

## **NHS VAT NEWS BULLETIN**

**January 2008**

### **THREE-YEAR CAP ON VAT REFUNDS**

The House of Lords has delivered its judgement on the legality of the three-year cap on VAT refunds.

The *Conde Nast* and *Fleming* judgement states that when the three-year time limit for VAT claims was introduced back in 1996, HMRC should have allowed an adequate transitional period for retrospective refunds to be made. Furthermore, the retroactive transitional period announced by way of business briefs a few years later has now been judged unacceptable.

This landmark decision means that VAT refunds accrued but not claimed for periods before 1996 right the way back to when VAT was introduced in 1973 are now repayable. HMRC are likely to act quickly to introduce an adequate transitional period for claims to be submitted. This makes it important for claims to be considered at the earliest opportunity.

### **POTENTIAL FOR THE NHS**

This issue represents a real opportunity for NHS organisations to submit claims in relation to business activities, where previous claims were either not made or were stopped by HMRC due to the cap. This is likely to be more relevant for Trusts which have the same VAT registration number now as they had prior to 4 December 1996. This will be the case for many Trusts that were originally formed in the early 1990s. Contracted-out service VAT claims would not be valid as these form part of Government funding and subject to an annual cut-off.

VAT refunds for earlier periods are likely to be more difficult to prove due to lack of adequate records, restructuring of NHS entities, changes in VAT registrations, etc.

We would therefore urge NHS organisations to contact us at the earliest opportunity to discuss potential claims. HMRC are yet to respond to the judgement, but we will inform you of their response as soon as this becomes available.

For further advice:

Chris Silk  
E: [chris.silk@crsvat.com](mailto:chris.silk@crsvat.com)

Di Glasspool  
E: [Diana.glasspool@crsvat.com](mailto:Diana.glasspool@crsvat.com)

Gavin Barker  
E: [gavin.barker@crsvat.com](mailto:gavin.barker@crsvat.com)

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T: 01322 554053 F: 01322 559981 E: [info@crsvat.com](mailto:info@crsvat.com) W: [www.crsvat.com](http://www.crsvat.com)  
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