

VAT and opting to tax - some changes

On 1 June 2008 the Value Added Tax (Buildings & Land) Order came into force. This order updates the existing provisions regarding the option to tax land and buildings.

Background

The default VAT position is that income and expenditure relating to land and buildings is VAT exempt. However, businesses that let property can elect to forego this exemption - that is, they can opt to charge VAT on rental and other income they receive from the property. The effect of this is that they can then recover input tax they have incurred in respect of the property.

An option to tax cannot be revoked for 20 years. The result is that when the building is bought and sold during that 20 year period VAT must be charged on the transaction (unless another exemption applies). The first revocations will be possible from August 2009. This will benefit landlords whose tenants cannot recover the VAT on the rent.

The Value Added Tax (Buildings & Land) Order

The order introduces a number of changes to the option to tax regime.

- The date that permission to charge VAT is sought is now the effective date.
- Taxpayers can now appeal if HMRC refuse an application to elect to charge VAT.
- The cooling-off period following an application to apply VAT has been extended from three months to six months.
- A company that leaves a group is not tainted by the option to tax unless it had an interest in the property, a right to any proceeds of the property or is connected to a person with such an entitlement.
- If the building is demolished the option remains attached to the land and attaches to any future building built on it.
- If a commercial building is converted into dwellings, the purchaser or tenant must issue a certificate to disapply the option.

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trading disclosures

With nearly 2.5 million companies incorporated in the UK, the Government decided that it was necessary to increase the amount of information about a company made available to all those who have, or are contemplating having, dealings with it. The Companies (Trading Disclosures) Regulations 2008 (Regulations) comes into force on 1 October 2008 and shall replace the relevant provisions of the Companies Act 1985 and the Business Names Act 1985 relating to the trading disclosure requirements on all UK companies.

The Regulations prescribe the following requirements on companies from 1 October 2008:

- The standard of legibility of displays and disclosures;
- A requirement to display the registered name at the registered office, place of inspection of documents and at other business locations. However, in recognition of the large number of small family-run companies, there is no requirement to display the registered name at premises which are used primarily for residential purposes. There is also no such requirement for premises which are shared by several other companies, such as a firm of lawyers acting as the registered office for several clients;
- A particular manner of display of the registered name.
- The manner in which the registered name should appear on communications, such as applications for licences to carry on a trade or activity, written orders for goods or services, and written demands for payment;
- Further particulars to appear in business letters, order forms and websites;

- Disclosures of names of directors. A company may not cherry-pick which of its directors' names appears on its business letters: where the name of one director appears in a letter, other than in the text or as a signatory, the names of all directors should also be displayed;
- Disclosures relating to the registered office and inspection place in response to written requests to the company for that information.

Companies should also be aware of the proposed amendments to the Regulations due to come into force on 1 October 2009. The amendments shall, among other things, remove the need to display a sign at company premises (which are not the registered office or place for inspection of documents) of a company whose activities put its directors at risk of violence or intimidation.

The consequences of non-compliance can be costly. A company committing an offence in relation to its trading disclosure obligations could be subject to a fine which, as at June 2008, stands at up to £1,000. Therefore prudent companies will be taking appropriate steps now in order to avoid non-compliance when the Regulations come into force on 1 October 2008.

For more information about the Regulations and future amendments, or to ensure that your company is, and continues to be, compliant please contact James Thorby on jt@cbglaw.co.uk or on 020 7436 5151.