

VAT

Trading as a Going Concern: TOGC

The application of the VAT concept of “Trading as a Going Concern (TOGC)” applies when business assets are bought - assets being stock, goodwill, fixtures and fittings etc.

TOGC only applies when assets are transferred and are compulsory.

There cannot be a significant break in trading.

The partial transfer of a business is possible, but that part must be able to operate alone, and assets must be used to make the supplies for that part sold.

TOGC is a large subject and below are a number of useful examples of what is and isn't a TOGC. If there are any doubts over a transactions status HMRC must be contacted for advice on the treatment of a particular transaction either through the National Advice Line or the local office.

The following are examples of a TOGC

- The assets of a business are bought by another person(s) and the existing business ceases to trade
- The existing owner retires or dies and the business assets are taken over by another person(s).
- Part of an existing business is sold to another person, with its assets.
- The assets of an existing company are transferred to a new legal entity – i.e. a sole trader forms a partnership or limited company.
- The assets are transferred with the intention of carrying on the same kind of business.

The following are not a TOGC

- When a business is sold, that has no physical business assets.
- The transfers of shares in a limited company from one person to another.
- Changes in constitution of a partnership.
- When the assets sold are going to be used for a different type of business
- When there are consecutive transfers of a business where A sells to B and then immediately sells to C, B has not carried on a business.

Where the seller is VAT registered, the buyer **MUST** be registered or at the date of the transfer be required to be registered for VAT because all the conditions of compulsory registration have been met (i.e. t/o >£70,000 2010/11) OR be accepted for voluntary registration.

In other words a new owner must register, either voluntarily or as a compulsory registration (VAT1 form in both cases) otherwise standard VAT rates apply to the sale of the business.

<http://www.hmrc.gov.uk>

Registration for VAT cannot be made more than 3 months before an intended trading start date.

When a business has premises as part of the sale there are extra rules that apply. If all the conditions of a TOGC have been met for the other assets then the premises can be part of the TOGC. However if the purchaser has not elected and the vendor has

- Elected to waive exemption
- The premises are new (less than 3 years old) or unfinished or civil engineering works (which are std rated)

Then VAT must be charged.

The election to waiver exemption is also called “opt to tax” [VAT Opt to Tax](#).

The option to tax must be in writing at the time of supply (the time of supply is usually the date of transfer or receipt of a deposit). See the relevant document for more details.

VAT on expenses incurred when there is a TOGC are subject to the normal rules (i.e. solicitor’s fees). If the transferees are acquiring the assets as a TOGC and those assets will be used exclusively to make taxable supplies then the VAT incurred in acquiring the business is fully recoverable. If the acquired assets are to be used to make exempt or partially exempt supplies, only the apportioned VAT can be recovered.

Retaining the old VAT registration number is not advisable, due the problems with previously liability, but if this is the case, all VAT business records must be transferred to the new owner.

Details of TOGC can be found in Notice 700/9