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## Client Briefing Note

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### Are you due money from the Inland Revenue?

The current financial dilemmas are affecting everyone, but there may be a possibility for some businesses to get a repayment of VAT from the Inland Revenue if they have overpaid VAT in the past and it has not been corrected.

In recent years a VAT registered business that has under-claimed VAT, has been restricted to only claiming back for the last three years. However earlier this year the House of Lords ruled that the three year cap, introduced in 1997, was invalid. This means that a business can claim for VAT under-claimed in the last 24 years, from 1973 when the UK joined the EU. Because the opportunity is there to go back so far, even small amounts each year could add up to a substantial repayment being made.

It's time to dig through all your old records. Many businesses may have destroyed records after the statutory retention period has passed, but nonetheless it is worthwhile looking through old VAT records, correspondence you may have received following VAT visits, and any correspondence you have from your accountant. The Inland Revenue do not need to see the original documents, as long as you have some sort of evidence showing the amount of underpayment due.

This opportunity is only available for a short period, and all claims must be made by March 31 2009. Therefore get digging!

### VAT trap for housebuilders

In the current market, many housebuilders are having difficulty selling the houses currently under construction, and have decided to temporarily let their dwellings before selling them in the future.

Problems may arise however as a result of the VAT treatment differing for the two outcomes, selling or renting the property. Renting out the property may affect the VAT that can be recovered, and a "partial exemption" calculation is required to determine how much VAT can be recovered. Many housebuilders will not be effected by this as there is a minimum limit, but it is important to check to avoid errors arising.

Exceptionally, HMRC will allow a builder that does not currently operate a partial exemption method, to adopt instead a 'simple check for de minimis'. This simple check is based on the expected time period he will let his building as a proportion of the economic life of that building, which for VAT purposes is ten years. His exempt input tax is determined by applying the proportion to his total input tax. Provided his exempt input tax does not exceed £625 per month on average (up to £7,500 per year), and is not more than half of his total input tax, then his exempt input tax is de minimis and he can recover it in full. Do remember that the 'de minimis' test applies to the total input tax incurred including for example any input tax on general overheads such as bookkeeping costs.

If you fail this check, you may be required to adjust the VAT previously recovered on your submitted VAT returns, and/or restrict the VAT to be recovered on your current and future VAT returns.

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