

Newsalert

EU Direct Tax Group

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The EUDTG is one of PwC's Thought Leadership Initiatives and embedded in the International Tax Services Network. The EUDTG is a pan-European network of EU tax law experts and provides assistance to organizations, companies and private persons to help them to fully benefit from their rights under EU law.

European Commission requests the UK to amend its rules regarding the former maximum 6 year period for common law claims in respect of direct tax paid in contravention of the EC Treaty/TFEU.

On 30 September 2010, the Commission issued a Press Release requesting the UK to amend its rules regarding the introduction of effectively a maximum 6 year time limit (as a consequence of s107 FA 2007) for common law claims for the repayment of taxes under the care and management of the Commissioners of Inland Revenue.

S107 FA 2007 was one of two pieces of legislation (the other being section 320 FA 2004) which were introduced by HMRC (with retrospective effect) to seek to prevent the decision of the Courts in Deutsche Morgan Grenfell (DMG) from applying to common law claims against HMRC. DMG had determined that for claims made on the basis of mistake of law, the start of the 6 year limitation period could be postponed until the discovery of the mistake or when the mistake could have been discovered with reasonable diligence.

This section was enacted to block High Court claims begun before 8 September 2003, unless such claims benefited from a favourable judgment of the House of Lords given before 6 December 2006.

The significance of the Commission infringement proceedings is that it suggests that the parallel and much wider earlier s320 FA 2004 blocking provision iro common law claims made on or after 8 September 2003 is also now more likely to be found to be in contravention of the M&S Teacakes case (C-62/00) principle that such measures are only lawful if an adequate prospective transitional period is given.

This is of particular relevance to the FII GLO case, for which leave to appeal to the Supreme Court is currently pending, including on the limitation issues such as s107 FA 2007 and s320 FA 2004.

From 1 April 2010, it is no longer possible to make a common law mistake claim for direct tax. Although a year's notice was given, if ultimately the UK courts and/or the ECJ hold that compound interest is an essential element of a full San Giorgio remedy of an unjustifiable breach of EU law, and such interest cannot be read down into the statutory simple interest regime, then the blocking of common law mistake claims and therefore of compound interest may itself be unlawful.

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