

Autumn 2008

## Option to Tax (OTT) – Welcome Changes!

The new rules came into force on 1 June 2008 and have simplified the complex rules and addressed some of the practical issues which had arisen over time. The original Schedule 10 (introduced in 1989) had become very complex, due to many layers of anti-avoidance legislation being added to the original draft over a number of years, to combat VAT planning arrangements and close loopholes. The end result was a piece of legislation which was in parts incomprehensible! The new Schedule 10 is written in much clearer language and brings a number of welcome changes following detailed consultation with businesses.

The new rules cover:

- Changes to the scope of the option.
- Obtaining permission prior to opting to tax.
- Certificates for disapplication of the OTT when selling land to Housing Associations and for certain residential conversions.
- New rules for intermediaries supplying buildings to be converted into dwellings.

- Real estate election – for businesses with a number of properties.
- Opted properties held in a VAT group.
- Cooling off period and revoking the OTT. The earliest date to revoke an option is 1 August 2009.
- New appeal rights.
- Other minor changes requested by businesses.

There are now also a number of new forms available for download from HMRC's website for specific circumstances. A revised Public Notice 742A (parts of which have the force of law) outlines the changes in detail.

Businesses which have a portfolio of opted properties should review their internal procedures, in light of the new rules.

## Online VAT registration - Update

HMRC have recently updated the online VAT Registration form. The changes provide clearer guidance on how to complete the form online. Each screen now has a sub-heading with certain additional questions which must be answered.

This should reduce the number of questionnaires sent out by HMRC to obtain additional information. These questionnaires undoubtedly delayed the process quite significantly.

The new changes should result in faster processing of the applications. On that note generally, applying for a VAT registration online is much quicker than the paper application process. From current experience, a VAT number can be obtained online within approximately 7 to 10 working days, provided that all the necessary information and evidence is sent promptly to HMRC.

The well publicised long delays in obtaining VAT numbers have now been resolved by HMRC.

### In this issue:

- **Option to Tax (OTT) - Welcome Changes!**
- **Online VAT registration - Update**
- **VAT errors - A new regime**
- **VAT Refunds – Don't miss out!**

# VAT Errors - A new regime

---

The new thresholds will apply to accounting periods beginning on or after 1 July 2008. The limit for adjusting for net VAT errors on the next return has increased from £2,000 to the greater of £10,000 and 1% of net turnover (Box 6 of the VAT return), capped at £50,000. Any errors which exceed this threshold have to be separately disclosed to HMRC.

A new penalty regime has also been introduced and will apply to all VAT returns with a due date on or after 1 April 2009.

The new regime has a range of penalties depending upon whether errors are careless, deliberate or deliberate and concealed. The maximum penalties applied to the potential lost revenue for each category will be 30%, 70% and 100% respectively. All businesses are expected to take "reasonable care" when dealing with their VAT

affairs. However, larger and more complex businesses will be expected to take a higher degree of care. This is likely to lead to differing opinions on how to quantify the required "degree of care".

Penalties can be substantially reduced if there is an unprompted disclosure of the error to HMRC. This means that the disclosure is made at a time when the business has no reason to believe that HMRC has discovered, or is about to discover, the error. The quality of the disclosure will also be taken into account when calculating the level of a penalty. This means that the more a business assists HMRC in the disclosure process, the higher the potential reduction in the level of the penalty.

Penalties can also be suspended for a period of up to 2 years. The conditions for suspension will be agreed with HMRC.

## VAT Refunds – Don't miss out!

---

Following the House of Lords decision in the case of Fleming and Condé Nast, the three year capping rules introduced in 1997 were deemed to have been unlawfully implemented, due to the lack of a transitional period for claims to be made. These decisions have resulted in a new transitional period to 31 March 2009. Businesses should now review any prior claims which were capped and also check if there are any areas where additional claims can now be made. Interest will also be payable.

Claims can be made for output tax overpaid in the period to 4 December 1996 and input tax underclaimed for the period to 1 May 1997.

This is a unique opportunity as claims can be made by most businesses. Certain sectors have made substantial claims as a result of changes in legislation or HMRC's policy during the period prior to 1996/7.

Examples are:

- Motor dealers/Garages
- Charities
- Educational establishments
- Retailers
- Theatres.

However, most businesses are likely to have areas where input tax has not been claimed e.g. staff expenses such as entertainment/mileage claims.

Many businesses have not submitted claims due to a lack of the appropriate VAT records. This does not prevent a business from submitting a claim. HMRC will accept estimated claims based on other records such as financial statements and any other available data.

**For further information please call your normal contact at any of the offices below.**

**St. Albans**  
Gloucester House  
72 London Road  
St. Albans  
Hertfordshire  
AL1 1NS  
**Tel: (01727) 869141**  
Fax: (01727) 869149  
stalbands@mercerhole.co.uk  
DX: 6121 St. Albans

**London**  
International Press Centre  
76 Shoe Lane  
London  
EC4A 3JB  
**Tel: (020) 7353 1597**  
Fax: (020) 7353 1748  
london@mercerhole.co.uk  
DX: 469 London/Chancery Lane

**Milton Keynes**  
Silbury Court  
420 Silbury Boulevard  
Central Milton Keynes  
MK9 2AF  
**Tel: (01908) 605552**  
Fax: (01908) 677433  
miltonkeynes@mercerhole.co.uk  
DX: 54467 Milton Keynes

**Northampton**  
300 Pavilion Drive  
Northampton Business Park  
Northampton  
NN4 7YE  
**Tel: (01604) 669330**  
Fax: (01604) 702000  
northampton@mercerhole.co.uk

This newsletter is a short selection of items which may be of interest extracted from complex legislation. Further specific advice on any matter referred to must be taken at all times. No part of this publication may be reproduced without the prior permission of Mercer & Hole. The information is given for general guidance only and publication is without responsibility for loss occasioned to any person acting or refraining from

acting as a result of the information given.

Registered by the Institute of Chartered Accountants in England & Wales to carry out company audit work. Financial Services provided by M&H LLP trading as Nightingale Associates. Nightingale Associates is authorised and regulated by the Financial Services Authority.