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Chartered Certified Accountants

ACCA

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Too Late To Claim? Not Necessarily!

Mistakes can easily happen in tax, some of which may result in an overpayment by the taxpayer. For example, an individual may have made an error when completing their self-assessment tax return, resulting in tax being overpaid. The error is only discovered-some time later. What can be done?

The tax legislation allows individual taxpayers (and trustees) to amend their tax returns to correct mistakes, etc. However, the amendment cannot normally be made more than twelve months after the filing date for the tax return. What if this time limit has passed?

That's a relief!

Fortunately, a form of relief is potentially available in such circumstances. For individuals, the 'overpayment relief' rules apply for income tax and capital gains tax purposes (TMA 1970, Sch 1AB). Overpayment relief also applies to claims in respect of overpaid Class 4 National Insurance contributions (see HMRC's Self-Assessment Claims manual at SACM12005). There are similar rules for companies (FA 1998, Sch 18, Pt IV), but this article concentrates on overpayment relief for individuals.

A claim for overpayment relief can be made, broadly, where a person believes that tax has been paid, assessed, determined or directed, which is not due. However, the relief is not available in certain specific circumstances, which are listed in the legislation as 'Case A' to 'Case H' (in TMA 1970, Sch 1AB, para 2). These overpayment relief restrictions are broadly as follows (see SACM12065 onwards for detailed guidance):

- Case A: Mistake in claims, elections, etc. - where the amount in the overpayment relief claim arises broadly from a mistake concerning a claim, election or notice (e.g. failing to make a claim), or capital allowances;
- Case B: Other relief available - where the person can correct the overpayment or over-assessment by other means (e.g. by amending a return, if within the time limits);
- Case C: Other relief out of time - where the person could have obtained relief by other means when they first knew, or ought reasonably to have known, that the relief was available;
- Case D: Grounds of claim considered on appeal - where a court or tribunal has already considered the grounds on which the overpayment relief claim is made; also, where HMRC has considered the grounds and settled the appeal by agreement;
- Case E: Grounds of claim not considered on appeal - where the person knew (or should reasonably have known) the grounds for the overpayment relief claim at a time when they could have been put forward on an appeal to a court or tribunal;
- Case F: HMRC proceedings - where HMRC has taken proceedings to enforce payment of the amount in the overpayment relief claim under an assessment or determination, or where proceedings have been settled by agreement; and
- Cases G and H: Practice generally prevailing – overpayment relief is not available in respect of income tax or CGT that was understood to be due under the practice generally prevailing at the time the liability was calculated (Case G), or for PAYE income where the amounts were calculated in accordance with the practice generally prevailing 12 months after the end of the tax year (Case H). However, Cases G and H do not apply if the tax is charged contrary to EU law. In addition, the onus is on HMRC in any appeal hearing to demonstrate that there was a practice generally prevailing (SACM12105).

Overpayment relief is obviously helpful, but the above restrictions present high hurdles for the taxpayer to jump over when considering whether an overpayment relief claim is appropriate.

Example 1: Overpayment relief claim available

Joe understated an allowable cost when calculating his profits from self-employment, which resulted in an overpayment of tax. However, he only spotted the problem after the statutory deadline for amending the return had passed.

An overpayment relief claim may be possible (see the time limit for making claims below).

Example 2: No overpayment relief claim possible

Ken's profit from self-employment was arrived at after deducting an expense which had been restricted in accordance with normal practice at that time. However, in a subsequent tax case, it was decided that this practice was wrong and that such expenses should not be subject to restriction.

Unfortunately, an overpayment relief claim is not available to Ken, due to restriction G above.

Practical Tip :

An overpayment relief claim cannot be included in a tax return. The claim must normally be made in writing within four years of the end of the 'relevant tax year'. This is defined as broadly the tax year to which the incorrect tax return relates, or the one in which the tax was paid, or the one to which the excessive assessment, determination or direction relates, depending on the circumstances. However, there is an exception from the above time limit in cases of 'special relief' (under TMA 1970, Sch 1AB, para 3A). For HMRC guidance on the contents of a claim, see SACM12150.

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We are a firm of Chartered Certified Accountants providing services in Accountancy, Tax, Payroll, VAT, Computerised SAGE book keeping and Secretarial Services.

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Whose Income Is It Anyway?

Married couples (and civil partners) often own assets such as investment properties in joint names. For income tax purposes, those individuals are generally treated as beneficially entitled to income from the investment property in equal shares.

50:50 or not?

This '50:50' rule applies while the couple are living together. There are various exceptions to the general rule (see ITA 2007, s 836). For example, if the couple have unequal beneficial interests in the investment property as tenants-in-common (e.g. husband 60% and wife 40%) and they make a valid declaration to HM Revenue and Customs (HMRC) on form 17, the 50:50 rule is generally disapplied and they are taxable on the rental profits on a 60:40 basis instead (ITA 2007, s 837).

It should be noted that the declaration on form 17 can only be made if the couple are beneficially entitled to the income in unequal shares, and they own the investment property as tenants-in-common (in the remainder of this article, it is assumed that the declaration does not apply).

Living together

The 50:50 rule applies while the couple are living together. For these purposes, a married couple are treated as 'living together' broadly unless they are separated under a court order or by deed of separation, or they are in fact separated in circumstances in which the separation is likely to be permanent (ITA 2007, s 1011).

If a divorcing couple continue 'living together' (e.g. they do not separate on a 'permanent' basis), HMRC treats the 50:50 rule as continuing to apply until the divorce becomes absolute (see HMRC's Trusts, Settlements and Estates manual at TSEM9838).

Whose income?

The 50:50 rule might come into play in unfortunate domestic circumstances.

For example, in Akan v Revenue and Customs [2018] UKFTT 0268 (TC), the taxpayer was the tenant of a flat. Following her marriage, the taxpayer and her husband became joint tenants. They lived in the flat from 1988. In 1996, the couple bought a leasehold interest in the flat from the council. They continued living there until June 1997, when they moved to a house. The flat was then let out.

In 2006, the couple decided to separate. The taxpayer's husband transferred his interest in the flat to her in December 2006. However, the taxpayer lived at the house with her husband and children until she moved out in around 2010. They divorced in October 2011. After leaving the house, the taxpayer rented another property. The flat was let out, but subsequently became her main residence on approximately 1 October 2012, before being sold in November 2012.

During the period of joint ownership (and some of the period of the taxpayer's sole ownership), all arrangements for letting the flat were undertaken by her husband, who exercised exclusive control of the letting. From June 1997 (while the husband managed the letting), the net rents were paid to and retained by him. For the tax years 1997/98 to 2004/05, HMRC treated 50% of the rental profits as the taxpayer's taxable income, but she argued that all the income had been received by her husband. For 2008/09 to 2009/10, HMRC treated the taxpayer as taxable on 100% of the net income, but she argued that she should not be taxable on that income because it had all been received by her husband.

The First-tier Tribunal found on the evidence that the taxpayer and her husband were not separated for tax purposes until 2010. The tribunal concluded that for 1997/08 to 2004/05, the law on jointly-held property required 50% of the net income from the flat to be treated as the taxpayer's income. From December 2006 (when the taxpayer was the sole owner), the tribunal considered that if she had beneficially received rental income from the flat it would have been her taxable income.

However, up to 2008/09 the taxpayer's husband received and had control over income from the flat. The tribunal accepted the taxpayer's evidence that she found her husband controlling and abusive, and that she did not voluntarily consent to his retention of the rental profits. The tribunal considered it very unlikely that the taxpayer could have recovered the debt due from her husband in full and held that for 2006/07 to 2008/09 only 20% of rental profits were taxable on her.

Practical Tip :

In Akan, the 50:50 rule applied to the taxpayer's detriment. However, in some cases, the rule can benefit a married couple (or civil partners). For example, Carl and Diane (a married couple living together) jointly own an investment property (i.e. Carl 20% and Diane 80%). The application of the 50:50 rule results in a potential tax saving if Carl is a basic rate taxpayer and Diane pays income tax at higher rates. Careful planning by married couples with jointly-owned property can have positive tax results in the right circumstances.

Making HMRC Prove It!

The imposition of penalties by HM Revenue and Customs (HMRC) for non-compliance with statutory obligations such as filing tax returns or paying tax unfortunately seems to be becoming an increasingly common occurrence.

It would be understandable to assume that HMRC's systems and procedures satisfy the requirements for (say) the issue of valid penalty notices when tax returns are filed late. However, several tribunal cases have identified flaws in HMRC's administration of penalties, resulting in successful taxpayer appeals against penalties for late tax returns.

Where's the proof?

For example, in Qureshi v Revenue and Customs [2018] 115 (TC), HMRC imposed penalties on the taxpayer for the alleged late filing of tax returns for 2013/14 and 2014/15. The taxpayer appealed, having written to HMRC in January 2017 and July 2017 stating that she had not received any notices requiring her to file tax returns. The First-tier Tribunal pointed out to the HMRC officer at the appeal hearing that it was incumbent upon HMRC to prove that a notice to file (as required by TMA 1970, s 8) had been sent to the taxpayer. However, the officer instead informed the tribunal that 'HMRC has an understanding with the courts and tribunals' on such evidential matters.

The tribunal judge seemed rather unimpressed. He made it clear that HMRC, as a litigant, held no privileged position. The burden of proof in a penalty case rested upon HMRC to prove every factual matter said to justify the imposition of the penalty. The officer referred to HMRC's bundle of documents and told the tribunal that because a document headed 'Return Summary' contained an entry 'Return Issued Date' and alongside it appeared '12/6/14', it could conclude that a notice to file 'must have been' sent on that date. She also informed the tribunal that a 'Return Summary' page would only come into existence if HMRC had sent out a notice to file. She added that any notice to file 'would have been' sent to such address for the appellant as HMRC then held on file.

However, the tribunal held that HMRC's production of these documents was not adequate to allow the tribunal to infer that any notice to file was in fact posted by HMRC with the postage prepaid and was properly addressed to the taxpayer. In the circumstances, the tribunal found that it had not been proved, on the balance of probabilities, that the necessary notices to file were sent by HMRC to the taxpayer. The taxpayer's appeal was allowed.

The same tribunal judge reached similar decisions in Loial v Revenue and Customs [2018] UKFTT 138 (TC) and Galiara v Revenue and Customs [2018] UKFTT 190 (TC), in successful taxpayer appeals against penalties for the late filing of tax returns. By contrast, the taxpayer lost his appeal in Olalekan v Revenue and Customs [2018] UKFTT, in which the tribunal (with a different judge than in the above cases) found that the taxpayer was not a credible witness and accepted that HMRC had sent tax returns to the correct address (following a consideration of the law on the serving of documents by post as it applies in Scotland).

Lucky escape?

However, although the taxpayer's appeal in Qureshi (and also Loial and Galiara) was successful, the tribunal hinted that the outcome may have been different if HMRC had taken a different approach.

The tribunal acknowledged that in large organisations with automated processes (such as HMRC) it may not be possible to prove that someone placed a filing notice in an envelope on a specific date, correctly addressed it and sent it through the Royal Mail. The courts and tribunals therefore admit 'evidence of system'. The tribunal pointed out that if this evidence is sufficiently detailed and cogent, it may well be sufficient to discharge the burden of proving that the notice was sent in the ordinary course of the way in which the particular business or organisation operates its systems for the dispatch of such material. However, HMRC provided no 'evidence of system' in Qureshi.

In any event, at the time of writing it remains to be seen whether HMRC will appeal the tribunal's decision. Furthermore, First-tier Tribunal decisions do not set binding precedents, although they can be persuasive in similar cases.

Practical Tip:

Interestingly, unlike the taxpayer in Qureshi, in Galiara the taxpayer did not seek to argue that he had not received notices to file his tax returns, yet the tribunal allowed the appeals of both taxpayers on a similar basis. The good news for taxpayers is that these (and other) cases indicate that the tribunal is not afraid to challenge HMRC about its administrative procedures, such as the making of assessments and delivery of notices to the taxpayer, and whether they comply with statutory requirements. This may provide taxpayers with welcome (and possibly unexpected) help in appeals before the tribunal in some cases.

Personal Tax

Any Tax Due For Unemployed Person?

If you are unemployed and have profits from a rental property as long as there is no other income to take into account then there could be no tax due.

Case Study: Anne

Anne owns a property and receives rental profits however Anne is unemployed and receives no other income. Over the year she will make a profit of £4,500 (i.e. £375 * 12), and this amount is within the annual personal tax allowance, which for the 2018-2019 tax year is £11,850.

Property Tax

Can I Offset Costs If I Have Lived In The Property?

The simple answer to this question is yes - both purchase costs and major refurbishment costs can be added to the acquisition costs of the property, to set off against the sale proceeds, to reduce the capital gain when the property is disposed of.

Case Study:

Louise buys her first home in August 1988 for £50,000. The purchasing costs are £700 and include solicitor's fees, survey fees etc. In May 1991, she has a conservatory built. The cost of this is £15,000. In June 1995, she moves in with her long-term boyfriend and rents her property out. She finally decides to sell her first home in June 2014, she is able to claim relief on the £700 purchasing costs and the cost of the conservatory against the capital gain.

Business Tax

The 'Dividend Allowance'

The 'Dividend Allowance ('DA')'' is not, in fact, an allowance, rather, it is a zero - rate of tax applied to the dividend income only, of all taxpayers regardless of their marginal tax rate. DTA applies whether the dividend is in case or 'in specie'. For 2018/19, the first £2,000 of dividend income is taxed at zero rate. Dividends in excess of this amount are taxed at the rates below, charged at the taxpayers' marginal tax rate:

Case Study:

Minimum Salary – Dividends Taxed At Basic Rate

Jane is the sole director of her company - JA Designs Ltd. In 2018/19, she receives a salary of £8,424 and a cash payment as a dividend of £50,000. The salary is covered by the personal allowance of £11,850 and as less than the Primary and Secondary Threshold of £8,424, no NIC will be payable either by Jane herself or the company. The calculation of tax payable is:

On salary:
Nil (balance of allowances available = £3,426 (i.e. £11,850 - £8,424)

On dividend:
£3,426 covered by balance of allowances taxed at Nil

'Dividend Allowance':
£2,000 x 0%

Basic rate band balance:
£2,437.50 (£32,500 (i.e. £34,500 - £2,000)) x 7.5%)

Balance of dividend:
£3,924.05 (£12,074 (i.e. £50,000 - £3,426 - £32,500)) x 32.5%)

Total tax on dividend = £6,361.55
Total personal tax = £6,361.55

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