

Property & Construction

June 2008



VAT Update

Option to Tax - New rules with effect from 1 June 2008

After a wait of several years for a revision to the regulations was it worth it?

The answer is almost certainly yes but as always great care should be exercised when entering into any transaction involving land and property.

Here is a summary of the changes:

Extent of the option

HMRC's policy had been to treat land and buildings separately which was found to be incorrect following a case in the European Court.

From now on if a business opts to charge VAT on land and subsequently builds on it, the option will automatically apply to that building.

However HMRC have introduced a new provision to maintain its previous policy and now a business will be able to choose if a previous option will apply to a new building or not providing the new building is not within the curtilage of an existing building. There are rules regarding what you have to do to exclude the building from the option.

Also a transitional rule has been introduced for options notified pre 1 June 2008 where it was clear that it related to the building only. If the building is demolished at any time in the future the option may be treated as revoked.

Revoking an option to tax

It has been known for a long time that August 2009 would mark the point in time when the first options that were made back in 1989 could be revoked (the 20 year rule).

HMRC have now released details of the conditions that must be satisfied for a business to be able to revoke an option under this rule.

The three month cooling off period for new options has been extended to six months but a number of conditions must still be satisfied.

A further change is that an option will automatically lapse once an interest in land or buildings has

not been held for six years although this will not apply if the opter has been a member of a VAT group and a so called relevant associate has left the VAT group with a relevant interest in the property.

Real Estate Elections (“REE”)

This is a new facility to replace the previous Global option that was removed some years ago.

This will be a much more flexible arrangement where a list of properties can be added to or amended and existing options can be converted into Real Estate Elections.

A REE will only apply once an interest in land or buildings is actually acquired.

Therefore if an option is required to be made before an interest is acquired or the effective date is earlier than the day on which an interest is acquired a separate notification must be made.

Great care needs to be exercised when notifying a REE to ensure that any land or buildings already owned over which an option is not required are not unwittingly included in the REE.

New Certificate procedure

In certain circumstances an option to tax on land and buildings can be disapplied because of a purchasers intended use for a qualifying purpose.

This can cause serious problems for vendors who need a sale to be subject to VAT to avoid having to repay VAT on the purchase/development or other costs.

Sales of land to Housing Associations have been a particular problem although in certain circumstances this can be avoided.

To assist vendors, purchasers will now have to provide a Certificate before the price is legally fixed e.g. by exchange of contracts, that should give vendors a chance to negotiate the sales price to take account of any irrecoverable VAT or enter into an arrangement to avoid the problem.

Group registrations

New rules have been introduced so that in certain circumstances a former member of a VAT group will either be automatically released from an option or can apply to be released.

New option forms

There are now a total of nine new forms including the Certificates referred to above.

Construction Industry Scheme Update

HMRC have introduced a sensible amendment to the CIS regulations with regard the compliance conditions that need to be met by a contractor/sub-contractor on applying for gross payment status. This amendment to the regulations comes into force from 3 June 2008. It will mean that if a contractor/sub-contractor has not paid (or has paid late) an amount up to £100, HMRC will now treat this as having satisfied obligations under the CIS gross payment conditions. In practice this will stop the unnecessarily harsh practice of removing gross payment status even where a relatively minor failure has taken place such as late payment of a £100 penalty.

If you would like further information on the above issues please call your usual contact or telephone 0800 0665 894 and speak to:-

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