

Case Alert

Defeat for Littlewoods at Supreme Court

Common-law claim for payment of compound interest defeated

Summary

Where VAT has been overpaid by a taxpayer as a result of a mistake, UK Law provides a regime whereby the taxpayer can claim interest. Section 78 of the VAT Act 1994 allows for the payment of interest in such cases but only on a simple interest basis.

A judgment in a case concerning ACT (Sempra Metals) some years ago held that compound interest was payable and not simple interest. Following that judgment, Littlewoods lodged a claim in restitution (a common law remedy) arguing that it was also entitled to the payment of compound interest.

The Supreme Court has found that such common law claims are not covered by Section 78, which provides the only legal remedy for the payment of interest. The Court has also ruled that it is up to the Member State to determine what constitutes an adequate indemnity under European law.

United Kingdom Supreme Court

After a long and arduous battle, and to the relief of HM Treasury, the UK's Supreme Court has finally brought an end to the issue of whether compound interest should be paid in cases where VAT has been overpaid.

Littlewoods had overpaid VAT to HMRC on various supplies due to a mistake. It claimed and was repaid the VAT along with statutory simple interest under the provisions of section 78 of the VAT Act 1994. The VAT refund was for £205 million and the s78 interest paid by HMRC amounted to £268 million. Following Sempra Metals, Littlewoods argued that it was entitled to the payment of compound interest and lodged a High Court claim arguing that it should be paid the difference between the s78 interest (calculated on a simple basis) and what would have been payable had interest accrued on a compound basis. This difference was in the region of £1.25 billion. Littlewoods was a 'test' case. According to the Court the amount of compound interest claimed by other taxpayers was in the region of £17 billion.

In a fairly short judgment, the court has unanimously confirmed that the only claims for payment of interest that can be entertained are those made under s78. A claim in restitution – a common-law remedy does not, somehow, trump s78 otherwise the purpose of s78 and the intention of Parliament at the time of enacting s78 would be defeated. It was clearly Parliament's intention at the time to provide a single statutory remedy. The Court also confirmed that when the Court of Justice referred to the provision of an 'adequate indemnity' – a requirement of EU law, this does not mean that the taxpayer will receive complete reimbursement. It is up to Member States to determine the term 'adequate indemnity' provided that it complies with the principles of effectiveness and equivalence. The UK has determined that simple interest provided by s78 provides taxpayers with such an adequate indemnity given that, as in the Littlewoods case, the amount of simple interest paid under that section far outweighs the amount of tax that was overpaid.

Comment – a major defeat for Littlewoods and for all of the other claimants sitting behind this case. After almost a decade of litigation, the Supreme Court's judgment brings an end to these proceedings. No doubt HM Treasury will be breathing a huge sigh of relief.

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