

Editorial News

Law Society's Use of Electronic Commerce

The Law Society has been awarded £43,800 for pioneering the use of electronic commerce by the DTI's Information Society Initiative (ISI) Programme for Business. The institution was one of sixteen which successfully met the Professional Institution Network Challenge (PINC).

Designed to encourage the take-up of electronic commerce by professional institutions, through the creative use of existing technologies, PINC is a project-based competition for professional institutions in any sector. Organisations had to demonstrate how their project would enhance the quality of the services they delivered. Additionally, projects had to encourage the use of such technologies by their members, businesses within that sector, especially SMEs (small and medium-sized enterprises), and other institutions.

The Law Society received the award for Law Society On Line, a project to develop its existing web site. The objectives were to improve accessibility, visibility and accountability, while providing the focus for an awareness campaign to encourage solicitors to take up the new opportunities offered by the information age. Solicitors are vital business intermediaries, making them well-placed to promote use of the Internet in all sectors – and obliging the profession to offer electronic communication as an essential client service.

The main services to be developed include an on-line news service including legal services and recruitment marketplaces; an online library containing legal updates and links to legal source material; the latest policy briefings and decisions; and practical advice on professional ethics.

Winning entries receive up to 50 per cent of the cost of their project, with a maximum of £50,000.

For further information, please contact: The ISI Programme for Business Publicity Centre on Tel: 0171 828 1593; Fax: 0171 931 9640 and E-mail: user@kinross-and-render.co.uk

Pitfalls in New Property VAT Legislation

This month's changes affecting 'exempt' VAT minimisation schemes relating to commercial property transactions have resulted in layer upon layer of complexities according to Irit Herzenshtein a Partner with Chartered Accountants Hacker Young.¹

The current scheme introduced in the 1996 Budget (with effect from 26 November 1996) originally contained nightmare provisions which involved assessing property use by tenants on a quarterly basis.

These were withdrawn but with the ambiguous warning of sudden re-implementation if this proved necessary, the replacement provisions are now modified with the statutory instrument which came into effect on 3 July this year.

One will need a crystal ball to unscramble this legislative dichotomy. It is in dire need of revision if its contents are to be practicably applicable, according to Ms Herzenshtein.

In essence, where there is 'exempt' use a person may not have an effective option to collect VAT on a property and may suffer a VAT claw-back or pay irrecoverable

VAT as a consequence.

'Exempt' use includes use by a non-VAT registered or non-business party where an element of financing in the form of rent repayment or premium is a consideration.

It is important to determine whether a property already owned or being acquired falls within this definition. It depends whether it is a 'capital item' within the scope of the Capital Goods Scheme.

The Capital Goods Scheme is a mechanism used to spread VAT recovery on property and high value computers. For property a 10-year life is assumed unless a shorter lease interest is held.

New provisions also provide for a claw-back where capital goods in the form of property are sold and the output tax is less than the input tax recovered. However, HM Customs has announced that this will only be invoked where there is VAT avoidance at issue.

To fall within the scheme a property must have been acquired, built or extended at a cost of £250,000 + with VAT incurred. As from 3 July 1997 this rule also applies to fitting-out, refurbishments and for the first time, civil engineering works.

Where property is acquired without VAT being incurred because the purchaser chose the option of it being transferred as a going concern (TOGC) the purchaser takes on the historic capital goods position and exposure. A VAT history of the property will be required.

Where a separate lease is granted to an exempt user, even if this is for a fraction of the property, current legislation withholds the option to tax on the whole building. It doesn't matter whether the lease is financing the property. The term 'Financing' includes premium, fitting-out or even rent.

HM Customs can reduce this impact by statutory concession but unless the parties agree to be bound by such a concession exempt user could insist on the letter of the law. Clearly, not only the sale document of a property such as a shopping centre but also the individual leases and licences for each (shop) unit become important elements.

One area of risk which is frequently encountered involves a VAT registered business overlooking the option to apply VAT to the sale of a non-opted property which has been fitted-out, refurbished or extended.

For example, say Company X Limited buys a property for £5 million spends £1 million fitting it out then recovers £175,000 VAT on the fitting out cost. If, in year two, the company elects to sell the property to its pension fund, then lease it back to the company which has not elected to opt, the company sale is exempt and a claw-back of 80 per cent of the £175,000 will be incurred.

There is no opportunity to put in place a retrospective 'option to tax' to correct such an error.

In such a complex arena, where the goalposts are not only being moved but appear and disappear altogether, it is essential that anyone contemplating entering into a contract affecting property seeks up-to-the-minute VAT advice from an expert at the outset.

For further information please contact: Irit Herzenshtein, ACA, ATII, on 0171 216 4600.

¹No responsibility for loss occasioned to any person acting or refraining from acting as a result of this material can be accepted.