

BPF RESPONSE TO CONSULTATION ON POTENTIAL CHANGES TO PROCESSING OTT FORMS BY HMRC

Introduction

The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £107bn to the economy in 2020 and supported 2.3 million jobs. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.

To encourage investment into our towns and cities that will help to level up the UK, we need a user-friendly tax system that is simple to navigate and minimises the amount of time and money that businesses need to spend on their tax affairs. Sadly, we are a long way from that point and VAT administration in particular is far more burdensome than it need be. However, in that vein we welcome HMRC's consultation on option to tax (OTT) process changes in the hope that it might free up HMRC resources to improve businesses' experience of the tax system.

General comments

The proposals in the consultation paper follow a trial carried out over the summer of this year whereby HMRC stopped carrying out validity checks on OTT notifications on the basis that the correct notification of an OTT should be the responsibility of the opter. This trial was considered a success by HMRC as it has reduced the time taken to process OTT notifications and has helped to free up resources within the OTT National Unit.

We agree that it is – and always has been – the responsibility of opters to ensure they correctly notify their OTTs and that these are “valid”. However, HMRC's historic approach of verifying OTT notifications and the impression HMRC has generally given that it was “approving” these, has given rise to a market practice of parties to property transactions expecting a certain level of evidence as to whether the property asset in question has been opted.

At the very least, this includes the automated email sent by HMRC on receipt of an OTT via email. But in the eyes of many lenders, advisors and other taxpayers, HMRC's letter of acknowledgement of an option to tax is the “gold standard” to show VAT is correctly chargeable on the rents of a property or that the transaction qualifies as a TOGC.

Neither the changes trialled over the summer, which have now been permanently incorporated into HMRC's processes, nor the present consultation have been publicised beyond a relatively small number of trade associations and professional organisations. These will have raised awareness among their members, but there remains a large number of taxpayers and advisors operating in ignorance of HMRC's recent process changes and current proposals. This low level of awareness risks causing confusion and uncertainty in the property market and this could delay transactions as parties seek the level of VAT evidence that they have been used to obtaining in the past.

To minimise this potential market disruption, we would strongly urge HMRC to publish a Revenue & Customs Brief highlighting the trialled changes and current consultation proposals as soon as possible. Relevant guidance and Manuals may also need updating and HMRC should expect that it will take time for awareness of these changes to filter through to taxpayers.

Receipt of a notification of an OTT

We would make the following points in relation to HMRC's proposal to stop issuing OTT notification receipt letters:

- At the risk of repeating ourselves, it really is crucial that there be some HMRC publication setting out recent and potential future changes to OTT notification processes. Taxpayers, their lenders and advisors will otherwise have no official certainty that these changes are taking place.
- This should include changes to guidance and Manuals where appropriate. For instance, para 2.3.1 in 700/9 could be updated to say "the seller must have the buyer's notification of the non-disapplication of the option to tax and may find it prudent to obtain this in writing – *it is not however necessary to obtain evidence that the notification was posted, emailed or otherwise sent to HMRC.*"
- There will be plenty of existing legal agreements which require the production on an HMRC acknowledgement letter before certain actions can occur or where not providing would cause a breach. For a time-limited period (say one or two years), taxpayers should therefore be able to request an acknowledgement letter when they can demonstrate it is needed as part of contractual arrangements entered into before the date of implementation of the new HMRC policy.
- The automated email acknowledgement of receipt is a helpful and time-efficient way of demonstrating that an OTT has been notified. However, there have been technical issues with this in the past, with automated acknowledgments not being sent under certain circumstances. People need to know that the technology is reliable.
- This reliability should extend to taxpayers being able to attach property plans (which may be relatively large files) to email OTT notifications without that email being rejected by HMRC's systems for technical reasons (e.g. size restrictions, issues opening files).
- It is common for property businesses to set up a new Special Purpose Vehicle (SPV) to buy a property and for an OTT notification to be uploaded as part of the online VAT

registration process. While the online registration generates an acknowledgment from HMRC, this refers only to the registration and not to the OTT notification sent alongside it. A taxpayer could send the OTT notification separately by email to obtain automatic acknowledgment of receipt, but this hardly seems like the most efficient way of doing things so HMRC should consider amending the automated VAT registration receipt email to refer to any documents sent alongside it.

Confirming the existence of an OTT

We recognise that requests for confirmation of the existence of OTTs involve some work for the OTT National Unit and that can see why HMRC is considering how it can limit such requests. We also accept that it is taxpayers' responsibility to maintain good records of OTTs notified.

That said, the ability to consult HMRC on the existence of OTTs can be a valuable one in situations where good records have not been kept and in the absence of any other way of determining the existence of an OTT, it feels like a shame to get rid of it.

It seems reasonable to us that HMRC should be able to charge a small fee to cover the cost of processing requests for information about past OTTs. Ideally, this should be used to reinvest in the OTT National Unit, but even if this is not possible, at least HMRC is being remunerated for the effort expended.

If HMRC proceed with the proposed approach of checking for existing OTTs only under certain circumstances (i.e. effective date >6 years ago, if appointed as LPA received), then we would recommend that a further circumstance be added to the list, namely where there has been a recent (e.g. in the past six months) change in ownership. This is to allow buyers to make sure that they have complete VAT records where the seller may not have kept them so.

Also, as we recommended in our response to HMRC's call for evidence last year on potential reforms to the land and property exemption, HMRC should upgrade the taxpayer portal so that it becomes possible for OTT notifications to be stored there. This would require time and investment by HMRC, but it could make a very positive difference. It would ensure that both parties to a transaction had one version of the truth and would simplify the provision of evidence on the VAT status of a property – in the words of a member: "quick redacted screen shot from the list on the portal, job done".

Finally, to the extent that recent process changes and (should they go ahead) the consultation proposals free up resources within the OTT National Unit then we would like to see this resource redeployed to improve HMRC's service for taxpayers elsewhere. For example, in helping to clear backlogs in other areas or in supporting the development of an enhanced taxpayer portal.

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