

Transfer as a Going Concern

When a business which is already trading is sold, the transfer of the business to the new owner will normally be treated for VAT purposes as a 'transfer as a going concern' (TAGC). This is an important VAT concept, because a TAGC is not a taxable supply – no VAT is charged and none is recovered. There are various criteria which have to be met for a transfer to qualify, the most important of which is that the new owner must become VAT registered for the transfer to be a TAGC. Another is that the new business must be the same as or not significantly different from the old one. A third is that the transfer must put the transferee in a position to run the business transferred.

For a vendor, it is essential that if the new owner claims to be taking over the business as a TAGC, you have evidence that the purchaser is VAT registered. If you do not do this, your proceeds of sale may be treated as including VAT at the appropriate rate.

For a purchaser, it is essential that you do not pay VAT if you take over a business, are VAT registered and intend to operate a business which is the same as or similar to the business taken over. If you do, the VAT you pay will not be recoverable.

HM Revenue and Customs (HMRC) can be very tough on this. In a recent case, a seaside café, which had taken over drinks stock from the upmarket eatery that preceded it, had to go to the Tribunal to win its argument that the transfer was not a TAGC and it did not have to register for VAT (its takings being below the VAT registration threshold). In another case, HMRC opposed the recovery of input tax paid by a couple who took over a country pub and they only won the argument because although the VAT registration and licence were in their names, the freehold title was in their names and that of their son. This meant that the couple could not take over the trade without entering into a lease, which meant TAGC was avoided...a lucky escape for the couple as the VAT involved was more than £30,000 and the failure was inadvertent!

It is always better to be safe than sorry with VAT. We can advise you on all purchases and sales of businesses.

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