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Recovery of overpaid direct tax and VAT—an introduction

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Where a person has paid more tax than was due from them, the question arises as to whether they are entitled to recover the excess from HMRC. In the case of VAT, the additional question arises as to whether the tax bearer is entitled to recover the overpaid amount from the taxpayer or from HMRC.

The position may be governed by a statutory regime. To the extent not excluded by a statutory regime, common law may apply; specifically, the law of restitution. In both cases, the position may be qualified by EU law.

This Practice Note provides an introduction to these topics and the more detailed Practice Notes in each area.

Income tax, capital gains tax and corporation tax

The statutory regime that governs the recovery of overpaid income tax, capital gains tax and corporation tax is referred to as overpayment relief and was introduced on 1 April 2010.

References:

TMA 1970, Sch 1AB

FA 1998, Sch 18, Part VI

Prior to the introduction of overpayment relief, a taxpayer's rights to recover overpaid tax flowed largely from common law (specifically, the law of restitution), which remains relevant not only in relation to outstanding claims and claims that are under appeal, but also where overpayment relief does not apply or where any restriction on its application is incompatible with EU law.

References:

Woolwich Equitable Building Society v IRC [1992] STC 657

Deutsche Morgan Grenfell Group v IRC [2007] STC 1

For more information on overpayment relief, the impact of EU law, and the application of the law of restitution in the context of direct tax, see Practice Note: Overpaid direct tax and restitution.

VAT

The statutory regime that governs the recovery of overpaid VAT is set out in section 80 of the Value Added Tax Act 1994 (VATA 1994).

However, it only applies between the taxpayer and HMRC, and the cost of overpaid VAT is rarely borne by the taxpayer; it is usually borne by the client or customer (the tax bearer).

Common law (specifically, the law of restitution) may be engaged to enable the tax bearer to recover the overpaid amount, either from the taxpayer or, in certain circumstances, directly from HMRC.

For more information on the taxpayer's position under VATA 1994, s 80, see Practice Note: VAT overpayments and under-deductions.

For more information on the tax bearer's position and the application of the law of restitution in the context of VAT, see Practice Note: VAT—restitution and interest.

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