

## **Failed Option to Tax**

### *Cobel Ltd (20976)*

A VAT registered taxpayer purchased a commercial property to rent out for retail purposes. Just before completion, the taxpayer was informed the vendor was to charge VAT. The taxpayer contacted the National Advice Service to ask whether the VAT on purchase is recoverable. He cannot remember (after 5 years) the precise advice but he said he was told nothing that frightened him or lead him to believe that he would not be able to claim the VAT. Following the purchase the taxpayer recovered the VAT on the purchase but no VAT was charged on the rent invoices.

During a routine control visit, the officer identified the problem and raised an assessment for the claimed input VAT. The taxpayer's new accountant argued that his client was misled by the National Advice Service and they made an application for belated notification of the option to tax. HMRC rejected the application on the basis that a valid and genuine decision to opt had not been made. The Tribunal considered that the taxpayer was ignorant of the process of opting to tax and therefore he could not have made a decision to do something which he did not know he had to do. The appeal was dismissed.

*This case demonstrates the complexities of the option to tax. Readers with property VAT queries are advised to refer to VAT Property Solutions which is available free of charge on our website [www.4eyesltd.co.uk](http://www.4eyesltd.co.uk). It is also essential when using the National Advice Service to make a file note of the conversation and to record the unique reference number that will be offered.*

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