Transfers of going concerns – securing greater certainty for taxpayers after Intelligent Management Services Limited case

Indirect Tax

01 June 2018

The CIOT (and others) write to HMRC to clarify the position regarding transfers of going concerns for taxpayers following recent changes in guidance and the *Intelligent Management Services Limited* case

For many businesses, the transfer of a going concern (TOGC) will be an exceptional and high value transaction and securing the VAT free position for both seller and buyer is imperative.

The CIOT, ATT and ICAEW wrote a joint submission to HMRC in 2016 in respect of improving certainty for all parties involved in transfers of going concerns. Following ongoing correspondence and discussion, HMRC invited representatives from the CIOT, ATT and ICEAW to meet to discuss providing greater confidence to taxpayers for the VAT treatment.

Taxpayers' requests for rulings on TOGCs

It was interesting to hear from HMRC that there have been relatively few requests for clearances on TOGCs, having only received 48 requests in 2017/18. Of these requests, HMRC issued rulings on 12. With such a low number of requests, it appeared to HMRC that this was not a large problem.

Views were presented that taxpayers and advisers do have difficulties being certain on the VAT position for TOGCs, and we had experienced perceptions from members that it would be difficult to obtain a ruling for the following reasons:

- Likelihood the request would be rejected – the above statistics appeared to support a higher than expected rejection rate. HMRC confirmed that it will undertake a review of the reasons why the clearance requests for TOGCs were rejected and provide feedback.
- Lack of understanding of an 'unusual aspect' of a transaction: for a small or medium business, it would be common for a TOGC to be an exceptional transaction. There is a difference in what HMRC considers unusual compared to the understanding of a taxpayer or even its adviser.
- Time-consuming process: many TOGCs will have a firm completion date and the perception that a ruling could take several weeks or months to obtain would often be too late.
- Cost: Where a taxpayer has engaged professional advice, a ruling request would add to the costs of the TOGC, particularly if there was a risk of entering into additional correspondence coupled with a high risk of rejection.

Guidance

The above discussion led on to the requirement for clear and up to date guidance. At the time of the meeting, there were pages in VAT manuals that superseded paragraphs of public notice 700/9, and taxpayers would not necessarily know that this was the case unless advised. HMRC confirmed that updates to public notice 700/9 have been completed in draft and it is anticipated that they will be published in summer.

The CIOT has a separate ongoing project looking at errors in guidance so please do forward any that you are aware of to technical@ciot.org.uk

Other matters

The CIOT is working on a separate submission to HMRC highlighting uncertainties in TOGCs arising from the Upper Tier decision in *Intelligent Managed Service Limited* ([2015] UKUT 0341) and looking at uncertainties when comparing the rules for TOGCs to the rules in the International Financial Reporting Standards relating to transferring business or assets. HMRC asked if we could also include specific taxpayer experiences so please forward any examples to technical@ciot.org.uk.