These notes refer to the Finance Act 2009 (c.10) which received Royal Assent on 21 July 2009

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 79: Effect of Vat Changes on Arbitration of Rent for Agricultural Holdings

Summary

1. Section 79 amends the Agricultural Holdings Act 1986 (AHA) so that the exercise or revocation of the option to tax or a change in the rate of VAT does not qualify as a change of rent for the purposes of AHA.

Details of the Section

2. Subsection (1) provides for an amendment to paragraph 4 of Schedule 2 to AHA. The exercise or revocation of the option to tax by a landlord or a change in the rate of VAT applicable to the lease will not affect the right of either party to the lease to apply for an arbitration of rent.

3. Subsection (2) provides that the amendment will apply to options, revocations or VAT rate changes that have effect before the date of Royal Assent.

4. Subsection (3) clarifies that the reference to "option to tax" also includes an "election to waive exemption" if made before 1 June 2008. Similarly, any references to the "exercise or revocation" of such an option include the "making or revocation" of such an election.

Background Note

5. On 18 December 2008, the High Court ruled in the case of Mason v Boscawen that the VAT charged on rent is part of the rent for the purposes of the Agricultural Holdings Act 1986.

6. It was noted that a change in the rate of VAT chargeable is a change of rent which therefore, prevents the parties to a lease from referring the rent to arbitration for a period of three years from the date of the rate change. The exercise or revocation of the option to tax by a landlord also has the same effect.

7. The section causes changes in the VAT chargeable on rents to be disregarded for the purposes of the rent arbitration provisions of the AHA. It is effective for rate changes, options or revocations which occurred before the date of Royal Assent.