

Option to Tax Clarification

Customs have recently clarified their policy in respect of their discretion to accept a belated notification of an option to tax on land and buildings. They take the opportunity of highlighting the two distinct stages of the process which are 1) making the election, and 2) notifying Customs.

Customs have explained the distinction between a belated notification of an option and a belated or retrospective option. They say there has been an increase in the number of applicants seeking belated or retrospective options as opposed to late notifications i.e. more people are trying to alter the effective date from which VAT should have been chargeable on property/land as opposed to the numbers advising Customs late that they have made an election and have been charging VAT from that.

The "moving of the goalposts" with regard to the effective date of an option and any attempt to move it back to a previous date is monitored very closely by Customs and is regarded as potential VAT avoidance if there are no valid reasons for the request. Proof that VAT has been charged from a particular date and was always intended to be charged from that date will be required if Customs are to be satisfied that they can exercise their discretion in allowing retrospection.

The option to tax is an area fraught with difficulty and costly mistakes are often made as decisions are taken without regard to the correct VAT position. IM VAT Solutions – Construction has a comprehensive section dealing with the option to tax and subscribers are advised to consult it as part of the initial feasibility study of any potential land transaction.