

## Issue: VAT and Option to Tax

### **Background:**

A distressed asset was being sold by a liquidator to a large corporate buyer. The diligence team could not trace an original option to tax for VAT purposes such that there was doubt as to whether or not the liquidator should charge VAT to the buyer.

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### **Issue:**

The liquidator and his advisors had written to HMRC to seek comfort that no option to tax existed. HMRC gave a response which gave some comfort but understandably was caveated. The liquidator was not prepared to give an indemnity to the buyer in the event an option to tax was discovered such that VAT was due under the sale agreement.

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### **Solution:**

We issued a policy to the buyer to cover the risk that an option to tax was discovered in the future with a policy limit of £20m. This became a significant issue on the deal with the liquidator potentially facing liability if an option was found and the buyer seeking comfort on the point with such a large amount at stake.

