able to recover any amounts incorrectly paid.

Further advice

16. If you have any questions about this change, please contact Pauline Walsh on 0113 389 4432 (e-mail: pauline.walsh3@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk