

Land and Property - Option to Tax

The changes to Schedule 10 VATA 1994 have been set out in Revenue and Customs Brief 24/08 and Information Sheet 03/08. There are certain major changes to the Option to Tax of which all property businesses and their advisors should be aware. In particular, we draw your attention to the following:

- **Real Estate Elections (REE)** – This is a new class of the Option to Tax where future acquisitions of land and property are automatically opted, although it will be possible to request that an Option to Tax for a particular property is disapplied. A REE cannot be revoked. Before choosing to make a REE, businesses should consider the impact of HMRC's requirements to retain records under this election. The new law also contains some (flexible but complex) rules as to how to manage the options for existing land, opted and un-opted.
- **Revocation** - There are new rules regarding the revocation of an option to tax. Generally, the rule is that an option cannot be revoked for twenty years. However, there is an automatic revocation where no interest has been held in a property for six years.
- Also, having made an option to tax a business now has a six months 'cooling-off' period in which to revoke the option. However, there are strict conditions which must be complied with.
- Where an Option to Tax is to be made in respect of land, the option will now also apply to buildings on the site and any future buildings to be built on that site. However, it will now be possible to exclude a newly constructed building (and land within its curtilage) from an existing option to tax land.
- It is HMRC's view that current (pre 1 June 2008) options to tax land only (and not buildings thereon) will now automatically cover buildings as well. This may mean some previously exempt rents becoming liable to VAT.
- If an option to tax was made for a building and not the land, HMRC has introduced a transitional arrangement whereby a business may choose to treat the option as revoked when the building is demolished. However, you must retain commercial evidence that this choice has been made from 1 June 2008. There remains some doubt under the new legislation as to the status of an option which was made to tax a building and whether the option flows through to a new building following the demolition of the opted one.
- The option to tax rules have been extended to cover an area of land (e.g. City of London) rather than single properties. A business might experience difficulties in the future with regard to the revocation of such an option as all individual property interests held within that area must meet the revocation conditions. A REE might be the preferable option.
- There are new rules permitting intermediaries to be excluded from the effect of an option to tax where a commercial building is being sold via the intermediary to a person for conversion for a relevant residential purpose. The intermediary can issue a certificate to the vendor to require the vendor to 'disapply' his option to tax.

This is a brief list of some of the main areas of change but there are both potential pitfalls and opportunities for businesses within these new regulations. If you would like 4 Eyes Ltd to review the impact of the changes upon your current property portfolio, or to provide further advice or guidance generally, please contact us.