



Time limits for claims

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- All claims are subject to time limits – also elections, notices and applications
 - Compliance with both substantive and formal conditions by specified time
 - Substantive – e.g. relief for trading losses (ITA07 s64; CTA10 s37), or gift relief to be carried back (ITA07 s426)
 - Formal – e.g. claim for relief must be made in return (TMA70 s42(2); FA98 Sch 18, para.57(2)) and for quantified amount (TMA70 s42(1A); FA98 Sch 18, para.54)
 - When does time start to run? How long does time run? Is there a specific date?
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- Claims for income tax and CGT – four years from end of tax year (TMA70 s43 (general) and Sch1AB, para.3 for claims for repayment)
 - Claims for corporation tax – four years from end of accounting period to which it relates (FA98 Sch 18, para.55)
 - Subject to other specific limits, e.g.:
 - Corporation tax: group relief / capital allowances – latest of one year after filing date for CTSA / 30 days after enquiry concludes / amendment of CTSA after enquiry / appeal against amendment finally determined
 - If make a mistake in it, can amend it within time limit for making claim (TMA70 s42(9); FA98 Sch 18, para.56)
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- Where notice to file return given under TMA70, most claims / elections must be made in return (TMA70 s42(2))
 - Broadly same for corporation tax (FA98 Sch18, para. 57(2))
 - But – counts if made by amendment to return (TMA70 s42(5) and FA98 Sch18, para. 57(3))
 - Can still make claims after time limit for amending return has expired
 - If not in return then, ‘in such form as Board shall determine’ (TMA70 Sch1A, para.2(3))
 - Has someone else made claim for you in time? *Taylor Clark Leisure plc v. HMRC* [2018] S.T.C. 1556
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- *Dundas Heritable Limited v. HMRC* [2018] UKFTT 244 (TC)
 - Claim for capital allowances v. corporation tax
 - Claim made in CTSA – all substantive requirements met
 - But CTSA late, by more than one year
 - Time limit for claim: latest of one year after filing date for CTSA / 30 days after enquiry concludes / amendment of CTSA after enquiry / appeal against amendment finally determined (FA98 Sch18, para.82(1))
 - HMRC opened enquiry...
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- HMRC argued – claim not in time when made – and can't come to be in time just because subsequent event creates new time limit; also absurd because otherwise HMRC can't prevent late claim – if claim is not within first anniversary of filing date, and that's only reason for rejecting it, rejection is by opening enquiry (see SACM10050)
 - FTT held otherwise
 - Certain enquiries excluded expressly from counting > enquiries into amendment that makes a claim, where enquiry restricted to the claim
 - HMRC could make discovery assessment
 - Within plain meaning of provisions that claim made in time – if not...
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- FTT in *Dundas* > last time limit, 30 days from day appeal against amendment finally determined, not yet expired – so can make fresh claim
 - General rules following assessment / amendment – depend on basis of assessment / amendment
 - Loss of tax brought about deliberately / carelessly:
 - Any relief / allowance to which would have been entitled on claim being made within time allowed (TMA70 s36(3) / FA98 Sch.18, para.65(2))
 - Time limit? ‘in determining amount to be charged’
 - Otherwise
 - Any claim / election / application / notice within one year of end of year of assessment (IT/CGT) or accounting period (CT) in which amendment / assessment made (TMA70 s43A / FA98 Sch18, para.62)
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- Specific discretion:
 - CGT: election for rebasing to 31/3/82 (TCGA92 s35(6))
 - Corporation tax: group relief / capital allowances – HMRC have specific discretion to allow late claims (FA98 Sch18, paras 74(2) and 82(2))
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- General discretion
 - Something put in within time limit but ‘unsatisfactory’ – if rejected shortly before / any time after time limit, HMRC say officer should extend time limit (SACM10020)
 - Nothing put in within time – HMRC > can still allow it under general care and management powers (CRCA05 S5(1)) but depends on reason for missing time limit (SACM10035), for example HMRC’s own fault, or beyond person’s control
 - But not if person deliberately chose to wait, e.g. because didn’t have precise figure (should have put in provisional figure / estimate), or fault of adviser (SACM10040)
 - Can take into account whether case involves an avoidance scheme?
 - May be other exceptional cases but ‘(This content has been withheld because of exemptions in the Freedom of Information Act 2000)’
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- If you haven't made a claim etc. in time, don't despair!
 - Claim by conduct
 - Claim made by someone else
 - Make a claim anyway
 - HMRC discretion > judicial review
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