
VAT: SIMPLIFYING THE PROCEDURE FOR OPTING TO TAX LAND AND BUILDINGS

Who is likely to be affected?

1. Any business that wishes to opt to tax (i.e. to apply VAT to supplies in relation to) land and buildings on which they have made previous exempt supplies.

General description of the measure

2. The measure simplifies the procedure for opting to tax supplies of land and buildings, in respect of which taxpayers have made previous exempt supplies. It will be achieved through the replacement of an existing automatic permission condition (APC) for taxpayers that would otherwise need to seek permission from HM Revenue & Customs (HMRC) before opting to tax land or buildings. In order to further reduce the need for taxpayers to contact HMRC when opting to tax such supplies, HMRC will withdraw two related informal Extra-statutory Concessions, and partially regularise one of them.

Operative date

3. The new APC will have effect on and after 1 May 2009. The informal concessions will continue to apply for a further 12 months until 30 April 2010, after which, one will continue, in part, while that area of law is reviewed and the remainder will be withdrawn.

Current law and proposed revisions

4. Taxpayers that have previously made exempt supplies of land and buildings and now wish to opt to tax them require HMRC's formal permission to do so, unless they meet any one of four automatic permission conditions. This measure introduces a new APC from 1 May 2009, which should apply to more taxpayers than the APC which it replaces. This will allow more taxpayers to opt to tax without seeking HMRC's prior permission.

5. The current APCs are set out in tertiary legislation and published in Notice 742A – Opting to Tax Land and Buildings at section 5.2 in Box D. Condition 3 is to be replaced by the new APC.
6. The new APC legislation and associated guidance (also covering the informal concessions) will be published shortly in an Information Sheet.
7. HMRC currently operates two informal concessions in relation to the option to tax. One applies when a taxpayer registers for VAT as a result of opting to tax and the other applies for taxpayers who are already VAT registered who opt to tax a property on which previous exempt supplies have been made. These two informal concessions allow taxpayers on opting to tax to recover more VAT than would be possible if a strict interpretation of the VAT recovery rules were applied.
8. These concessions require taxpayers to contact HMRC in order to agree the VAT that may be recovered; their operation complicates the procedure for opting to tax. One of these concessions, and some parts of the other concession, have no vires in EU or UK law, and will therefore be withdrawn on 1 May 2010.

Further advice

9. If you have any questions about this change, please contact the National Advice Service on 0845 010 9000. Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk