

## Option to Tax – VAT Issues

### Issues

- An option to tax can only be revoked within the first six months (under limited conditions) or after 20 years. It is therefore effectively a decision which lasts 20 years. When deciding to opt, property owners need to consider the input VAT at stake and weigh this up against the potential disadvantages.

- The main potential disadvantages are:
  - The tenant/occupier may be unable to recover any VAT charged to it on sale/rental. (The option to tax covers the entire property).
  - VAT cash flow;
  - Administration – opting to tax, VAT returns, capital goods scheme adjustments and potential VAT registration;
  - Stamp Duty Land Tax is charged on the VAT inclusive price.

For further advice concerning any of the issues raised, please contact one of our key individuals detailed below. Information on other property tax related topics can also be found on our website at <http://bankingtaxfinance.davislangdon.com>

### Opportunities and how we can help

With careful planning, some of which is simple and unaggressive, some very complex, many of the disadvantages of the option to tax can be overcome. For example, we can advise you on the possibility of :

- Delaying the decision to opt to tax by incurring and recovering VAT in a separate company pending a decision;
- Separating out the interests in a property to enable opting to tax some floors and not others, e.g. to opt to tax retail units but not the floors let out to a VAT - averse tenant, e.g. insurance company;
- Managing VAT cash flow on sale and sometimes even securing a VAT cash flow advantage;
- Removing the requirement to request permission to opt to tax by transferring the property to another entity which has not made exempt supplies of the property;
- Removing an option to tax, either by revocation or by using the anti-avoidance rules for planning.

The above should be considered carefully and professional advice sought as there are a number of potential pitfalls and it is necessary to consider whether or not any of the planning would be discloseable to HMRC under the disclosure rules.

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