Foreword

This notice cancels and replaces Notice 742A (June 2008). It also cancels Information Sheets 06/09, 14/09, 02/10 and 08/10. Details of any changes to the previous version can be found in paragraph 1.2 of this notice.

The following areas of this notice have the force of law under Schedule 10 of the VAT Act 1994.

The text within boxes in paragraphs 2.7.5, 3.4.2, 3.6.2, 5.6, 6.3.6, 6.3.8, 8.1.4, 8.1.6, 8.3.4, 8.3.7 and 14.9, which explains how to make a notification or application and what information it should contain.

The text within boxes A-L in paragraphs 2.7.2, 3.4.3, 3.6.3, 5.2, 6.3.5, 8.1.2, 8.3.3, 13.8.6, 13.9.1, 14.8.3 and 14.9 and 14.12.

Example:

The following statement has the force of law.
Notification of the exclusion of a new building from the effect of an option to tax (for the purpose of paragraph 27 of Schedule 10 to the VAT Act 1994) must be made on form VAT1614F and must contain the information requested on that form.

Further help and advice

If you need general advice or more copies of HM Revenue & Customs notices, please phone the VAT Helpline on 0845 010 9000. You can call between 8.00 am and 8.00 pm, Monday to Friday.

If you have hearing difficulties, please phone the Textphone service on 0845 000 0200.

If you would like to speak to someone in Welsh, please phone 0845 010 0300, between 8.00 am and 6.00 pm, Monday to Friday.

All calls are charged at the local rate within the UK. Charges may differ for mobile phones.

Other documents on this or related subjects

Notice 742 Land and property

Notice 700 The VAT Guide

Notice 708 Buildings and construction

Notice 701/1 Charities

Notice 701/20 Caravans and houseboats

Notice 700/1 Should I be registered for VAT?

Notice 700/2 Group and divisional registration

Notice 706/2 Capital goods scheme

Notice 706 Partial exemption

Notice 700/11 Cancelling your registration

1. Introduction

1.1 What is this notice about?

This notice explains the effect of an option to tax and will help you to decide whether to exercise that option. It will tell you whether you need permission from us before you can opt to tax, and how to notify us of your decision. Prior to 1 June 2008, the option to tax was also referred to as the election to waive exemption. From 1 June 2008, it is only referred to as the option to tax.

We recommend that you also read Notice 742 Land and property which gives basic information relating to supplies of land.

This notice assumes that you have a working knowledge of basic Value Added Tax (VAT) principles, as outlined in Notice 700 The VAT Guide.

This notice is available both on paper and on our internet website, go to **www.hmrc.gov.uk**.

1.2 What's changed?

This notice replaces the June 2008 edition of Notice 742A Opting to tax land and buildings and incorporates VAT Information Sheets 06/09, 14/09, 02/10 and 08/10, which are now withdrawn. The notice has been revised and provides additional guidance on recent changes to the law. The main changes are:

- allowing 30 days in which to notify an exclusion of a new building from the effect of an option (see paragraph 2.7.4)
- changes to when a body corporate ceases to be a relevant associate (see paragraph 6.3.3, third bullet point)
- anti-avoidance provisions to prevent automatic revocation of an option to tax when taking out a real estate election (see paragraph 14.8.2) or when a lapse of six years occurs since a relevant interest has been held in the opted property (see paragraph 8.2.2)
- changes to the conditions for revoking an option to tax within the six month 'cooling off' period (see paragraph 8.1)

- changes to the conditions for revoking an option to tax where more than 20 years have elapsed (see Box G at paragraph 8.3.3)
- changes to the time an option is revoked where prior permission is given by the Commissioners, (see paragraph 8.3.9)
- an amendment to 'the connected persons' test (see paragraph 13.7)
- an updated definition of occupation for the purpose of the anti avoidance measures (see paragraph 13.8) and a new 10% occupation rule' (see paragraph 13.8.4)
- updated guidance on real estate elections (see section 14)
- defining when acquisition of a property takes place for the purpose of a real estate election (see paragraph 14.5).

1.3 What effect does an option to tax have?

Supplies of land and buildings, such as freehold sales, leasing or renting, are normally exempt from VAT. This means that no VAT is payable, but the person making the supply cannot normally recover any of the VAT incurred on their own expenses.

However, you can opt to tax land. For the purposes of VAT, the term ‘land’ includes any buildings or structures permanently affixed to it. You do not need to own the land in order to opt to tax. Once you have opted to tax all the supplies you make of your interest in the land or buildings will normally be standard-rated. And you will normally be able to recover any VAT you incur in making those supplies.

1.4 Who should read this notice?

You should read this notice if you make, or intend to make supplies of any interest in land, buildings or civil engineering works.

1.5 Note about terminology used in this notice

For the purpose of this notice:

- '**property**' means land (including buildings and civil engineering works), and
- an '**interest in**' property means any interest in, right over or licence to occupy property.

1.6 What law does this notice cover?

The area of VAT law which specifies the supplies of land and buildings that are exempt from VAT is Group 1 of Schedule 9 to the Value Added Tax Act 1994. The law detailing the option to tax is found in Schedule 10 to the Value Added Tax Act 1994.

Some areas of this notice have force of law. Such areas are identified in the foreword to this notice.

2. The scope of an option to tax

2.1 What am I opting to tax?

You are opting to tax land. For the purposes of VAT, the term ‘land’ includes buildings. When you opt to tax you can specify an area of land or a ‘building’. Commonly, you will specify a ‘building’ because that is the prominent feature of the land.

- If you specify a building, the option to tax will continue to apply to the land on which the building stood if the building is demolished and to any future buildings constructed on the land.

- If you specify land, the option will apply to any buildings on the land and future buildings constructed on the land.

In both circumstances, you can specifically exclude new buildings from the effect of an option to tax if you wish to (see paragraph 2.7). Further details about the scope of an option to tax are in paragraph 2.4.

2.2 What constitutes a ‘building’?

Usually it will be clear what constitutes a ‘building’, for instance an office block or a factory. However in some instances the law treats more than one building as being a single ‘building’ for the purpose of the option to tax. These are:

- buildings that are linked, or if not yet built are planned to be linked. See paragraph 2.3 for more information on links, and

- a complex consisting of a number of units grouped around a fully enclosed concourse, such as a shopping mall.

2.3 What is a ‘link’?

A 'link' is an internal access or a covered walkway between buildings the purpose of which is to allow movement of goods and people.

It does not include:

- a car park, either above or below ground
- a public thoroughfare, or
- a statutory requirement, such as a fire escape.

2.4 What is covered by the option to tax?

We use a number of basic principles to determine how far your option to tax extends over the land and associated buildings.

Option	**Principle**
Land	Your option to tax covers all the land, and any buildings or civil engineering works which are part of the land.
	Your option to tax will cover the discrete area of land that you specify, and will not affect any adjoining land.
	If you construct a new building on land that you have opted, the building will be covered by the option to tax unless you notify us that you wish to exclude the building from the effect of the option (paragraph 2.7 explains how to do this).
Buildings	Your option to tax will cover the whole of the building, and the land under the building and within its curtilage (the land immediately around the building including, for example, forecourts and yards). If your interest in the building is restricted to one floor, your option to tax will still cover the remaining floors of the building.
	If the building stands in a large area of land, the extent of the curtilage (or how far the option to tax extends over the land) depends on how far the services of the building can be utilised. For example, a racecourse grandstand may provide electricity and shelter for stalls, or other facilities, within its peripheral area. An option to tax on the grandstand would extend over the whole area of land that uses the benefits. Equally, an option would normally extend to an area adjacent to a building which is put to a use that is ancillary to the use of the building, such as car parking.

	If the building is demolished or destroyed, your option to tax will still apply to the land on which the building stood and to any future buildings that are constructed on the land. However, if • you opted to tax before 1 June 2008, and • it is clear from your notification that the option was made on the building only (for example, you specified in your notification 'Building at 1 High Street…') you can, if you wish, treat the option as revoked once the building is demolished. You do not need to notify us before revoking but you should retain evidence in case this is requested in the future.

2.5 Options exercised before 1 March 1995

Before 1 March 1995, slightly different rules applied to determine the scope of an option to tax. These rules will still apply to you if, before 1 March 1995, you opted to tax

- agricultural land, or
- units within a parade, precinct or complex (such as a row of shops or a retail precinct).

If you have any queries about the scope of an option to tax exercised before 1 March 1995 in relation to agricultural land or a parade, precinct or complex, you should contact the Option to Tax National Unit (paragraph 4.2.3 shows how you may contact them).

2.6 What if I make changes to a building after I have opted to tax?

If you make changes to a building after you have opted to tax you will need to consider whether your option to tax covers those changes. This table below sets out the basic principles for the most common changes made.

Change	**Principle**
Extensions	If you have opted to tax a building and you extend it at a later date, upwards, downwards or sideways, your option to tax will apply to the whole of the extended building.

Linked buildings	If prior to their completion buildings are linked by an internal access or covered walkway (see paragraph 2.3 for more information on what is meant by a 'link') they are treated as a single building and an option to tax will apply to both parts. If a link is created after both buildings are completed, the option to tax will **not** flow through with the link.
Forming a complex	If you have a group of units that have been treated as separate buildings for the option to tax and you later decide to enclose them so as to form a complex which meets the description in paragraph 2.2, the option to tax will not spread to the un-opted units.

2.7 Excluding a new building from the effect of an option to tax

2.7.1 In what circumstances can I exclude a new building from the effect of an option?

If you construct a new building on opted land (and that building is not within the curtilage of an existing building - for the meaning of 'curtilage', see paragraph 2.4) you may exclude the new building (and land within its curtilage) from the effect of the option to tax by notifying us of the exclusion.

If you decide to do this, the new building will be permanently excluded from the effect of your existing option to tax. But you may, if you wish, make a fresh option to tax in the future, subject to obtaining permission from us if appropriate (see section 5).

If you choose to exclude a new building from the effect of an option to tax this may affect your entitlement to recover input tax on your costs. See section 9 for further information about input tax.

2.7.2 What is the earliest time that I can exclude a building?

The earliest time that you can exclude a building from the effect of an option to tax is when construction begins. The time when construction of a building begins, for this purpose, is determined by Box A below.

Box A

The boxed text below has the force of law.
The time at which the construction of a new building is taken to begin for the purposes of excluding it from the effect of an option to tax (for the purposes of paragraph 27(7) of Schedule 10 to the VAT Act 1994).
Construction of a building begins when it progresses above the level of the

building's foundations.

Usually, a building will have progressed above the level of the foundations at the point at which the first brick is laid.

2.7.3When does exclusion have effect?

Exclusion has effect from the earliest of the following times:

- when a grant of an interest in the building is first made
- when the new building, or any part of it, is first used, or
- when the new building is completed.

2.7.4When must I notify the exclusion?

An exclusion is only valid if it is notified to us. Notification must be made after construction has begun (see paragraph 2.7.2) and, normally, within 30 days of the date the exclusion has effect (see paragraph 2.7.3). A longer period may be allowed in exceptional circumstances.

2.7.5How do I notify you?

The following statement has the force of law.
Notification of the exclusion of a new building from the effect of an option to tax (for the purpose of paragraph 27 of Schedule 10 to the VAT Act 1994) must be made on form VAT1614F and must contain the information requested on that form.

You can download form VAT1614F from our website, go to www.hmrc.gov.uk, or obtain it from our VAT Helpline on 0845 010 9000.

3. Supplies not affected by an option to tax

3.1 What supplies are not affected by an option to tax?

There are some supplies where, even if you have opted to tax, the option will not apply. **If you make any of the supplies described in this section your supplies will remain exempt from VAT even if you have opted to tax. This may have an impact on how much input tax you can claim or make it necessary for you to repay input tax that you have previously claimed.**

The table below summarises supplies on which the option to tax will have no effect and indicates where certificates are required.

Summary of supplies not affected by the option to tax

Type of supply	Paragraph number (see below)	Evidence required
1. Buildings designed or adapted and intended for use as dwellings (for example existing houses and flats).	Paragraph 3.2	No certificate required. Recommend: evidence of intended use retained.
2. Buildings designed or adapted and intended for use for relevant residential purpose.	Paragraph 3.3	No certificate required, but purchasers or tenants must inform supplier of intended use. Recommend: Written confirmation of intended use is retained by supplier.
3. Buildings for conversion into dwellings etc. (for example pub conversions).	Paragraph 3.4	Certificate (VAT1614D) must be given by recipient and retained by supplier.
4. Buildings intended to be used for a relevant charitable purpose.	Paragraph 3.5	No certificate required, but purchasers or tenants must inform supplier of intended use. Recommend: Written confirmation of intended use is retained by the supplier.
5. Land sold to a relevant housing association.	Paragraph 3.6	Certificate (VAT1614G) must be given by the recipient and retained by the supplier.
6. Land sold to an individual for construction of a dwelling	Paragraph 3.7	No certificate required.
7. Pitches for residential caravans.	Paragraph 3.8	No certificate required.
8. Moorings for residential houseboats.	Paragraph 3.9	No certificate required.

9. Supplies affected by the anti avoidance measures.	Paragraph 3.11 and Section 13	No certificate required.

3.2 Buildings designed or adapted and intended for use as dwellings

Your option to tax will not apply if you supply a building, or part of a building, that is designed or adapted and intended for use as a dwelling (such as a house), or as a number of dwellings (such as a block of flats). We recommend that you retain evidence to show that the building is intended for use as a dwelling or number of dwellings. Notice 708 Buildings and construction explains what is meant by 'designed as a dwelling'.

3.3 Buildings designed or adapted and intended for use for relevant residential purposes

Your option to tax will not apply if you supply a building, or part of a building that is designed or adapted for use for a relevant residential purpose (such as a nursing home) and the purchaser or tenant informs you before you make your supply that it is intended for use solely for a relevant residential purpose. Whilst there is no requirement for a formal certificate to be given, we strongly recommend that you obtain confirmation of the intended use in writing and retain it with your VAT records.

Where part of a building is intended for use solely for a relevant residential purpose and part is not, your option to tax will not apply to the part to be used for a relevant residential purpose, but only where the different functions are to be carried out in clearly defined areas. In these circumstances the value of your supply should be fairly apportioned between the exempt and taxable elements.

A building used for a relevant residential purpose is one in which some of the facilities, such as dining rooms and bathrooms, are shared, but this does not include use as a hospital, prison, hotel or similar establishment. Examples include residential homes for children, the elderly or disabled persons and student halls of residence. See Notice 708 Buildings and construction for further details about the meaning of 'solely for a relevant residential purpose'.

3.4 Buildings for conversion into dwellings etc

Your option to tax will not apply if you supply a building or part of a building that is **not** designed or adapted as a dwelling (or number of dwellings) or for a relevant residential purpose but you receive a certificate (VAT1614D) from the recipient of your supply (by the time described in paragraphs 3.4.3 and 3.4.4 below) certifying that it is intended for use as a dwelling or number of dwellings or solely for a relevant residential purpose. This can apply where the building, or relevant part, is either:

- intended for such use without conversion work being undertaken, or
- intended for such use after conversion.

3.4.1In what circumstances can I issue a certificate?

As a recipient of a supply, you may certify that a building or part of a building is intended for use as a dwelling or solely for a relevant residential purpose only if you:

- intend to use the building (or part of the building) as a dwelling or solely for a relevant residential purpose
- intend to convert the building (or part of the building) with a view to it being used as a dwelling or solely for a relevant residential purpose, or
- are a 'relevant intermediary' (see paragraph 3.4.5 below).

You may not issue a certificate if the building is to be put to a non-qualifying use for a period before being used as a dwelling or solely for a relevant residential purpose. However, minor or incidental non-qualifying use (such as storing goods for a short period) is disregarded.

For the meaning of 'solely for a relevant residential purpose', see paragraph 3.3 and Notice 708 Buildings and construction.

3.4.2What form must the certificate take?

The following statement has the force of law.
Certification of intention to use a building (or part of a building) as a dwelling or dwellings or solely for a relevant residential purpose (for the purpose of paragraph 6 of Schedule 10 to the VAT Act 1994) must be made on form VAT1614D and must contain the information requested on that form.

You can download form VAT1614D from the HMRC website or obtain it from our VAT Helpline on 0845 010 9000.

3.4.3When should the certificate be provided?

As a supplier, if you receive a certificate by the time set out in Box B below, you **must** exempt your supply of the building or part of the building to which the certificate relates.

Box B

This boxed text below has the force of the law.
Time by which a certificate of intended use as a dwelling (or dwellings) or solely for a relevant residential purpose must be given to the seller making the supply (for the purpose of paragraph 6(2) of Schedule 10 to the Value Added Tax Act 1994)
The certificate must be given before the price for the grant to the recipient by the seller is legally fixed, for example by exchange of contracts, letters or missives, or the signing of heads of agreement.

3.4.4Can I accept a certificate after the time specified in Box B?

If you receive a certificate after the time the price for the grant has been legally fixed, you do not have to accept the certificate, but may do so at your discretion, but only in respect of supplies that arise after the certificate is given. For example, if you have granted a lease for periodic rental payments, you may only exempt the rental supplies that take place after you receive a certificate. If you sell the freehold, you may only exempt the supply if it takes place after you receive a certificate (in the case of freehold sales, the supply would typically take place at completion). It should be noted that it is the fixing of the price of the grant that establishes the time by which the certificate should be given. Care should be taken, particularly in relation to the signing of the heads of agreement, as this will not in all cases legally fix the price.

3.4.5What is a 'relevant intermediary'?

You are a ‘relevant intermediary’ if you are purchasing an interest in a building or part of a building and

- you intend to dispose of the whole of the interest you are purchasing to another, and
- your prospective purchaser has given you a certificate certifying that he:
- intends to convert the building (or part of it) with a view to it being used as a dwelling or solely for a relevant residential purpose, or
- is himself a 'relevant intermediary'.

If you are a ‘relevant intermediary’, the certificate you receive from your prospective purchaser serves two purposes:

1. It enables you to issue a certificate to disapply your supplier’s option to tax (so that your purchase of the building, or relevant part, is exempt), and

2. It disapplies your own option to tax (if you have made one) when you come to supply the building on to your purchaser (so that your sale of the building, or relevant part, is exempt).

3.4.6What if only part of building is intended for use as a dwelling or for a relevant residential purpose?

If only part of the building is intended for use as a dwelling or solely for a relevant residential purpose, the certificate should make it clear that this is the case and must contain a description of the qualifying part. The option to tax will apply to the part of the building that is not intended for the qualifying use and the value of the supply should be fairly apportioned between the exempt and taxable elements. You can find out more about apportionment in Notice 700 The VAT Guide.

3.4.7What if I make more than one supply of an interest in the building?

If you make more than one supply of a relevant interest in a building to the person who has given you the certificate (for example, because you have granted a lease for periodic rental payments), your option will be disapplied in relation to all subsequent supplies that arise from the same grant in the building or parts of the building covered by the certificate. You should note that you are not obliged to accept a certificate if you receive it after the point at which the price for the grant is legally fixed. See paragraph 3.4.4.

3.5 Buildings to be used solely for a relevant charitable purpose

Your option to tax will not apply if you supply a building, or part of a building, and the purchaser or tenant informs you before you make your supply that they intend to use it solely for a relevant charitable purpose, other than as an office for general administration for example, head office functions of the charity. Whilst there is no requirement for a formal certificate to be given, we strongly recommend that you obtain confirmation of the intended use in writing and retain it with your VAT records.

Where part of a building is intended to be used solely for a relevant charitable purpose (other than as an office) and part is not, your option to tax will not apply to the part used for a relevant charitable purpose, provided that the different functions are carried out in clearly defined areas. In these circumstances the value of your supply should be fairly apportioned between the exempt and taxable elements.

Relevant charitable purpose means use by a charity for its non-business activities, or as a village hall or similarly to provide social or recreational facilities for a local community. See Notice 701/1 Charities for more information on non-business activities carried out by such bodies and Notice 708 Buildings and construction for further details about the meaning of 'solely for a relevant charitable purpose'.

3.6 Land sold to a relevant housing association

Your option to tax will not apply if you supply land to a relevant housing association which provides you with a certificate (by the time described in paragraphs 3.6.3 and 3.6.4) certifying that, after any necessary demolition work, dwellings or relevant residential buildings will be constructed on the land. Where only part of the land is to be put to such use your option to tax will only be disapplied in relation to that part and you should therefore apportion the value of your supply between the exempt and taxable elements.

3.6.1 What is a relevant housing association?

A relevant housing association is a:

- registered social landlord within the meaning of Part 1 of the Housing Act 1996
- registered social landlord within the meaning of the Housing (Scotland) Act 2001
- registered housing association within the meaning of Part 2 of the Housing (Northern Ireland) Order 1992, or
- private registered provider of social housing within the meaning given by section 80(3) of the Housing and Regeneration Act 2008.

3.6.2 What form must the certificate take?

The following statement has the force of law.
Certification by a relevant housing association that land is to be used (after any necessary demolition work) for the construction of a building or buildings intended for use as a dwelling or number of dwellings or solely for a relevant residential purpose (for the purpose of paragraph 10 of Schedule 10 to the VAT Act 1994) must be made on certificate VAT1614G and must contain the information requested on that form.

You can download form VAT1614G from the HMRC website, or obtain it from our VAT Helpline on 0845 010 9000.

3.6.3 When must the certificate be provided?

As a supplier, if you receive a certificate by the time set out in Box C below, you **must** exempt your supply of the land to which the certificate relates.

Box C

This boxed text below has the force of the law.
Time by which a certificate of intended use of the land for constructing a dwelling, a number of dwellings, or solely for a relevant residential purpose must be given to the person making the supply (for the purpose of paragraph 10(2) of Schedule 10 to the Value Added Tax Act 1994)
The certificate must be given before the price for the grant to the recipient by the seller is legally fixed, eg exchange of contracts, by missives or letters, or the signing of heads of agreement.

3.6.4Can I accept a certificate after the time specified in Box C?

If you receive a certificate after the time the price for the grant has been legally fixed, you do not have to accept the certificate, but may do so at your discretion, but only in respect of supplies that arise after the certificate is given. For example, if you have granted a lease for periodic rental payments, you may only exempt the rental supplies that take place after you receive a certificate. If you sell the freehold, you may only exempt the supply if it takes place after you receive a certificate (in the case of freehold sales, the supply would typically take place at completion). You should also note that the signing of the heads of agreement will not always fix the price of the grant.

3.7 Land sold to an individual for construction of a dwelling

Your option to tax will not apply if you supply land to someone who intends to build a dwelling on it for their own use, and not in the course or furtherance of any business carried on by them (no certificate is required). This includes cases where the purchaser intends to engage a builder to carry out the construction work on his behalf.

3.8 Pitches for residential caravans

Your option to tax will not apply if you supply a pitch for a permanent residential caravan (no certificate is required). A residential caravan is one where residence throughout the year is not prevented by covenant, planning consent or similar permission. See Notice 701/20 Caravans and houseboats for further information about caravan pitches.

3.9 Moorings for residential houseboats

Your option to tax will not apply if you supply facilities for the mooring or berthing of a residential houseboat (no certificate is required). A houseboat is a floating decked structure that is designed or adapted for use solely as a place of permanent habitation. A houseboat does not have the means of, nor is capable of being readily adapted for, self-propulsion. A residential houseboat is one where residence throughout the year is not prevented by covenant, planning consent or similar permission.

3.10 Building to be used for both commercial and residential purposes

If you supply a building that is intended to be used partly for commercial and partly for residential purposes, such as a shop with a flat above, you should apportion your supply between the taxable and exempt (or zero rated) elements. You may choose the method of apportionment but it must provide a fair and reasonable result. You can find out more about apportionment in Notice 700 The VAT Guide.

A certificate might be required in order for you to treat the area intended for use as a dwelling as exempt. This depends on the status of that area of the building at the time of your supply:

- if it is already designed or adapted for use as a dwelling (for example, is already a flat), no certificate is required (see paragraph 3.2)

- if it is **not** already designed or adapted as a dwelling at that time (for example, is office space intended for conversion into a flat), certificate VAT1614D is required (see paragraph 3.4).

3.11 Land or building affected by the anti-avoidance measures

The option to tax has no effect in relation to supplies resulting from a grant that falls within the anti-avoidance measures described within section 13.

4. How to opt to tax

4.1 What do I need to do if I want to opt to tax?

There are two stages in opting to tax. The first stage is making the decision to opt. This may take place at a board meeting or similar, or less formally. However you reach your decision, we recommend that you keep a written record, showing clear details of the land or buildings you are opting to tax, and the date you made your decision.

If you have previously made exempt supplies of the land or building you may need our permission before you can opt to tax. You can find more information about this in section 5.

The second stage is to notify us of your decision in writing. Paragraph 4.2 explains how you should do this.

4.2 Notification of an option to tax

4.2.1When should I notify my option to tax?

For your option to tax to be valid you must normally make your notification within 30 days of your decision. You can ask us to accept a notification made more than 30 days after your decision but we will not do so unless we are satisfied that you made your decision to opt at the relevant time. If you would like us to consider accepting a belated notification, you should enclose with your notification an explanation of your circumstances and any evidence that will help to show us that the decision was made at the relevant time.

We will normally accept a belated notification if:

- you provide direct documentary evidence that the decision was made at the relevant time (eg copies of correspondence with third parties referring to the option to tax), or

- you provide evidence that output tax has been charged and accounted for and input tax claimed in accordance with the option; and a responsible person (such as a director) provides a written declaration that the decision to opt was made at the relevant time and that all relevant facts have been given.

We might accept a belated notification in other circumstances. This will depend on the facts of your case.

4.2.2What should I include on my notification?

Your notification must state clearly what land or buildings you are opting to tax, and the date from which the option has effect (see paragraph 4.3). We suggest you use the notification form VAT1614A. You can download form VAT1614A from the HMRC website or obtain it from our VAT Helpline on 0845 010 9000.

If you are opting to tax discrete areas of land we suggest that you send a map or plan clearly showing the opted land with your notification. If you are opting a building that has a postal address please give it in full including the postcode.

It would speed up our processing of your notification if you include your VAT registration number, or if your registration is pending, your VAT Registration Unit reference number.

It is important that an appropriate person signs the notification and any accompanying list or schedule. See section 7 for more information.

4.2.3Where should I send my notification?

If you are already registered for VAT, your notification should be made to our centralised Option to Tax Unit in writing, either:

- by post to HM Revenue & Customs, Option to Tax National Unit, Cotton House, 7 Cochrane Street, Glasgow, G1 1GY or
- by fax to 0141 285 4423/4454
- by scanning a signed letter or form and sending it by email to optiontotaxnationalunit@hmrc.gsi.gov.uk

If you are not registered but need or wish to be registered for VAT as a result of your option to tax, your application to register for VAT and your notification of the option to tax should be submitted together to the appropriate VAT Registration Unit (see Notice 700/1 Should I be registered for VAT?). For more information about registering for VAT, go to the HMRC website or phone the VAT Helpline on 0845 010 9000.

4.2.4Will I receive an acknowledgement of my notification?

We will normally acknowledge receipt of your notification within 15 working days, although this is not necessary for the option to tax to have legal effect. You should not delay charging VAT just because you have not received our acknowledgement.

4.2.5What if I am notifying an option to tax in relation to land or buildings which are being transferred as a going concern?

You should read section 11 below.

4.3 What is the effective date of my option to tax?

Your option to tax will have effect from the date of your decision, or any later date that you have specified, providing you notify us in writing within the relevant time limits (see paragraph 4.2).

In no circumstances can an option to tax have effect from a date before you made your decision to opt.

4.4 Who is bound by the option to tax?

It is for you alone to decide whether to opt to tax any land or buildings. If you do decide to opt to tax and are not a member of a VAT group or intend to become one in the future, only the supplies you make of your interest in the land or building will be affected. Your option to tax will not affect supplies made by anyone else. For example, if you are selling an opted building the purchaser has the choice of whether to opt to tax or not. Similarly, if your tenant is sub-letting, they too have this same choice. For this reason, we suggest that you inform your tenant of your decision at the earliest opportunity so that they may safeguard their right to recover input tax by opting to tax, should they wish to.

If you are a member of a VAT group your option to tax may affect other members. As 'relevant associates' they may be bound by your option to tax (see paragraph 6.3).

4.5 What happens if I make an option but at the time of making it, intend to revoke it under the 'cooling off' period?

If, at the time of making an option you intend to revoke it during the six month 'cooling off' period (see paragraph 8.1), the option is treated as invalid from the outset.

5. Permission to opt to tax

5.1 In what circumstances do I need permission from HMRC?

If you have made, or intend to make, any exempt supplies of the land or buildings within the 10 years prior to the date you wish your option to take effect, you will need our written permission to opt to tax unless you meet one or more of the automatic permission conditions set out below.

5.2 Automatic permission

You do not need to obtain our written permission before you opt to tax provided you meet the conditions we have set out in a notice. The conditions have changed from time to time. Condition 3 was amended from 1 May 2009. If you meet **any** of the four conditions set out in Box D below you do not need written permission before you opt to tax:

Box D

These conditions have the force of law.	
Number	**Condition**

1.	It is a mixed-use development and the only exempt supplies have been in relation to the dwellings.
2.	You do not wish to recover any input tax in relation to the land or building incurred before your option to tax has effect, **and** • the consideration for your exempt supplies has, up to the date when your option to tax is to take effect, been solely by way of rents or service charges and excludes any premiums or payments in respect of occupation after the date on which the option takes effect. Regular rental and/or service charge payments can be ignored for the purposes of this condition. Payments are considered regular where the intervals between them are no more than a year and where each represents a commercial or genuine arms length value; **and** • the only input tax relating to the land or building that you expect to recover after the option to tax takes effect will be on overheads, such as regular rental payments, service charges, repairs and maintenance costs. **If you expect to claim input tax in relation to refurbishment or redevelopment of the building you will not meet this condition.**
	Notes: When deciding whether you meet this condition you should disregard: • VAT refundable to local authorities and other bodies under section 33(2)(b) of the Value Added Tax Act 1994; • any input tax you can otherwise recover by virtue of the partial exemption de minimis rules (Regulation 106, VAT Regulations 1995); **and** • any input tax you are entitled to recover on general business overheads not specifically related to the land or building, such as audit fees.
3.	You may opt to tax if you satisfy the first (outputs) requirement and (if applicable) the second (inputs) requirement. **Definitions** For the purposes of this condition: • 'property' includes land, buildings and civil engineering works. • the question of whether a person is '**connected**' with another person is to be decided as it would be for the purposes of Part 1 of Schedule 10 to the Value Added Tax Act 1994 • 'permissible exempt supplies' means the following exempt supplies arising from a grant in relation to the land: a. Supplies for which the consideration solely represents legal and/or valuation costs reimbursed under the agreement for the grant; or b. Supplies where: i. the consideration is provided by way of regular rents and/or service

charges; and

ii. the consideration relates to a period of occupation of the property and that period ends no later than 12 months from the date on which the option first takes effect; and

iii. no opted supply, other than an opted supply relating solely to the same period of occupation as an exempt supply under point (ii) above, will be reduced in value as a result of the consideration payable for these exempt supplies.

First (outputs) requirement

You do not intend or expect that any supply which will be taxable as a result of you making your option to tax will either:

1. be made to a person connected with you; or

2. arise from an agreement under which you or another person has made or will make an exempt supply in respect of a right to occupy the property, where the right begins or continues after the date on which the option takes effect.

Application of the first (outputs) requirement

- You may disregard paragraph 1 of the requirement if the person connected with you is expected to be entitled to credit or refund of at least 80% of the VAT chargeable on the supply.
- For the purposes of paragraph 2 of the requirement you may ignore permissible exempt supplies.

Second (inputs) requirement

1. This requirement applies if you have been or expect to be entitled to credit for any part of the input tax incurred on your capital expenditure on the property as being wholly or partly attributable to supplies that are taxable supplies by virtue of your option to tax.

2. Where this requirement applies you must not intend or expect to use any part of the capital expenditure for either of the following purposes:

a) making exempt supplies which do not confer a right to credit for input tax pursuant to section 26(2)(c) of the Value Added Tax Act 1994; or

b) for private or non-business purposes, other than purposes giving rise to a right to a refund of VAT on the supplies under sections 33, 33A or 41(3) of the Value Added Tax Act 1994.

Application of the second (inputs) requirement

- For the purposes of the requirement, your capital expenditure is your expenditure on goods or services used in connection with the acquisition of, building works on, construction works on or the fitting

	out of, the property. Capital expenditure does not include expenditure on routine repairs and maintenance. • For the purposes of the requirement, 'entitled to credit' includes a deduction or credit arising as a result of the application of Regulation 109 or Part XV of the VAT Regulations 1995 (SI 1995/2518). • You may disregard paragraph 2a of the requirement if any of paragraphs a), b) or c) below apply: a) all the exempt supplies concerned are supplies which fulfil any of the following descriptions: i. supplies within Paragraphs 5 to 11 of Schedule 10 to the Value Added Tax Act 1994 and made to a person who is not connected to you; ii. permissible exempt supplies; iii. supplies within Group 5 of Schedule 9 to the Value Added Tax Act 1994 which are incidental to one or more of your business activities; b) you make exempt supplies, but intend or expect the input tax incurred on your capital expenditure on the property that is attributed to those exempt supplies, including any subsequent adjustments to initial input tax deduction, will not exceed £5,000; c. you expect to be entitled to full credit for all the input tax incurred on your capital expenditure on the property as a result of the application of section 33(2) of the Value Added Tax Act 1994.
4.	The exempt supplies have been incidental to the main use of the land or building. For example, where you have occupied a building for taxable purposes the following would be seen as incidental to the main use and the condition would be met: • allowing an advertising hoarding to be displayed; • granting space for the erection of a radio mast; • receiving income from an electricity sub-station. The letting of space to an occupying tenant, however minor, is not incidental.

5.3 Why is automatic permission condition 3 so long?

This condition has been written in a legally precise form in order to ensure it cannot be used for tax avoidance purposes. There is a flow diagram at Annex 2 of this notice which has been designed to assist in understanding this particular automatic permission condition.

5.4 What do I need to do if I meet one of the conditions?

If you meet one of the conditions and you decide that you want to opt to tax you still need to write to us to notify your option. You should state in your notification, preferably on form VAT 1614A, that, although you have made previous exempt supplies of the land or building, you satisfy one of the conditions for automatic permission (clearly identifying which one). Section 4 gives more information on notifying an option and the records you need to keep.

5.5 What if I don't meet any of the conditions?

If you do not meet any of the conditions for automatic permission you must obtain our written permission before you can opt to tax.

5.6 How do I apply for permission?

The following statement has the force of law.
An application for prior permission to opt to tax (for the purpose of paragraphs 28 and 29 of Schedule 10 to the Value Added Tax Act 1994) must be made on form VAT1614H and must contain the information requested on that form.

You can download form VAT1614H from the HMRC website, or obtain it from our VAT Helpline on 0845 010 9000.

5.7 When will my option take effect?

Once permission is granted, your option will automatically take effect from your application date, or from any later date you request in your application. There is no need for you to notify your option to tax separately once permission is granted.

If you wish your option to take effect from your application date, we recommend you keep evidence of the date you submit the application form (such as a certificate of posting).

5.8 In what circumstances will you grant permission?

We cannot grant you permission to opt to tax until you provide all the information requested in application form VAT1614H and any additional information that we may ask for. Occasionally we will refuse permission if we are not satisfied that granting permission would result in a fair and reasonable attribution of input tax. If we are satisfied, we will write to you prior to granting permission and ask you to confirm that you still wish to proceed with your option to tax.

5.9 What if I fail to ask for permission?

If you notify us of an option to tax without obtaining prior permission, in circumstances under which permission is required (see paragraph 5.1), your option to tax will be invalid. However, we have the discretion to treat the option as a valid option. We will generally only exercise this discretion in cases where:

(a) tax would otherwise be at risk, or

(b) you took reasonable steps, before notifying the option, to determine whether permission was required, but failed to realise it was required due to a minor error or oversight. For example, you might have made a one off exempt supply which you had overlooked.

If you think this should apply to you, please write to the Option to Tax National Unit (paragraph 4.2.3 shows how you may contact them) with details of your situation.

6. Option to tax and VAT registration

6.1 Liability to register for VAT

If you are not already registered for VAT, you should read VAT Notice 700/1 Should I be registered for VAT? If you are required to or wish to register you should complete an application form and send it to the appropriate Registration Unit (listed in VAT Notice 700/1 Should I be registered for VAT?). The Registration Unit will need to be satisfied that you will be making taxable supplies, so you should send your option to tax notification with your application form. If you need our permission before opting to tax, you cannot register before we have given permission so you should also enclose a copy of your written permission with your application.

If your turnover falls below the registration threshold and you deregister, the option to tax does not cease because you have deregistered. See section 12 for more details.

6.2 How long must I keep records?

You must keep your correspondence and any record of your decision to opt to tax for a minimum of six years. An option to tax cannot normally be revoked until at least 20 years have passed (see section 8). We strongly recommend you keep your option to tax records for longer than six years.

6.3 How does the option to tax affect group registrations?

6.3.1 What is a 'relevant associate'?

An option to tax made by a member of a VAT group is generally binding upon other members of the same VAT group. A body corporate that is bound by another body corporate's option to tax under these rules is known as a 'relevant associate' of the opter. If you are a relevant associate, you must normally charge VAT on any supplies you make of the opted property, even after you have left the VAT group.

For information about VAT Groups, see Notice 700/2 Group and divisional registration.

You become a 'relevant associate' if:

- you are in the same VAT group as the opter when the option first has effect,
- you are in the same VAT group as the opter at any later time when the opter has an interest in the opted property, or
- you are in the same VAT group as another 'relevant associate' of the opter when that relevant associate has an interest in the opted property.

6.3.2 In what circumstances do I cease to be a 'relevant associate'?

You cease to be a 'relevant associate' in one of three ways:

- by meeting the basic conditions explained below and automatically ceasing to be a relevant associate (see paragraph 6.3.3 below)
- by meeting all of the specified conditions set out in Box E below and notifying us on form VAT1614B (see paragraph 6.3.6 below), or
- by obtaining our permission (see paragraph 6.3.7 below).

6.3.3 Automatically ceasing to be a relevant associate

You will automatically cease to be a relevant associate in relation to an opted property if you meet **all** of the following conditions:

- you are no longer in the VAT group in which you became a relevant associate

- you do not hold any interest in the opted property
- you have not disposed of the opted property on terms that may require the purchaser to make additional payment in the future. Such payment is often referred to as an 'overage' and can be contingent on such things as the purchaser obtaining planning permission, and
- you are not ‘connected’ with any person who is the opter or relevant associate and who holds an interest in the land.

If you meet all of these conditions, you automatically cease to be a relevant associate from the time that all four conditions are met. There is no need for you to notify us or to seek permission.

6.3.4In what circumstances is a person connected with another?

See paragraph 13.7 of this notice.

6.3.5Ceasing to be a relevant associate after 20 years

If you do not meet the basic conditions set out in paragraph 6.3.3, you will cease to be a relevant associate of an opter if you:

- meet all of the conditions specified in Box E below, and
- notify us on form VAT1614B (see paragraph 6.3.6).

Box E

The boxed text below has the force of law.	
Conditions for a body corporate to cease to be treated as a relevant associate of an opter (for the purpose of paragraph 3(5)(a) of Schedule 10 to the Value Added Tax Act 1994 ('the VAT Act 1994')).	
A body corporate ceases to be a relevant associate of an opter at the time when it meets all of the following conditions:	
1.	**The grouping condition** The body corporate has ceased to be treated as a member of the VAT group (see section 43 of the VAT Act 1994) by virtue of which it became a relevant associate of the opter.

2.	**The 20 year condition** The body corporate has: • held any relevant interest in the building or land acquired whilst a member of that VAT group for a period of at least 20 years; and • been treated as a relevant associate of the opter for a period of at least 20 years.
3.	**The capital item condition** Any land or building that is subject to the option is not, in relation to the body corporate, subject to input tax adjustment as a capital item under the capital goods scheme.
4.	**The valuation condition** Neither the body corporate, nor any person connected with it, has, within a period of ten years ending on the date that the body corporate ceases to be a relevant associate, made a supply of a relevant interest in the building or land that is subject to the option that: • was for a consideration that was less than the open market value of that supply; or • arose from a relevant grant.
5.	**The pre-payment condition** No supply of goods or services has been made for a consideration to the body corporate (or to a person connected with it) which will be wholly or partly attributable to a supply or other use of the land or buildings made by that body (or by a person connected with it) more than 12 months later.

Explanatory Note 1

"Relevant interest in the building or land" means an interest in, right over or licence to occupy the building or land (or any part of it).

Explanatory Note 2

"Relevant grant" means a grant that the grantor intends or expects will give rise to a supply for a consideration significantly greater than any consideration for any earlier supply arising from the grant (except as a result of a rent review determined according to normal commercial practice).

Explanatory Note 3

For the purposes of conditions 4 and 5 above, any question whether a person is "**connected**" with another person is to be decided as it would be for the purposes of Part 1 of Schedule 10 to the Act.

6.3.6How do I notify you?

The following statement has the force of law.
Notification of cessation to be a relevant associate (for the purpose of paragraph 4 of Schedule 10 to the Value Added Tax Act 1994) must be made on form VAT1614B and must contain the information requested on that form.

You can download form VAT1614B from the HMRC website, or obtain it from our VAT Helpline on 0845 010 9000.

6.3.7Applying for permission to cease to be a relevant associate

If you do not meet the all of the conditions set out in paragraph 6.3.2 or Box E above, you may apply for permission to cease to be a relevant associate.

6.3.8What form should my application take?

The following statement has the force of law.
Application for permission to cease to be a relevant associate (for the purpose of paragraph 4 of Schedule 10 to the Value Added Tax Act 1994) must be made on form VAT1614B and must contain the information requested on that form.

You can download form VAT1614B from the HMRC website or obtain it from our VAT Helpline on 0845 010 9000.

6.3.9In what circumstances will you grant permission?

We will not grant permission unless you meet conditions 1 and 2 of Box E above.

In deciding whether or not to grant permission, we will give particular consideration to whether or not you or a third party has received a VAT benefit as a result of your actions.

6.3.10 If you grant permission, when will I cease to be a relevant associate?

You will cease to be a relevant associate from the date permission is granted, except in the circumstances specified below.

We can only allow an earlier date if you previously gave a notification of ceasing to be a relevant associate believing, in error, that you met the conditions in Box E above. If this is the case, we can allow you to cease to be a relevant associate from the date stated in the notification, but will not do so unless we are satisfied that the reasons for failing to meet the conditions are insignificant.

In granting permission, we can apply conditions. In cases where these are subsequently broken we may treat the original application for permission as invalid.

7. Responsibility for opting to tax

7.1 Who is responsible for making the decision and notifying the option to tax?

The person responsible for making the decision and notifying the option to tax depends on the type of legal entity holding (or intending to hold) the interest in the land or building, and who within that entity has the authority to make decisions concerning VAT. In most cases it will be the sole proprietor, one or more partners (or trustees), a director or an authorised administrator. If you have appointed a third party to notify an option to tax on your behalf, we require written confirmation that the third party is authorised to do so. We would also wish to be notified if you withdraw that authority. The following paragraphs explain who is responsible in other, slightly more unusual situations.

7.2 Beneficial owners

In some cases there may be both a beneficial owner and a legal owner of land or buildings. An example of this is a bare trust, where a trustee is the legal owner but the benefit of the income from the land or building passes to the beneficial owner. For VAT purposes it is the beneficial owner who is making the supply of the land or building. It is the beneficial owner who should opt to tax, and who must account for any VAT due on the supply and claim any input tax that arises.

This is not the case, however, where the beneficiaries are numerous, such as unit trusts and pension funds. In such situations the person making the supply is the trustee who holds the legal interest and receives the immediate benefit of the consideration.

7.3 Joint owners

Joint ownership will arise if you and another person buy land or buildings together, or if you sell a part share of your land or building to someone else. If you are a joint owner it is likely that the only supply that can be made of the jointly owned land or building is by you and the other person together.

You and the other person should together notify a single option to tax if you want supplies of the jointly owned land or building to be standard-rated. The taxable supply of the land or building is then made by both of you as one taxable person. To account for output tax and to be able to recover input tax, you and the other person should register for VAT together as if a partnership, even if you are not in partnership for any other purpose.

7.4 Limited partnerships

Under the Limited Partnership Act 1907 every limited partnership must be registered with the Registrar of Companies (Companies House). It follows that a limited partnership which is not registered with Companies House (such as an overseas limited partnership) cannot be treated as a limited partnership for VAT purposes and will normally be registered as a general partnership.

A limited partnership is made up of one or more ‘general’ partners, who have unlimited liability, and one or more ‘limited’ partners, who are not liable for debts and obligations of the firm. A limited partner is unable to take part in the management and running of the partnership business, and where we find that a limited partner is doing so, we will treat them as a general partner.

If there is only one general partner and one or more limited partners, the general partner is treated as a sole proprietor for VAT registration purposes. Likewise if there are two or more general partners and one or more limited partners, the general partners are treated as a partnership for VAT registration purposes. It is the general partner(s) who should opt to tax and account for any VAT due on the supply and claim any input tax that arises.

Where title to the land or building is held jointly in the names of the general partner(s) **and** the limited partner(s), only the titleholders can make any supplies of that land or building together. That suggests that the limited partner is involved in the management and running of the partnership, and as such we treat them as a general partner and amend the VAT registration to reflect that. If the partnership decides to opt to tax, one or more of the partners should sign the notification.

7.5 Limited liability partnerships

A limited liability partnership has a separate legal status from its members and is able to enter into contracts in its own right. This means that the individual members of the limited liability partnership are protected from debts or liabilities arising from negligence, wrongful acts or conduct of another member, employee or agent of the partnership.

A limited liability partnership is a corporate body and is liable to register for VAT, subject to the normal registration rules. If the partnership decides to opt to tax, one or more members must sign the notification.

8. Revoking an option to tax

8.1 Revoking an option to tax within the six month 'cooling off' period

8.1.1When can I revoke without prior permission?

If you change your mind within six months of the effective date of your option to tax, you can revoke your option to tax if you meet all the conditions set out in a) to d) in paragraph 8.1.2 together with one of the three conditions in Box F below. You will not need our prior permission but you must notify us before the end of the 6 month period and your notification must be made on form VAT1614C (see paragraph 8.1.4).

8.1.2What are the conditions for revoking?

The conditions are:

a. less than six months have passed since the day on which the option had effect

b. no tax has become chargeable on a supply of the land as a result of the option

c. no transfer of a going concern has occurred, and

d. you have notified the revocation to HMRC on form VAT1614C (see paragraph 8.1.4).

Additional conditions are set out in Box F below. To revoke your option to tax you must satisfy one of the three conditions in Box F or obtain our permission. Where we grant permission we may impose conditions.

Box F

The contents of this box have the force of law.
Additional conditions for revoking an option to tax less than six months after the day on which it had effect (provision made under paragraph 23(4) of Schedule 10 to the Value Added Tax Act 1994).
A revocation of an option to tax under paragraph 23 of Schedule 10 to the Value Added Tax Act 1994 is effective only if one of conditions (1) to (3) below is met in relation to the option, or if the taxpayer gets the prior permission of the Commissioners on an application made to them before the end of the six month period mentioned in paragraph 23(1)(a). Where the taxpayer seeks the prior permission of the Commissioners, they may specify conditions subject to which their permission is given and, if any of those conditions are broken, the Commissioners may treat the revocation as if it had not been made. The conditions are that: 1. neither the person who exercised the option to tax ('the opter') nor any

relevant associate of the opter has recovered extra property input tax;

2. by virtue of the revocation, the opter and all relevant associates of the opter would be liable to account to the Commissioners under regulation 107 or 108 of the Value Added Tax Regulations 1995 ('the VAT Regulations 1995') for all of the extra property input tax they have recovered; or

3. extra property input tax has been recovered entirely on one capital item and amounts to less than 20% of the total input tax incurred on that item.

Definition

'Extra property input tax' means input tax attributable to supplies which, if made at a time when the option has effect, would be taxable supplies by virtue of the option.

'Capital item' means a capital item to which part 15 of the VAT Regulations 1995 applies by virtue of regulation 113 of those Regulations.

8.1.3Explanation of terms used in Box F

VAT Regulation 107 relates to the adjustment of partial exemption attribution at the end of a 'longer period' (normally a year) and would apply where the property input tax credit was originally computed under a partial exemption method and revocation falls within the same 'longer period'.

VAT Regulation 108 (commonly called 'clawback') requires adjustment of input tax credited as attributable to intended taxable supplies when the intended use of the inputs concerned changes before use starts. This will apply in most circumstances where revocation happens before the property is first used after incurring the input tax.

Information about ‘longer period’ adjustments and ‘clawback’ can be found in Notice 706 Partial Exemption. Information about **capital items** can be found in Notice 706/2 Capital goods scheme.

8.1.4How do I notify you?

The following statement has the force of law.

Notification of revocation of an option to tax within the 6 month ‘cooling off’ period (for the purpose of paragraph 23 of Schedule 10 to the VAT Act 1994) must be made on form VAT1614C and must contain the information requested on that form.

You can download form VAT1614C from the HMRC website or obtain it from our VAT Helpline on 0845 010 9000.

8.1.5When can I seek permission to revoke?

You can seek permission to revoke if you meet conditions a. to d. of paragraph 8.1.2 but do not meet any of the three additional conditions specified in Box F.

8.1.6How do I apply for permission?

The following statement has the force of law.
Application for permission to revoke an option to tax within the six month ‘cooling off' period (for the purpose of paragraph 23 of Schedule 10 to the VAT Act 1994) must be made on form VAT1614C and must contain the information requested on that form.

You can download form VAT1614C from the HMRC website or obtain it from our VAT Helpline on 0845 010 9000.

You must submit your application within six months of the effective date of your option to tax. Your application for permission will also be treated as notification of your revocation, so there is no requirement to make a separate notification once permission is granted.

When considering whether to grant permission, we will give particular consideration to whether you or a third party has received a VAT benefit as a result of your actions.

8.1.7When does the revocation take effect?

The revocation of an option to tax during its 'cooling off' period has effect from the day on which the option was exercised. However, if we set conditions when granting permission to revoke and any of these are broken, we may treat the revocation as invalid.

8.1.8How should I adjust my input tax after I have revoked my option?

If you revoke an option to tax under the 'cooling off' rules, you should adjust your input tax in accordance with the appropriate rules explained in Notice 706 Partial Exemption and Notice 706/2 Capital Goods Scheme (also see paragraph 8.1.3).

8.1.9How does the ‘cooling off’ period apply in relation to real estate elections?

If you choose, at the time of making a real estate election, to convert existing ‘global options’ into separate options to tax, you cannot revoke these new separate options under the 'cooling off' period.

See section 14 for information about real estate elections.

8.2 Automatic revocation of an option where no interest has been held for more than 6 years

8.2.1 In what circumstances does automatic revocation occur?

An option to tax is revoked where the opter has not held an interest in the opted building or land for a continuous period of six years commencing at any time after the option to tax has effect. The revocation is automatic and no notification is required. However, the revocation is subject to the rules described in paragraph 8.2.2 and will not be applicable in all cases.

8.2.2 Are there any circumstances in which the automatic revocation does not apply?

The automatic revocation will not occur where any of the following circumstances apply. **All references to 'relevant time' mean the time the option would otherwise be revoked:**

1. Where the opter has sold the property on terms that may require the purchaser to make additional payment after the 'relevant time'. Such payment is often referred to as an 'overage' and can be contingent on such things as the purchaser obtaining planning permission.

The following three circumstances can only apply if the opter is or has been a member of a VAT group.

2. Where a relevant associate of the opter in relation to the opted property (see paragraph 6.3) has sold the property on terms that may require the purchaser to make additional payment after the 'relevant time' (see 1. above).

3. Where before the 'relevant time' a relevant associate of the opter in relation to the opted property (see paragraph 6.3) left the opter's VAT group and **at the time of leaving** any of the following applied:

(i) the relevant associate had an interest in the property

(ii) the relevant associate had, prior to leaving the VAT group, disposed of an interest on terms that might have required the purchaser to make additional payment at a later date (see 1. above), or

(iii) the relevant associate was connected to the opter or another relevant associate of the opter and that person had an interest in the property,

or

4. Where, at the 'relevant time', a relevant associate of the opter in relation to the opted property (see paragraph 6.3) is member of the same VAT group and either currently holds an interest in the property or has held one during the previous six years.

8.3 Revoking an option where more than 20 years have elapsed since it first had effect

8.3.1In what circumstances can I revoke without prior permission?

You may revoke an option to tax where more than 20 years have elapsed since the option first had effect if you meet either condition 1 or conditions 2-5 of Box G below. You will not need our permission, but you must notify us on form VAT1614J (see paragraph 8.3.4).

8.3.2When does the option first have effect?

Your option first had effect on the day you exercised the option or any later day that you specified when opting to tax (see paragraph 4.3).

8.3.3What are the conditions for revoking?

Box G

The following statement has the force of law.	
Conditions for revoking an option to tax when more than 20 years have elapsed since the option first had effect (for the purposes of paragraph 25(1)(a) of Schedule 10 to the Value Added Tax Act 1994 ('the VAT Act 1994')).	
A taxpayer may revoke an option to tax made by the taxpayer if either condition 1 below **or** all of conditions 2 to 5 are met.	
1.	**The relevant interest condition** Neither the taxpayer nor any relevant associate connected with the taxpayer has a relevant interest in the building or land at the time when the option is revoked; and if the taxpayer or a relevant associate of the taxpayer has disposed of such an interest, no supply for the purpose of the charge to VAT in respect of the disposal - (i) is yet to take place, or (ii) would be yet to take place if one or more conditions (such as the happening of an event or the doing of an act) were to be met.

2.	**The 20 year condition** The taxpayer or a relevant associate connected with the taxpayer held a relevant interest in the building or land: • after the time from which the option had effect; and • more than 20 years before the option is revoked.
3.	**The capital item condition** Any land or building that is subject to the option at the time when it is revoked does not fall, in relation to the taxpayer or a relevant associate connected with the taxpayer, for input tax adjustment as a capital item under part 15 of the Value Added Tax Regulations 1995 (adjustments to the deduction of input tax on capital items).
4.	**The valuation condition** Neither the taxpayer nor any relevant associate connected to the taxpayer has made a supply of a relevant interest in the building or land subject to the option in the 10 years immediately before revocation of the option that: • was for a consideration that was less than the open market value of that supply, or • arose from a relevant grant.
5.	**The pre-payment condition** No part of a supply of goods or services made for consideration to the taxpayer or a relevant associate connected with the taxpayer before the option is revoked will be attributable to a supply or other use of the land or buildings by the taxpayer more than 12 months after the option is revoked.

Explanatory Note 1

'Taxpayer' means
(a) a person who exercised the option to tax or is treated as making that option by virtue of a real estate election pursuant to paragraph 21 of Schedule 10 to the Act, and
(b) in relation to an option to tax treated as exercised by virtue of a real estate election made pursuant to paragraph 21 of Schedule 10 to the VAT Act 1994 by a body corporate treated as a member of a group under sections 43A to 43D of the Act other than the person described in (a) above, the body corporate whose relevant interest gave rise to the option to tax.

Explanatory Note 2

'Relevant interest in the building or land' means an interest in, right over or licence to occupy the building or land (or any part of it).

Explanatory Note 3

'Relevant grant' means a grant that the taxpayer intends or expects will give rise to a supply made after the option is revoked for a consideration significantly greater than any consideration for any supply arising from the grant before the revocation (except as a result of a rent review determined according to normal commercial practice).

Explanatory Note 4

In relation to condition 2 above, it does not matter whether, at the time the option is revoked, the taxpayer continues to hold the relevant interest in the building or land that meets the condition.

Explanatory Note 5

For the purpose of condition 3:-

(1) land or buildings that fall for input tax adjustment as a capital item under Part 15 of the VAT Regulations shall not be regarded as so doing if the relevant amount does not exceed £10,000;

(2) the relevant amount is the total of the amounts that the taxpayer or a relevant associate connected with the taxpayer would be required to pay to the Commissioners pursuant to regulation 115 (2) of the VAT Regulations in respect of intervals ending after the revocation of the option if:–

(a) that person were a taxable person during such intervals; and

(b) the land or building concerned were used, after the revocation of the option, only for making supplies that are not taxable supplies.

Explanatory Note 6

For the purposes of conditions 1 to 5 above, any question whether a person is **'connected'** with another person is to be decided as it would be for the purposes of Part 1 of Schedule 10 to the Act.

Explanatory Note 7

'Relevant Associate' means - A body corporate as defined in paragraph 3 of Schedule 10 to the Act.

Further notes about Box G (these are for guidance only and do not have the force of law):

- The term ‘relevant associate’ is explained in paragraph 6.3.

- The second paragraph of Condition 1 prevents revocation where the opter or a relevant associate has disposed of the property on terms which may require further payment to be made in the future. Such payment is commonly referred to as an 'overage' and can be contingent on such things as the granting of planning permission.

- Guidance on 'connected' persons is in paragraph 13.7.

8.3.4 How do I notify you?

The following statement has the force of law.
Notification of revocation of an option to tax after 20 years (for the purpose of paragraph 25 of Schedule 10 to the VAT Act 1994) must be made on form VAT1614J and must contain the information requested on that form.

You can download form VAT1614J from the HMRC website or obtain it from our VAT Helpline on 0845 010 9000.

8.3.5 When will my revocation take effect?

Your revocation will take effect from the day that you specify when you notify us, but this cannot be any earlier than the day on which you notify us.

8.3.6 When can I seek permission to revoke?

If you do not meet the conditions in Box G you may still seek our permission to revoke.

8.3.7 How do I apply for permission?

The following statement has the force of law.
Application for permission to revoke an option to tax after 20 years (for the purpose of paragraph 25 of Schedule 10 to the VAT Act 1994) must be made on form VAT1614J and must contain the information requested on that form.

You can download form VAT1614J from the HMRC website or obtain it from our VAT Helpline on 0845 010 9000.

8.3.8In what circumstances will you grant permission?

We will not grant permission unless you meet condition 2 of Box G above.

In deciding whether or not to grant permission, we will give particular consideration to whether or not you or a third party has received a VAT benefit as a result of your actions.

8.3.9If you grant permission, when will my revocation take effect?

If we grant permission, revocation will take effect from the day we grant permission or such earlier or later day or time we specify. For this purpose, we may specify a time by reference to the happening of a particular event or meeting of a condition. For example, we may specify that revocation will take effect after the sale of a property has been completed.

We can only specify an earlier day if you previously gave notification of revocation believing, in error, that you met the conditions in Box G above. In such cases we may allow the revocation to take effect from the day specified in your original notification, but we will only allow this where we are satisfied that the reasons for failing to meet the conditions are insignificant.

In granting permission we may specify further conditions subject to which the permission is given. If any of these conditions are subsequently broken we may treat the revocation as if it had not been made.

9. Input tax

9.1 Rules on reclaiming input tax

Your entitlement to recover any input tax you incur will depend on the liability of the supplies you make. This may be affected by your option to tax but you cannot assume that an option will allow input tax recovery and must still consider what supplies you will make and their liability.

If you make…	**Then you will normally be…**
taxable supplies of the land or buildings	able to recover any input tax relating to those supplies
wholly exempt supplies of the land or building (see section 3)	unable to recover any input tax relating to those supplies
supplies that are both taxable and exempt, for example you may have opted to tax a building that is to be used for both commercial and residential purposes	able to recover only the input tax relating to the taxable supply, Notice 706 Partial exemption explains how to work out how much input tax relates to taxable supplies

General information about input tax can be found in Notice 700 The VAT Guide.

9.2 What about input tax I incurred before I opted to tax?

9.2.1 May I recover input tax relating to supplies of land or buildings if the supplies are taxable independent of any option?

Yes. For example, a freehold sale of a commercial building within three years of its completion is always standard-rated. So if you construct a commercial building with the intention to make such a sale you may recover the input tax you incur.

But many supplies of land and buildings will only become taxable as a result of an option to tax. You may only recover input tax where you intend to make a taxable supply. For guidance on whether a taxable intention exists, see paragraphs 9.2.2 to 9.2.4.

9.2.2 May I recover input tax now that relates to future supplies despite not having yet made my option?

Yes, in certain circumstances. Input tax incurred prior to the making of supplies can be recoverable where you have a clear intention, at the time the costs are incurred, that the supplies of the buildings or land will be taxable. **An option to tax is by far the best evidence of an intention to make taxable supplies for land and property transactions.**

Where, in exceptional circumstances, you wish to delay the making of the option until a future date you may still be able to recover the input tax relating to supplies which will follow the option. This will only be the case, however, where you are able to produce unequivocal documentary evidence, at the time you wish to reclaim your input tax, that you intend your supplies to be taxable.

9.2.3 What types of documents will be accepted as evidence that I intend to opt to tax and make taxable supplies?

A list of examples of the types of documents that may contain evidence of intention is shown below. The list is not intended to be exhaustive and whether a particular document provides the evidence will very much depend upon its content.

It is unlikely that any single document alone will provide sufficient evidence and you are advised to hold a number of separate documents to prove your intention. HMRC will normally consider evidence as satisfactory where it involves third parties and shows a firm commitment to the making of taxable supplies. For example:

- A signed agreement/contract that specifies that the vendor will opt to tax prior to the sale.
- An investment appraisal or business plan accepted by a bank that confirms that supplies will be treated as taxable.

- Marketing literature that has been distributed to the public and where the scale and type of distribution, together with the nature of the advertisement itself, makes it clear that taxable supplies will be made.

- Instructions or advice from professional advisers that specifies the VAT treatment, together with confirmation of your acceptance of the advice.

- Any other similar document that shows that the intention is to make taxable supplies.

We cannot give a list of unacceptable documents. However, any document that merely sets out an option or number of options will not be accepted as unequivocal documentary evidence of an intention to make taxable supplies.

9.2.4Having recovered input tax relating to future taxable supplies, what action should I take?

- Any documents used as evidence of intention must be retained and made available to HMRC on request.

- Where the intention to make taxable supplies changes, a record must be kept of the date these changes occurred together with appropriate evidence. VAT previously deducted before the intention changed may need to be adjusted and repaid to HMRC. See Notice 706 Partial exemption for details.

- **If you have recovered input tax on the basis of an intention to opt to tax and wish to retain the input tax recovered, you must make an option to tax at the very latest before any supplies of the land or buildings are made, and notify the option as detailed in paragraph 4.2.**

9.2.5Are there any other circumstances in which input tax incurred prior to an option to tax can be recovered?

There are three:

- Where, prior to supplies being made, your intention to make exempt supplies changes to an intention to make taxable supplies you may be able to recover previously exempt input tax under the ‘payback’ rule. You will find more about the payback rule in Notice 706 Partial Exemption. Where, however, your change of intention is not accompanied by an option to tax you will need to retain suitable evidence of your new intention (see paragraph 9.2.3).

- Where you made exempt supplies of the land or building before opting to tax and incurred exempt input tax you may be able to recover this under a longer period adjustment (see Notice 706 Partial Exemption).

- If you have made exempt supplies and the initial attribution of your input tax has been finalised as exempt before you opt, you may be able to make adjustments under the Capital Goods Scheme in order to reflect your taxable use after the option (see paragraph 9.5).

In the circumstances described in the last two bullet points above, you may need to obtain our permission before you can opt to tax (see section 5).

9.3 What about speculative and abortive costs?

As a developer you may spend time and effort investigating potential projects, such as looking for sites and assessing their suitability. Where you have:

- a clear intention of what supplies you intend to make you must attribute the input tax incurred to the liability of the intended supply, or

- no firm intention of what supplies you will make, the input tax on the costs you incur is 'residual' for partial exemption purposes.

Some potential projects are not followed through, and in the end no supplies are actually made. If costs are wasted then no adjustment to how input tax on them was attributed is needed. If up to the time of aborting the project you have no firm intention regarding the liability of the supplies you wish to make (and as a result are unable to attribute the input tax to the liability of the intended supply), the related input tax should be left as residual.

When you decide to proceed with a project you will have a clear intention as to what supplies you will make. (It is frequently at this point that you decide whether to opt to tax for land and property supplies.) If you treated the input tax as residual previously you may have to adjust the input tax accordingly under the 'payback' and 'clawback' rules. Input tax on the ongoing costs should be attributed to the expected taxable or exempt supplies.

You can find further information in Notice 706 Partial Exemption.

9.4 What about the VAT I incurred prior to my registration?

You may find that you become registered for VAT as a result of opting to tax. Special rules apply to all newly registered persons under which they may be entitled to claim relief for VAT incurred on supplies they obtained before registration. Relief is restricted on supplies of services to those received not more than six months before your registration. This restriction may lead to inequitable treatment compared with a business carrying out similar activities, but who was already VAT registered when the tax was incurred. If you consider you have suffered because of this you should write to the Option to Tax National Unit (paragraph 4.2.3 shows how you may contact them) and explain your circumstances. But you should note that the Option to Tax National Unit will only consider cases where, had you been registered at the time the input tax was first incurred, the capital goods scheme would have applied (see paragraph 9.5).

In all cases relief for VAT incurred before registration is restricted to tax which can be directly attributed to a taxable activity. If you incurred tax before registration that was attributable both to exempt supplies before registration, as well as taxable supplies after registration, the relief will be restricted proportionately.

9.5 Capital goods scheme

If you acquire land or buildings which are considered to be capital items for the purposes of this scheme, you must review their use in your business over a series of intervals, normally lasting 10 years. If there are changes in the extent to which they are used for making taxable supplies you must make input tax adjustments to take account of this. The capital goods scheme will normally apply if you incur VAT on the purchase of the property, or on capital works, where VAT bearing costs, net of VAT, are £250,000 or more. But it will not apply where you have purchased property purely for the purpose of selling it on. You will find more information about how the scheme works in the Notice 706/2 Capital goods scheme.

10. Time of supply (tax point)

10.1 Normal tax point rules

The normal tax point rules apply to all supplies of land or buildings. These rules are explained in detail in Notice 700 The VAT Guide.

If you make leasehold supplies and have opted to tax, a tax point will normally occur when you either issue a tax invoice or receive a payment, whichever is the earlier.

If you are selling the freehold of land or a building a basic tax point will normally occur at the time of legal completion under the terms of the contract, when the freehold is conveyed to the purchaser. The equivalent under Scottish land law is the time of delivery of the disposition. Any payments you receive after the basic tax point do not create a tax point. If you issue a VAT invoice within 14 days after the basic tax point, then the date of issue of that invoice becomes the tax point. If you issue a VAT invoice or receive a payment before the basic tax point, then an actual tax point will be created by whichever happens first, to the extent of the amount invoiced or payment received.

10.2 Does a deposit create a tax point?

Often on the sale of land or buildings, the purchaser pays a deposit at exchange of contracts, followed by payment of the balance on the completion date. An independent stakeholder usually holds the deposit until completion, and the seller receives no payment until that time. In these circumstances, the deposit payment will not create a tax point. It follows that if the deposit is paid direct to the seller or their agent, the payment does create a tax point. In both cases, an earlier tax point arises if a tax invoice is issued before the seller receives any payment.

10.3 What if I receive arrears of rent following my option to tax?

In a tenanted building, a tax point might not occur until you receive payment. In these circumstances, if you opt to tax after the rent becomes due but before it is paid, you must account for output tax on the rental receipt. This is the case even if the payment covers a period before your option to tax took effect.

11. Transfer of a business as a going concern

11.1 What does ‘transferring a business as a going concern’ mean?

Notice 700/9 Transfer of business as a going concern explains the VAT position if you are selling or transferring your business and its assets, or part of it. In certain circumstances, special TOGC rules apply, and the sale will not be treated as a supply for VAT purposes, so no VAT should be charged. The transfer of a businesses or part of a business is treated as a VAT free TOGC in the following circumstances:

- where it is capable of separate operation after the sale has taken place
- where it is sold as a going concern
- where it is not part of a series of immediately consecutive transfers of a business

- where the purchaser intends to carry on the same kind of business, and

- where, in relation to certain transfers of land and buildings, further conditions are met (see paragraph 11.2).

It is important to note that where the seller/transferor is a VAT registered business the purchaser must also be a taxable person for VAT purposes or become one as a result of the transfer.

As the TOGC rules are mandatory and not optional, it is important to establish at the outset whether the sale or transfer of the business is or is not a TOGC.

11.2 What if I am transferring land or buildings as part of a transfer of a going concern?

In order for the transfer to be treated as a VAT free TOGC you must meet all conditions specified in Notice 700/9 Transfer of business as a going concern.

In addition, however, you must meet two further conditions where:

- you have opted to tax the land or buildings being transferred and the option is not disapplied in relation to the transfer, or

- you are transferring the freehold of a 'new' building and the supply, but for the TOGC, would be subject to the standard rate of VAT.

The additional conditions are:

- the purchaser must have opted to tax or made a real estate election (these must have been both notified to HMRC and effective on or before the relevant date. Paragraph 14.8 below explains how to notify a real estate election), and

- the purchaser must have notified you that their option to tax will not be disapplied under the anti-avoidance provision set out in VATA 1994, Schedule 10, paragraph 12 in respect of supplies they intend to make of the land or building (see section 13).

The requirement for the purchaser to notify the seller that their option will not be disapplied is designed to deal with avoidance schemes making use of TOGC provisions. In deciding whether their option is disapplied, the transferee needs to consider whether there are any circumstances in which the building being transferred would become for them a capital item. This could be, for example, as a result of the building being treated as part of the TOGC or alternatively as a taxable supply.

In cases where prior permission for an option is required, the application must have been made on form VAT1614H and HMRC must have granted permission before or on the relevant date (see section 5).

Where land and buildings form part of a TOGC the transfer is treated as neither a supply of goods nor a supply of services for VAT purposes and no VAT should be charged.

11.2.1 What we mean by 'notified'

By 'notified to HMRC' we mean that the purchaser has properly addressed, pre-paid and posted the appropriate form or letter to us (or faxed it to us). The declaration that the option will not be disapplied must also be made by the relevant date.

11.2.2 What is the 'relevant date'?

The relevant date is the time that the supply would be treated as taking place, if it were not for the special TOGC rules. This is normally the date of the transfer, but will also include receipt of a deposit if that is paid in advance of the date of the transfer (unless the deposit is paid to an independent stakeholder). Further information on time of supply can be found in section 10 of this notice.

11.3 Can a transfer that would otherwise be exempt or zero rated be treated as a TOGC?

There is no requirement for the purchaser/transferee to opt to tax or notify the seller that their option is not disapplied where the sale would, apart from the TOGC provisions, be an exempt or zero rated supply. In such instances the transfer of the land and buildings can be included in a TOGC regardless of whether the transferee has opted.

11.4 What if the conditions for TOGC are not met?

If you are transferring:

- the freehold of land or buildings which are new (less than 3 years old) or unfinished buildings or civil engineering work which would normally be standard rated, or
- land or buildings on which you have opted to tax and the option is not disapplied

and the purchaser has either:

- not opted to tax the property, or
- not notified you that the option to tax will not be disapplied,

then the conditions for a transfer of a going concern will not have been met in respect of the land or buildings. You will have to charge VAT on the sale of the land or building.

The following table will help you to decide whether the conditions for a transfer of a going concern have been met.

Commercial land or building, ordinarily exempt			
Has seller opted to tax (building over three years old)?	**Has the purchaser opted to tax?**	**Will the purchaser's option to tax be disapplied?**	**Transfer of a going concern provisions met?**
Yes	Yes	Yes	No
Yes	No	N/A	No
Yes	Yes	No	Yes
No	No	N/A	Yes
No	Yes	Yes	Yes
No	Yes	No	Yes
Yes, but option disapplied	No	N/A	Yes

New building (less than three years old), ordinarily standard-rated			
Has seller opted to tax?	**Has the purchaser opted to tax?**	**Will the purchaser's option to tax be disapplied?**	**Transfer of a going concern provisions met?**
Yes	Yes	Yes	No
Yes	No	N/A	No
Yes	Yes	No	Yes
No	No	N/A	No
No	Yes	Yes	No
No	Yes	No	Yes

11.5 What about the input tax I incur on transfer expenses?

VAT incurred in making or receiving a TOGC is input tax. As with all input tax, it is recoverable to the extent that it will be used in making taxed supplies. The way you treat this input tax in practice will depend on whether you are the transferor (the person disposing of the business), or the transferee (the person acquiring the business).

11.5.1 Transferor

As a transferor of a going concern, the transfer of assets is neither a supply of goods nor a supply of services for VAT purposes (see Notice 700/9 Transfer of a business as a going concern). Costs incurred therefore cannot be related to the sale and are general costs of the business (ie overheads).

However, input tax on costs that relate wholly to the transfer of the business (for example legal fees) should be treated as an overhead of the specific property business being transferred rather than the whole VAT registration. Where that property business makes:

- only taxable supplies, the input tax is fully recoverable
- only exempt supplies, the input tax is wholly non-recoverable, and
- both taxable and exempt supplies, the input tax is residual and recoverable in accordance with the partial exemption method in place.

If you are partly exempt and your partial exemption method fails to achieve a fair and reasonable result, you may wish to discuss the matter with HMRC. In exceptional cases, where significant distortion and unfairness would otherwise arise, we may approve an alternative way of calculating recoverable input tax on the TOGC.

11.5.2 Transferee

If you are the transferee of a going concern and acquire assets for your business, the input tax on costs that relate wholly to the acquisition of those assets will be recoverable to the extent to which they will be used in making taxable supplies. Therefore, where they are to be used in making:

- only taxable supplies, the input tax is fully recoverable
- only exempt supplies, the input tax is wholly non-recoverable, and
- both taxable and exempt supplies, the input tax is residual and recoverable in accordance with the partial exemption method in place.

Note: this guidance can only be applied to acquisitions of businesses by way of a transfer of a going concern. Any VAT incurred on costs related to any other form of acquisition, such as the acquisition of a controlling share interest in a business, should be considered under normal principles. If it is incurred for an economic purpose then it will be input tax. Its recoverability will depend on what supplies made or to be made it relates to.

11.5.3 Business acquired by a VAT group

If you acquire…	and you…	your VAT group may…
a business or its assets as a going concern	are a member of a VAT group registration that is partly exempt; or becomes partly exempt during the tax year in which the transfer takes place	have to account for VAT on certain assets as a supply both to and by the group. Notice 700/9 Transfer of business as a going concern gives full details

11.6 What if the land or buildings are in the capital goods scheme or have unused costs attaching to them?

Where assets are transferred without a supply occurring, any input tax rights and obligations go with them to the new owner. This means that the new owner may need to make capital goods scheme adjustments (see Notice 706/2 Capital goods scheme) or payback or clawback adjustments (see Notice 706 Partial Exemption) that may fall due.

11.6.1 Capital goods scheme

If you are transferring land or buildings as part of a TOGC which are 'capital items' for the purposes of the capital goods scheme, you should make the purchaser aware of any capital goods scheme adjustments you have made and provide sufficient information to enable the purchaser to carry out any future adjustments under the scheme that might be necessary.

If you have acquired land or buildings that are capital items, you are responsible for continuing the capital goods scheme, and making any further adjustments of input tax required under the scheme, until the intervals are complete.

11.6.2 Payback or clawback adjustments

If you are transferring land or buildings as part of a TOGC and:

- you have incurred input tax on or related to the land or buildings

- that input tax has been attributed to taxable, exempt or mixed use based on an intention, and

- that intention has not been fulfilled as of the time of transfer

you should make the purchaser aware of this and provide them with sufficient information to enable them to carry out any future payback or clawback adjustments that might become necessary if they use the costs in making supplies differently to the intention you formed prior to the transfer.

If you have acquired land or buildings with unused costs attaching to them, you are responsible for monitoring whether you use the costs differently to the transferee's original intention and making any adjustments of input tax that may be required.

12. Deregistration

12.1 What happens to my option to tax if I deregister?

Your option to tax is not cancelled if you deregister. If, for example, you let an opted property, deregister due to a fall in turnover, and then at a later date your rental income in relation to that property increases above the VAT threshold, the option to tax will still have effect and you must apply to register again.

You might deregister because you are selling your business as a transfer of a going concern. If that is the case, and you are disposing of land or buildings that are capital items for the purposes of the capital goods scheme as part of the transfer, you should inform the purchaser of any adjustments you have made under the scheme.

If the opted land or building is an asset on hand at deregistration you may have to account for output tax in respect of it. For more information please see Notice 700/11 Cancelling your registration.

13. Anti-avoidance measures

13.1 Why are the anti-avoidance measures needed?

Some businesses whose supplies are wholly or partly exempt are not entitled to recover all of the input tax they incur on the purchase of land or buildings, or on major construction projects. As a result, some of these organisations entered into arrangements designed to either increase the amount of input tax they could claim, or to spread the VAT cost of the purchase or construction over a number of years.

To counter this, an anti-avoidance test was introduced. The test is applied each time a grant is made and if caught, the option to tax will not have effect (it will be 'disapplied') in respect of the supplies that arise from that particular grant.

The anti-avoidance test may also impact on the VAT treatment of a transfer of a going concern (TOGC) of a property (see section 11).

If you grant an interest in a building or land and the person that is to be in occupation makes predominantly taxable supplies and is able to receive credit for the majority of input tax they incur, you are unlikely to be affected by the anti-avoidance measure. Your option to tax may, however, be disapplied if any of the following situations arise (these are examples only):

- **you are a partly exempt business and grant a lease in a building that you intend occupy at a later date**
- **you are a partly exempt business and enter into a sale and leaseback of a property that you occupy**
- **you construct a building and finance is provided by a bank that also intends to be in occupation, or**
- **you purchase a building and finance is provided by a bank that also intends to be in occupation.**

Where your supplies of property become exempt supplies due to the disapplication of your option to tax, this may mean that you cannot recover input tax, or that you have to repay input tax that you have previously recovered.

13.2 What is the test?

The test is as follows:

If, at the time of the grant of land or buildings:

1. the property is, or is expected to become, a capital item for the purposes of the capital goods scheme, either for the grantor, a person to whom the property is transferred or a person treated as the grantor (see paragraph 13.3.3 below), and

2. it is the intention or expectation of the grantor or the person treated as the grantor (see paragraph 13.3.3) or a person responsible for financing the grantor's acquisition or development, that the building will be occupied by them or a person connected with them, and

3. the person occupying the property will be doing so other than wholly or substantially wholly for eligible purposes (see paragraph 13.9)

then the option to tax will not have effect in respect of supplies that arise from that particular grant.

The following paragraphs will explain what the test means and how it is to be applied to each grant.

13.3 Grants and supplies

13.3.1 What is a grant and who is the grantor?

The word 'grant' refers to the act that transfers the interest in, or possession of, the land or building. Examples are a freehold sale of land or a building, the leasing or licensing of land or a building, or the assignment or surrender of that lease or licence.

The grantor is the person who sells, leases, licences or lets any of the land or buildings and can be anywhere in the 'chain' of people who have an interest in the land or buildings concerned. For example, a freeholder (A) may sell land to another party (B) who constructs a new commercial building and then leases it to another business (C), who will occupy the building for its own use. In this case there are two grantors, A and B. It follows that if C goes on to sub-let part of the building to another business, there would then be three grantors. **The test should be applied to each grant made.**

13.3.2 What are supplies arising from a grant?

In the case of a freehold sale there is normally a single supply at the time of completion. For leases, however, it is usual for there to be a succession of supplies following the grant. These are treated as made when you either issue an invoice or receive payment (the earlier of the two). Payment would also include any non-monetary consideration.

13.3.3 What if I make supplies under a grant that was originally made by another person?

If you make a supply under a grant that was originally made by another person then, for the purposes of part 1 of the test in paragraph 13.2, you are treated as if you had made the grant. The grant is treated as made on the date of your first supply of the land.

Where, for the purposes of the test, you are treated as the person who made the grant, you will need to determine whether you satisfy the other elements of the anti-avoidance test. However, in such circumstances the test is still satisfied (and your option disapplied) where your grant is treated as made after the expiry of your capital goods scheme adjustment period. For example, where there is an intention that the building will be occupied by someone connected with you and will not be used for eligible purposes, then even if your first supply (see paragraph 13.3.2) occurs after the building has ceased to be a capital item for the CGS, your option to tax will still be disapplied. This overcomes an avoidance scheme that involved deferring the supplies made under the grant until the land is no longer a capital item.

13.4 How does HMRC establish a person's intention or expectation?

The option to tax has no effect in relation to the supplies arising from the grant if either the grantor, or the person responsible for financing the grantor's acquisition or development of that particular property, knows or expects at the time the grant is made that either one of them, or any party connected with them, will occupy it for other than eligible purposes (see paragraph 13.9). There does not have to be an intention to avoid VAT for the grant to be caught by the test.

We will consider commercial documents and other evidence such as minutes of meetings, business plans and finance requests to establish the intention and expectation of the businesses that are involved in the particular development or transaction.

13.5 What is meant by finance?

For the purpose of the anti-avoidance measure finance means:

- directly or indirectly providing all or part of the funds for the acquisition or development
- directly or indirectly obtaining those funds from another person
- directly or indirectly providing the funds for discharging all or part of the owner's borrowing for the acquisition or development, or
- directly or indirectly procuring that such a liability will be discharged by another.

Finance could take many different forms, such as loans, guaranteeing a loan, purchase of shares or securities which finance a development of land, share issues or premium deals.

13.6 When is someone responsible for financing an acquisition or development?

For the purposes of the anti-avoidance measure a person is only deemed to have been responsible for financing an acquisition or development if two key conditions are met:

a. at the time the finance is provided, or the agreement to provide the finance is entered into, the person providing the finance must intend or expect that he or the grantor, or somebody connected to either of them, will occupy the particular property for other than eligible purposes; **and**

b. the funds must be for the purpose of financing the purchase, construction or refurbishment of that property.

If either of these conditions is not met, a person will not be deemed to be responsible for providing finance, even if he has provided the funds to meet part or all of the cost of the acquisition or development.

13.7 What is the 'connected' person test?

13.7.1 How is one person seen to be 'connected' with another?

The test in section 1122 of the Corporation Tax Act 2010 applies to determine whether persons are connected. The following persons are treated as connected with you:

- your husband, wife or civil partner
- your relatives and their husbands, wives or civil partners
- your husband's, wife's or civil partner's relatives and their husbands, wives or civil partners
- if you are in business in a partnership, your partners and their husbands, wives, civil partners and relatives
- a company that you control, either by yourself or with any of the persons listed above, or
- the trustees of a settlement of which you are a settlor, or of which a person who is still alive and who is connected with you is a settlor.

Relative means a brother, sister, ancestor or lineal descendant. It does not include nephews, nieces, uncles and aunts.

A company is connected with another company:

- if the same person has control of both, or a person has control of one and persons connected with him (or he and persons connected with him) have control of the other, or
- if a group of two or more persons have control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

13.7.2 Are there any exceptions to the normal 'connected persons' rule?

For the purposes of the option to tax a company is not treated as 'connected' to another company as a result of both being under the control of:

- the Crown
- a Minister of the Crown
- a government department, or
- a Northern Ireland department.

13.8 What does 'occupation' mean?

13.8.1 When is a person in occupation of a building?

A person is in occupation of a building or land if they have:

- a physical presence, and
- the right to occupy the property as if they are the owner.

This means they will have actual possession and control of the land, together with the ability to exclude others from the enjoyment of such rights.

Normally a legal interest in or licence to occupy the land, will have been granted to them. However, occupation could also be by agreement or de facto and it is therefore necessary to take into account the day to day arrangements, particularly where these differ from the contractual terms. An exclusive right of occupation is not a requirement; an agreement might, for example, allow for joint occupation. It is also not necessary for a person to be utilising all of the land for all of the time for them to be considered as occupying it.

13.8.2 When is a person not in occupation for the purposes of the test?

A person is not 'in occupation' where the interest they hold is subject to an inferior interest and they are prevented from having rights of occupation until the inferior interest expires. This can typically arise where a leaseholder has granted a sub-lease. However, an important feature of the test is that it is forward looking and takes account of the intended or expected occupation of the building or land throughout the Capital Goods Scheme (CGS) adjustment period. As a result, a person who has granted an inferior interest but intends nevertheless to occupy the land during the adjustment period, would intend to be 'in occupation' for the purposes of the anti-avoidance test.

13.8.3 In what circumstances can occupation be ignored?

A person can ignore the following types of occupation for the purposes of the test:

- Occupation by a lessor which is purely for the purpose of making rental supplies under the grant. Examples include:

- occupation by the grantor between the date of the grant and the start of occupation by the tenant which is for the purpose of undertaking refurbishment or repairs, and

- occupation by maintenance, security, reception staff or similar, but not where it is for the purpose of providing ongoing services separate from the letting itself.

- Occupation at a future date, but within the CGS adjustment period, which is solely for the purpose of re-letting the property or making a fresh grant.

13.8.4 What is the '10% occupation' rule?

Occupation of any part of the land or building (even a very small proportion) normally counts as occupation for the purposes of the anti-avoidance test. However, in respect of grants made on or after 1 April 2010, a person is not treated as being in occupation for the purposes of the test where the conditions of the '10% occupation rule' are met. The rule prevents disapplication of an option where the occupation is by a development financier (see paragraph 13.6) or a person connected to a development financier (except where such persons are connected to the grantor), and the part to be occupied is only a small proportion of any building included in the grant.

Following the introduction of the '10% occupation rule' a person who would otherwise be 'in occupation' for the purposes of the anti-avoidance test is treated as not occupying any part of the land if they satisfy a number of conditions.

13.8.5 How is the '10% occupation rule' applied?

The rule works as follows:

- the person(s) in occupation must not be the grantor or a person connected to the grantor

- there must be no intention or expectation at the time of the grant that the person(s) will occupy more than 10% of any building (or part of a building) included in the grant at any time during the grantor’s CGS adjustment period. Where the financier is in occupation together with persons connected to him, or alternatively, the occupation is by a number of persons connected to the financier, it is the combined occupation that counts towards the 10% threshold

- the proportion of the building occupied is to be calculated in relation to the whole of the single building or where the grantor holds an interest in only part of the building, that part in which an interest is held immediately prior to the grant being made (this includes any part of the building in which an interest is held by a person(s) connected to the grantor)

- where a number of buildings are included in the same grant the rule is applied to each building on an individual basis. Where the 10% threshold is exceeded in relation to any of the buildings the conditions are not satisfied

- for the purposes of the rule a single building takes its meaning from VAT Act 1994 Schedule 10 sub-paragraphs 18(4) to (7) and includes some linked buildings and enclosed complexes (see paragraph 2.6)

- the conditions are not satisfied where the person(s) occupies any land included in the grant which is not a building. However, the occupation of land that falls within the curtilage of the building or is used for parking vehicles can be disregarded as long as such occupation is ancillary to that of the building.

13.8.6 How do I calculate the proportion of the building occupied by a person for the purposes of the '10% occupation rule'?

For the purposes of calculating the percentage of the building occupied by a particular person the practices set out in the RICS 'Code of Measuring Practice' are to be used. Box H below sets out detailed rules about how the Code is to be applied. For example, the calculation must exclude any areas that are not available for exclusive occupation, such as (in most cases) walkways, stairwells and foyers. In addition, parts of buildings used for vehicle parking and parts which form the curtilage of the building are also excluded.

In most instances it will be clearly obvious that a tenant will be occupying less than 10% of a building. Where this is the case and HMRC have no reasons for believing that the 10% threshold will be exceeded at any time during the CGS adjustment period, taxpayers will not be required to produce evidence of their RICS calculation. However, taxpayers should retain appropriate details with their VAT records about any parts of buildings to be occupied by development financiers (or persons connected to development financiers). In rare cases where the area occupied is close to 10% (plus or minus 5%) HMRC may ask to see evidence of RICS calculations.

The '10% occupation rule' is based on the intention or expectation of the grantor and development financier at the time the grant is made and involves a forward look over the 10-year period of the CGS. The test, however, is a one-off test and where further occupation arises which was not intended or expected at the time of the original grant (and results in the 10% threshold being exceeded) the test is not reapplied to the original grant. However, in such cases (assuming other parts of the anti-avoidance test are met), the option will be disapplied in relation to the second and subsequent grants.

Box H

The boxed text below has the force of law.

Calculating the proportion of a 'relevant building' occupied by a development financier or person connected to a development financier (for the purposes of paragraph 15A(1)(b)(ii) of Schedule 10 to the Value Added Tax Act 1994).

The proportion of a 'relevant building' occupied by any person or persons for the purposes of paragraph 15A(1)(b)(ii) of Schedule 10 to the Value Added Tax Act 1994 is to be calculated using the recommended practices set out in the current version of the 'Code of Measuring Practice' published by the Royal Institution of Chartered Surveyors (the 'RICS Code'), but subject to the following:

1. The following parts of the building must be excluded:

- any part which is not available for exclusive occupation;
- any part intended primarily for use for vehicle parking;
- any part which is land forming part of the curtilage of the building.

2. Where in relation to any part of the 'relevant building' the RICS Code either:

- does not specify a 'core definition'; or
- specifies the use of more than one 'core definition',

the 'core definition' to be used is that applied or expected to be applied by the grantor for the purposes of calculating rent due from letting that part of the building or, if there is no such definition at the time of the grant, NIA (Net Internal Area).

Explanatory Note 1

“Current version of the “Code of Measuring Practice”” means the latest published version at the time the grant is made (i.e. the grant that is subject to the anti-avoidance test).

13.9 When is occupation 'wholly' or 'substantially wholly' for eligible purposes?

13.9.1 What is 'wholly' or 'substantially wholly'?

The anti-avoidance measure examines whether the grantor or the person responsible for providing finance intends that the development will be occupied other than “wholly” or 'substantially wholly' for eligible purposes.

The terms 'wholly' or 'substantially wholly' are defined in Box I below.

Box I

The boxed text below has the force of law.

Meaning of 'wholly' and 'substantially wholly' for eligible purposes (for the purpose of paragraph 15(5) of Schedule 10 to the Value Added Tax Act 1994)	
Expression	**Meaning**
Occupation 'wholly' for eligible purposes.	Land occupied 100% for eligible purposes.
Occupation 'substantially wholly' for eligible purposes.	Land occupied at least 80% for eligible purposes.

13.9.2 What are 'eligible purposes'?

For someone to be in occupation of the property for eligible purposes they must be occupying it for the purpose of making taxable supplies, or for other activities which entitle them to credit for their input tax.

Some organisations are always treated as occupying a development for eligible purposes and these include National Health Service Trusts and government departments. Occupation by local authorities or other bodies, such as police and fire authorities, are treated as eligible provided the occupation is for taxable or non-business purposes.

Occupation that arises only because of an automatic teller machine (ATM) fixed to the land is treated as being for eligible purposes.

The following are examples of businesses and organisations that may occupy a property for other than eligible purposes:

- businesses, such as insurance companies and banks, making exempt supplies, or
- someone who is not, and is not required to be VAT registered.

Organisations, such as charities, who undertake non-business activities, would **not** generally be in occupation for eligible purposes.

13.10 What land or buildings are covered by the capital goods scheme?

The anti-avoidance measure only applies to land and buildings that are, or are intended to become, capital items for the purpose of the capital goods scheme, either in the hands of the grantor or a person to whom the property is to be transferred. Generally, a capital item comes within the scheme when it is either bought, or first used.

The capital goods scheme will normally apply if you incur VAT on the purchase of the property, or on capital works, where VAT bearing costs, net of VAT, are £250,000 or more. But it will not apply where you have purchased property purely for the purpose of selling it on. You will find more information about capital items and how the scheme works in the Notice 706/2 Capital goods scheme.

14. Real Estate Elections (REE)

14.1 Who should read this section?

Warning

This section is only likely to be of interest to you if you:

a. intend to acquire a large number of properties and wish to opt to tax all of them, or

b. have made a 'global' option to tax in the past (see paragraph 14.13).

14.2 Note about terminology used in this section

For the purpose of this section:

- **'property acquisition'** means the acquisition of any interest in, right over, or licence to occupy land (including buildings and civil engineering works), and

- **'interest'** means any interest in, right over or licence to occupy land (including buildings and civil engineering works).

14.3 What is a REE? (introduction and overview)

A REE is a formal decision to opt to tax all future property acquisitions.

If you make a REE, you will be treated as if you have made an option to tax in relation to every property in which you subsequently acquire an interest (there are some exceptions, which are explained in paragraph 14.7 below).

Each property you acquire will be treated as separately opted, with effect from the time of acquisition (see paragraph 14.5 below). Each of these options is capable of being separately revoked **if** the conditions for revocation are met. For example, if you acquire a property that you do not want to be opted, you may be able to revoke within 6 months of acquisition under the "cooling off" provisions (see paragraph 8.1), but only if the relevant conditions are met.

For a REE to have legal effect, you need to notify the REE itself to HMRC (paragraph 14.9 explains how to do this), but once you have made a REE, there is no need for you to notify HMRC of an option to tax each time you acquire an interest in a property. You will, however, need to keep records and provide us with certain information if we request it (see paragraph 14.12).

14.4 Why were REEs introduced?

Some businesses with very large numbers of properties wish to opt to tax all (or nearly all) properties within their portfolios without having the administrative burden of having to notify HMRC of an individual option to tax each time they make a new acquisition. In the past, the only way to achieve this was to make a ‘global’ option to tax. The REE was introduced as an alternative to the global option. It is designed to provide some of the advantages of a global option whilst providing greater flexibility. Information about global options is in paragraph 14.13.

14.5 When does an option to tax under a REE have effect?

Once you have made a REE, each property you subsequently acquire (subject to the exceptions explained in paragraph 14.7) will be treated as opted to tax with effect from the start of the day you acquire it.

For this purpose, you will be treated as acquiring the property at the time that the supply to you, for VAT purposes, is treated as made, or if there is more than one such time, the earliest of them. For further information about time of supply, see section 10.

If you acquire a property as part of a VAT free transfer of a going concern ('TOGC') (see section 11), your option will have effect from the time that the supply to you would have been treated as made (or if there is more than one such time, the earliest of them) if the special TOGC rules had not applied.

14.6 Can I opt to tax a property in which I do not hold an interest?

If, after making a REE, you wish to opt to tax a property before you acquire an interest in it, you may do so by making a separately notified option to tax under the normal rules (see section 4).

14.7 What acquisitions are excluded from the effect of a REE?

The REE will **not** generate an option to tax for the following types of acquisitions:

1. Any acquisition of a property in respect of which you have already exercised an option to tax.

If you acquire an interest in a property and you have (or a body corporate that was in your VAT group at the time, has) previously opted to tax the building or land, under the normal rules, with effect from a date prior to the acquisition date, the REE will have no effect in relation to that property.

2. Any acquisition of a property in respect of which you already hold an interest when acquiring another different interest.

If the person who acquires an interest after the REE is made already held a different interest in the property before the REE was made and continues to hold that interest when acquiring the further, different interest, the REE will not generate an option to tax. This situation can typically arise where a leasehold interest is held prior to the purchase of the freehold. Alternatively, an interest in part of a building (for example, one floor) may be held at the time an interest in another part of the same building is acquired.

3. Any acquisition of a property for which permission to opt might ordinarily be required.

The REE will not generate an option to tax for an acquisition if you have made exempt supplies of the property within the 10 years prior to the date of acquisition.

14.8 What happens to options to tax I made before making the REE?

14.8.1 Automatic revocation where no interest held

Any options to tax exercised by you (or by a person within your VAT group at the time) before making a REE will generally be revoked automatically when you make a REE if you do not hold an interest in the opted land or building at that time (and no one within your VAT group holds an interest). Details are in the table below. However, there are exceptions to this rule, which are explained in paragraph 14.8.2.

If…	**and…**	**then...**
You previously opted to tax a building (or part of a building)	you do not have a relevant interest in the building at the time you make a REE	your option is revoked (subject to paragraph 14.8.2)
You previously opted to tax land (without reference to a particular building or buildings)	you do not have a relevant interest in the land at the time you make a REE	your option is revoked (subject to paragraph 14.8.2)
You previously opted to tax land (without reference to a particular building or	you only have an interest in part of the land at the	your option is revoked in relation to the parts of land in which you do not hold a

buildings)	time you make a REE	relevant interest (subject to paragraph 14.8.2)

14.8.2 What are the exceptions to automatic revocation?

Automatic revocation of an option will **not** occur at the time a REE is made in any of the following circumstances. **All references to 'relevant time' mean the time the REE is made or, in other words, the time the option would otherwise be revoked:**

1. Where the opter has sold the property on terms that may require the purchaser to make additional payment after the 'relevant time'. Such payments are often referred to as 'overages' and can be contingent on such things as the purchaser obtaining planning permission.

The following two circumstances can only apply if the person who opted to tax ('the opter') is or has been a member of a VAT group.

2. Where a 'relevant associate' of the opter in relation to the opted property (see paragraph 6.3) has sold the property on terms that may require the purchaser to make additional payment after the relevant time (see 1. above).

3. Where before the relevant time a relevant associate of the opter in relation to the property left the opter's VAT group and **at the time of leaving** any of the following applied:

a. the relevant associate had an interest in or licence to occupy the property

b. the relevant associate had, prior to leaving the VAT group, disposed of an interest on terms that might have required the purchaser to make additional payment at a later date (see 1. above), or

c. the relevant associate was connected to the opter or another relevant associate of the opter and that person had an interest in or licence to occupy the property.

14.8.3 Conversion of single option (for example, a 'global' option) into separate options

If, before you made a REE, you made a single option to tax in respect of land (without specifying a particular building or buildings) and that land is capable of being divided into separate parcels, you may convert the single option into separate options in respect of each of those parcels. This choice is only available in relation to land in which you have a relevant interest at the time you make the REE. Each parcel of land that is to be treated as being separately opted must meet the conditions set out in Box J below.

Box J

The boxed text below has the force of law.

Conversion of an option to tax land exercised before a real estate election into separate options to tax land in which a relevant interest is held at the time when the real estate election is made (for the purpose of paragraph 22(6) of Schedule 10 to the Value Added Tax Act 1994).	
A person making a real estate election may treat an option to tax made before the real estate election is made as though there were separate options to tax of individual parcels of that land. Each parcel of land that is to be treated as being separately opted must:	
1.	be identified by at least one of the following - its postal address, land registry title number, map or plan or other description, and
2.	meet the conditions relating to the scope of an option contained in paragraph 18 of Schedule 10 to the VAT Act 1994.

If you choose to convert a single option into separate options, you should clearly identify the separate parcels of land when you notify your REE (see paragraph 14.9).

For the purpose of revocation, the new options are treated as having effect from the time that the original option had effect. These options cannot be revoked under the six month ‘cooling off’ revocation.

If you are in a VAT Group when you make a REE and you choose to convert a single option into separate options, you (that is, the person that has made the REE) will be treated as the opter for these new separate options, regardless of which VAT group member made the original option. For the purpose of revocation, the new separate options are treated as having effect from the time that the original option had effect. However, for the purpose of the 'relevant associate' rules (see paragraph 6.3), they are treated as having effect from the date that the REE is made.

14.9 How do I notify a real estate election?

If you make a REE, you must notify it to us within 30 days of having made it, or such longer period as we may allow.

The following statement has the force of law.
Notification of a real estate election (for the purpose of paragraphs 21 and 22 of Schedule 10 to the Value Added Tax Act 1994) must be made on form VAT1614E and must contain the information requested on that form.

You can download form VAT1614E from our website, go to www.hmrc.gov.uk, or obtain it from our VAT Helpline on 0845 010 9000.

You must provide a list, with your notification, of properties in which you hold an interest at the time of making the REE (except for dwellings). If you have chosen to convert a single option into separate options (see paragraph 14.8.3), you must separately identify the separate parcels of land on this list. This list must contain the information specified in Box K below.

Box K

The boxed text below has the force of law.

Information to be provided with a notification of a real estate election by a person holding one or more relevant interests in land or buildings (for the purpose of paragraph 21(7) of Schedule 10 to the Value Added Tax Act 1994 ('the VAT Act 1994')).

The notification of a real estate election must contain the required information in relation to any land or buildings (other than buildings designed or adapted for use as a dwelling or a number of dwellings) in which the person making a real estate election holds a relevant interest at the time the REE is made.

The required information must be provided by way of a list specifying the following in respect of each property (other than dwellings or buildings designed or adapted for use as a dwelling) in which the person holds a relevant interest:

1.	a description of the land or buildings, identified by reference to postal address, land registry title number, map, plan or other description;
2.	in the case of land or buildings in respect of which no option to tax made by the maker of a real estate election has effect, the date of acquisition of a relevant interest in that land or buildings;
3.	in the case of land or buildings in respect of which an option to tax made by the maker of a real estate election has effect, the date when the relevant interest in the land or building was first acquired or, if later, the date when the option first had effect;
4.	where an option has effect in relation to two or more separately listed parcels of land or buildings, they must be identified as being subject to the same option.

Explanatory Note 1

'Relevant interest' .has the same meaning as in paragraph 21(12) of Schedule 10 to the VAT Act 1994.

Explanatory Note 2

If the person making a real estate election has more than one relevant interest in a parcel of land or a building that were acquired at different times, only the date of acquisition of the most recently acquired relevant interest is to be provided.

Explanatory Note 3

If the person making a real estate election is required to provide the date when an option first had effect in relation to a parcel of land or a buildings and that date is unknown, that person should record that fact and enter an approximate date, using that person's best judgement, and provide a written explanation of why that date is considered reasonable.

14.10 What do I do if I have no record of the date an option to tax first had effect?

If you make a REE and do not have a record of the date when an option first had effect in relation to land or building, explanatory note 3 to Box K allows you to provide an approximate date, using your best judgment. You also have to provide an explanation of why you consider that date is reasonable. We will normally accept lists with such dates without further enquiry, but reserve the right to review them either as part of our general assurance and tax maintenance work, or as a result of a specific event (for example, notification of the revocation of an option to tax).

14.11 Incomplete or incorrect lists

If you submit an incomplete list or one which contains incorrect information, you should submit a revised and current updated list to your Client Relationship Manager or, if you do not have one, to the National Option to Tax Unit in Glasgow (paragraph 4.2.3 shows how you may contact them), as soon as you identify the error.

14.12 What information must I provide after a real estate election has been made?

If you have made a REE, we may, at any time, require you to provide within 30 days (or such longer period as we may allow) a list of all properties and parcels of land you hold at that time, together with details of all acquisitions, disposals and conversions to dwellings made since you last provided a list. In such a case, you have to provide the information set out in Box L below.

Box L

The boxed text below has the force of law.

Information to be provided by the maker of a real estate election when required to do so by the Commissioners (under paragraph 21(8) of Schedule 10 to the Value Added Tax Act 1994 ('the VAT Act 1994')).

When required to do so, the maker of a real estate election must provide to the Commissioners the following information in relation to any land or buildings (other than buildings designed or adapted for use as a dwelling) in which that person or a relevant group member:

- holds a relevant interest at the time of providing the required information, or
- has ceased to hold a relevant interest since making a real estate election or, if later, since the last occasion on which the maker of the real estate election provided such information to the Commissioners.

The information set out in Part A of this box is to be provided in respect of every such property; the information set out in Part B is to be provided in respect of every such property in which a relevant interest has been acquired or disposed of by the maker of the real estate election or a relevant group member since the date of the last such list, if any.

Part A

In respect of any land or building in which the maker of a real estate election or a relevant group member holds a relevant interest or has ceased to hold such an interest as described above, the following information must be provided by way of a list specifying:

1.	the description of the land or buildings identified by reference to its postal address, land registry title number, map, plan or other description;
2.	in the case of land or buildings in respect of which no option to tax made by the maker of a real estate election or relevant group member has effect, the date of acquisition of the relevant interest in the land or buildings;
3.	in the case of land or buildings in respect of which an option to tax made by the maker of a real estate election or a relevant group member has effect, the date when the relevant interest in the land or building was acquired or, if later, the date when the option first had effect;
4.	where an option has effect in relation to two or more separately listed parcels of land or buildings, they must be identified as being subject to the same option.

Part B

The following information must be provided in respect of every property in which a relevant interest has been acquired or disposed of by the maker or the real estate election or a relevant group member since the date of the last such list, if any, by way of a list specifying:

1.	As appropriate, the date of the maker of the real estate election or a relevant group member: • acquiring a relevant interest in land or buildings in which that person has no other relevant interest; • ceasing to hold a relevant interest in land or buildings without retaining another relevant interest in that property; • opting to tax land or buildings otherwise than by virtue of a real estate election; • converting a building or buildings into a dwelling or dwellings; • excluding a new building from the effect of an option; and • revoking an option to tax in relation to land or buildings; identifying the land or building to which each occurrence relates.
2.	The VAT-exclusive value of the supply of a relevant interest acquired or disposed of by the maker of a real estate election or relevant group member.
3.	The VAT (if any) charged on the supply of a relevant interest by the maker of a real estate election or, where the supply occurred before its admission to the group, the relevant group member.

Explanatory Note 1

'Relevant interest' and **'relevant group member'** have the same meanings as they do in paragraph 21(12) of Schedule 10 to the VAT Act 1994.

Explanatory Note 2

Where the maker of a real estate election or relevant group member has more than one relevant interest in the same land or building that were acquired at different times, only the date of acquisition of the most recently acquired relevant interest is to be provided.

Explanatory Note 3

In the case of land or a building in which an interest has been held before the date of a real estate election, the date of the occurrence of the making of an option to tax by the person making a real estate election or a relevant group member is the date when that option first has effect.

Explanatory Note 4

The date of the occurrence of the revocation of an option is the date from which the revocation has effect.

Explanatory Note 5

The requirement to provide the information set out in Parts A and B above does not apply to the revocation of an option to tax by virtue of paragraph 23 ('the cooling off' period) or paragraph 24 (lapse of six years since having a relevant interest) of Schedule 10 to the VAT Act 1994.

14.13 About global options to tax and REEs

14.13.1 What is a ‘global’ option to tax?

A ‘global’ option is a single option to tax which covers a large number of properties, such as 'the whole of the UK' or 'all current property holdings and all future acquisitions'.

14.13.2 What are the disadvantages of a global option?

A global option is a single option to tax and therefore cannot be revoked on a property by property basis. A global option can only be revoked as a whole, and only if the relevant conditions are met for each property covered by the global option. Global options have caused particular problems for VAT groups, due to the relevant associate rules explained in paragraph 6.3.

14.13.3 Can I still make a global option instead of a REE?

You may still opt to tax a large area, such as the whole of the UK, if you wish to. However, you should be aware of the possible disadvantages described in paragraph 14.13.2. You can no longer exercise a global option in respect of 'all current property holdings and future acquisitions'.

14.13.4 I’ve made a global option in the past. Can I convert it into a REE?

If you have made a ‘global’ option to tax in the past, you can, if you wish, make a REE. This will have the following implications for your existing global option:

- The global option will generally be revoked in respect of any land in which you do not hold a relevant interest when you make the REE (see paragraph 14.8.1).

- You can, if you wish, convert the remainder of the global option into separately opted parcels of land when you make a REE (see paragraph 14.8.3). Each separate option will then be capable of being individually revoked, if the conditions for revocation are met.

14.14 How are REEs treated in VAT groups?

14.14.1 Which member of a VAT Group can make a REE?

Any member of a VAT group can make a REE although we expect that this will normally be done by the representative member of the VAT group.

14.14.2 What is the effect of a REE on properties acquired by other VAT group members?

If you are in a VAT Group when you make a REE, or if you join one after you have made a REE, your REE will affect acquisitions of any members of your group, in addition to affecting your own acquisitions.

This means that where a body corporate in the same group as you acquires an interest in a property, you will be treated as having opted to tax that property at the time the interest is acquired (except for the circumstances described in paragraph 14.7).

You will be treated as the opter in these circumstances and the body corporate which has acquired the interest will be a 'relevant associate' of you (see paragraph 6.3).

If a body corporate ceases to be a member of the same VAT group as you, any acquisitions it makes after ceasing to be a member of your VAT group will not be affected by the REE.

14.14.3 How does the REE effect an option to tax made by me (or by a body corporate within my VAT group at that time) before I made the REE?

If neither you nor any member of your VAT group holds an interest in the relevant opted property at the time of making the REE (or only holds an interest in part of it), the option might be automatically revoked (or partially revoked) (see paragraphs 14.8.1 and 14.8.2 for further information about this).

If the option is not automatically revoked (or if only part of it is revoked), and you choose to split the option into separately opted parcels of land (see paragraph 14.8.3), then you (that is, the person that has made the REE) will be treated as the opter for the new separately opted parcels of land, regardless of who made the original option (see paragraph 14.8.3 for further information about this).

For any other options to tax, the body corporate that originally made the option will remain the opter. Any further acquisitions that are made in relation to such opted property will not be affected by the REE (see paragraph 14.7.1).

14.15 Can I revoke a REE?

Once you have made a REE, you cannot revoke it but we have the power to withdraw a REE if you do not comply with our requests for information (see paragraph 14.13).

If we withdraw your REE, you cannot make a further REE unless you obtain our permission first. Where a subsequent REE is made, you may not convert single options into separate options (see paragraph 14.8.3).

Annex 1

All the following forms and certificates have the force of law and must be used where appropriate.

They can be downloaded the HMRC website, or obtained from the VAT Helpline on 0845 010 9000.

VAT1614B Ceasing to be a relevant associate

VAT1614C Revoking an option to tax within six months (the 'cooling off' period)

VAT1614D Certificate to disapply the option to tax: Buildings to be converted into dwellings etc

VAT1614E Notification of a real estate election

VAT1614F New buildings - exclusion from an option to tax

VAT 1614G Certificate to disapply the option to tax: Land sold to Housing Associations

VAT 1614H Application for permission to opt

VAT 1614J Revoking an option to tax after 20 years

Annex 2

Flowcharts designed to assist with the application

Notes

Note 1 - 'Opted supplies' means supplies that will be taxable as a result of the option to tax. 'Property' includes land, buildings and civil engineering works.

Note 2 - The question of whether a person is connected with another person is to be decided as it would be for the purposes of Part 1 of Schedule 10 to the VAT Act 1994. Guidance on connected persons is in paragraph 13.7.

Note 3 - 'Permissible exempt supplies' means the following exempt supplies arising from a grant in relation to the land:

a. supplies for which the consideration solely represents legal and/or valuation costs reimbursed under the agreement for the grant, or

b. supplies where

i. the consideration received is rent and/or service charges which relates to a period of occupation of the property and that period ends no later than 12 months from the date on which the option first takes effect, and

ii. no taxable rents and service charges to be made after that 12-month period will be reduced in value as a result of the consideration payable for these exempt supplies.

Note 4 - For the purposes of the requirement, 'entitled to credit' includes a deduction or credit arising as a result of the application of the 'payback' provisions or the capital goods scheme. Guidance on these terms can be found in Notice 706 and Notice 706/2.

Note 5 - For the purposes of the requirement, your 'capital expenditure' is your expenditure on goods or services used in connection with the acquisition of, building works on, construction works on or the fitting out of, the property. Capital expenditure does not include expenditure on routine repairs and maintenance.

Note 6 – 'Supplies conferring a credit to input tax' are supplies listed under the VAT (Input Tax) (Specified Supplies) Order 1999 (SI 1999/3121). These include:

a) services made to a person outside the EU Member States which are either:

i. directly linked to an export of goods to a place outside the member states, or

ii. certain intermediary services in connection with supplies of financial services which are exempt or would be exempt if made in the UK, and

b) certain supplies of investment gold.

Further details of these 'specified supplies' is available in Notice 706, paragraph 8.2.

Note 7 - Paragraphs 5 –11 of Schedule 10 to the VAT Act 1994 deal with the following supplies:

a) **Para 5** – supplies of a building (or part of a building) designed or adapted and intended for use as a dwelling or solely for a relevant residential purpose (further information is in paragraphs 3.2 – 3.3).

b) **Para 6** – supplies of a building (or part of a building) not designed or adapted as a dwelling or relevant residential building but intended for use as such, for example, following conversion (further information is in paragraph 3.4).

c) **Para 7** – supplies of a building (or part of a building) intended solely for a relevant charitable purpose other than as an office (further information is in paragraph 3.5).

d) **Para 8** – supplies of pitches for residential caravans (further information is in paragraph 3.8).

e) **Para 9** – moorings for residential houseboats (further information is in paragraph 3.9).

f) **Para 10** – supplies of land to housing associations (further information is in paragraph 3.6).

g) **Para 11** – supplies of land to individuals for the construction of dwellings (further information is in paragraph 3.7).

How we use your information

HM Revenue & Customs is a Data Controller under the Data Protection Act 1998. We hold information for the purposes specified in our notification to the Information Commissioner, including the assessment and collection of tax and duties, the payment of benefits and the prevention and detection of crime, and may use this information for any of them.

We may get information about you from others, or we may give information to them. If we do, it will only be as the law permits to:

- check the accuracy of information
- prevent or detect crime
- protect public funds.

We may check information we receive about you with what is already in our records. This can include information provided by you, as well as by others, such as other government departments or agencies and overseas tax and customs authorities. We will not give information to anyone outside HM Revenue & Customs unless the law permits us to do so. For more information go to **www.hmrc.gov.uk** and look for Data Protection Act within the Search facility.

Do you have any comments or suggestions?

If you have any comments or suggestions to make about this notice, please write to:

HM Revenue & Customs
CT & VAT, Property VAT Team
100 Parliament Street
London
SW1A 2BQ

Complaints

If you are unhappy with the way we have handled your affairs (because of delays or mistakes, for example) please tell the person or office you have been dealing with. If they are unable to sort things out, ask for your case to be referred to the complaints team.

For more information about our complaints procedures, go to **www.hmrc.gov.uk** and under ‘quick links’ select ‘Complaints’.