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Tax

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.

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