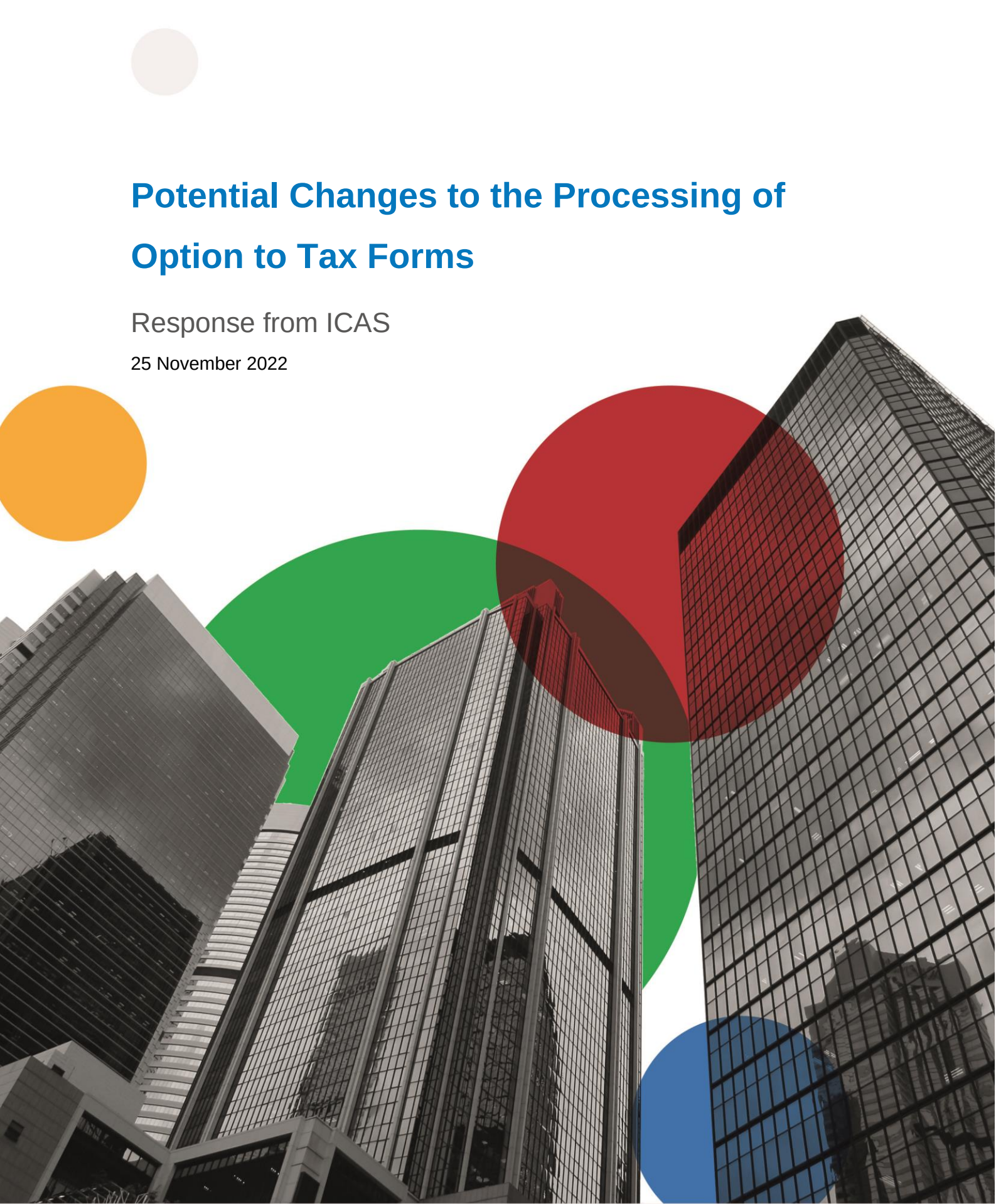




Potential Changes to the Processing of Option to Tax Forms

Response from ICAS

25 November 2022

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 22,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 10,000 of our members are based in Scotland and 10,000 in England.
2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.
3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. ICAS welcomes the opportunity to respond to the consultation on Potential Changes to the Processing of Option to Tax Forms by the Option to Tax (OTT) National Unit.
5. The option to tax provides valuable flexibility in the VAT land and property regime. Many of the issues that arise are practical ones with the process for opting (and obtaining HMRC confirmation of the OTT) and around ascertaining whether an option exists. There is currently no central register of options; the absence of any definitive record causes difficulties in property transactions where evidence of opting is required. Legal agreements often have to include clauses to deal with the lack of certainty.
6. The proposals do not address these practical problems – and could make them worse, in some respects. The Office of Tax Simplification (OTS) recommendation for a digital system for options should be revisited with a view to implementation in the medium term. A digital opting system would give businesses an audit trail for OTTs and allow them to access and print an OTT confirmation at a later date when required as evidence for a property transaction.
7. In the longer term a digital opting system, could also form the basis for a database of options. Over time, this could provide a solution to many of the practical problems with OTTs.
8. We comment below on the two proposals in this consultation – and on the OTS recommendations.

Receipt of a Notification of an OTT – proposal for HMRC to cease issuing an OTT receipt letter

9. The consultation notes that correct notification of an Option to Tax has been and remains the responsibility of the opter. However, evidence that notification has been made to HMRC is very important in property transactions where both parties need to have made and notified the option before completion, for example where a transaction is to be treated as a transfer of a business as a going concern. The absence of an OTT receipt letter is therefore likely to be problematic in some cases. As noted in our general comments legal agreements often need to take account of problems arising from the lack of certainty around OTTs.
10. It is helpful that submissions by email will continue to receive an automated email response, providing some confirmation of the date the option has been notified to HMRC.
11. However, the format of the automated response is important. We understand that currently, unless all the details are included in the subject line of the email, there is nothing to distinguish one automated response from another. The intention (as set out in the consultation) seems to be to continue issuing responses in the same format.

12. HMRC guidance on making an OTT should make clear how the subject line of the email should be completed, to ensure that the automated response is useful as evidence of notification. We suggest the guidance should include the following wording (or something similar):

"The Subject line of OTT emails should include the full postal address of the land/property to be Opted, the entity (or other taxable person) making the Option and its VAT registration number, and should specify the effective date of the Option."

Confirming the existence of an Option to Tax

13. The consultation proposes that HMRC will cease processing requests to confirm the existence of an Option to Tax on a particular property, except in two cases:
1. Where the effective opted date is likely to be over 6 years ago, or
 2. Where the request is made by a Land and Property Act Receiver, or an Insolvency Practitioner appointed to administer the property in question.
14. In principle, we support both the suggested cases where HMRC will continue to process requests – but we do have some comments on the details.
15. In case 1, it is unclear what HMRC's approach would be if a taxpayer is uncertain whether they have opted – or uncertain about the timing of the option. If a request is made to HMRC on the basis that an OTT might have been made more than 6 years ago, but in fact an OTT was made 4 years ago, would HMRC provide confirmation of the OTT?
16. Will HMRC expect the taxpayer in case 1 scenarios to provide any information or evidence, to indicate whether the OTT is likely to have been made more than 6 years ago? For example, information about the purchase date of the property, or details of a change in use? The consultation sets out a list of information to be provided in case 2 scenarios, but this only seems to relate to case 2, not case 1.
17. As noted in the consultation, OTT details are required to be kept for 6 years, so requests for older information should still be processed. If HMRC wanted to prevent requests relating to older OTTs, it would require legislation to impose a requirement to keep records of OTTs for longer – we understand that such requirements are in place in other jurisdictions.
18. It is important that Insolvency Practitioners (IPs) should still be able to obtain the information from HMRC, so we support the provision of information by HMRC in case 2 scenarios. IPs often find that locating any records (not just related to VAT matters) within an insolvent business is a significant challenge, particularly without ready access to key personnel who are likely to have left the business.
19. It is likely that in many cases, an IP may only know that property is owned by the business - and no more - so part of their diligence and duties will be to establish the VAT status of land and property. Some of the items included in the list of information required, as set out in the consultation, are unlikely to be available to the IP. It is particularly unlikely that the IP would have access to the following information:
- The date you first charged VAT on the opted land/property, or
 - The date the property was acquired and/or a loan was taken out by the opter on the relevant property.

Digital system for options and creation of a database of options

20. As noted above many of the issues arising from the option to tax regime are practical ones with the process for opting (and obtaining HMRC confirmation of the OTT) and around ascertaining whether an option exists. The lack of a central register of options causes uncertainty and problems in property transactions.

21. The OTS considered the opting process in its [2017 VAT review](#). It found that an automated digital system for dealing with options to tax would be useful to HMRC and businesses – and would address the practical problems which currently arise when initially opting. A digital system would enable efficient online notification and confirmation and would also create an audit trail – with businesses able to access and print confirmations when later required for legal transactions. Businesses can already access their VAT registration certificates in their online VAT account – at the very least, it would make sense for OTTs to be accessible in the same way.
22. It is clear that the proposals in the current consultation are aimed at preventing many queries to HMRC about the existence of options. A digital system, as suggested by the OTS, could be the starting point for the creation of a central database of options. Over time a central database would remove the need for most queries to HMRC and would provide vital information to businesses, advisers and HMRC. Clearly, a central database would not initially include past options – although businesses could be given the opportunity to add these. However, adding all new options going forward would gradually build up a reliable database
23. The OTS mentioned concerns about confidentiality arising from a publicly accessible database but considered that it would be worth exploring whether limited property-specific information could be made public. Much of the data would already be in the public domain for various reasons (for example, Land Registry, Registers of Scotland etc). We assume that the key information for the database would be the date of the option, VAT number and property – and in view of the benefits of having a database, we would expect widespread support. However, if a publicly available database proved to be impossible to implement, it would still be useful for HMRC to hold a database which would enable it to deal easily with queries arising around property transactions. As noted above, it would also make sense for businesses to be able to access OTTs in their online VAT accounts, even if it is not feasible to create a public database.
24. ICAS strongly supports the OTS recommendation for a fully digital opting system which would allow businesses to access and print confirmations. We also support the suggestion for further exploration of the creation of a database to record options. If this is not possible, it would be helpful to make OTTs accessible, in the same way as VAT registration certificates.

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