VAT Notice 700/9 update: transfer of a business as a going concern

Indirect Tax

01 July 2018

HMRC have advised us that the long-awaited update to VAT Notice 700/9: Transfer of business as a going concern is to be published shortly and have given us the opportunity to provide comment on the final draft.

For many businesses, the transfer of a going concern (TOGC) will be an exceptional and high value transaction and gaining certainty over the VAT-free position for both seller and buyer is vital. To do this, clear and up to date guidance from HMRC is essential; a point we raised recently in meetings with both HMRC and the Financial Secretary to the Treasury, Mel Stride.

Notice 700/9 was last technically updated in 2008, so its decade-long update to incorporate more recent case law such as *Intelligent Management Services Ltd* is eagerly anticipated and most welcome.

HMRC recently invited the CIOT to provide high-level comment on the final draft, emphasising that at this stage in the process, HMRC will only make amendments if there are any significant changes. General feedback is welcome however as, once published, the policy teams will have more editorial control over the technical content.

Our members have broadly welcomed the update, whilst raising queries which have been passed on to HMRC; including:

- Lack of clear structure and examples
- Missing explanation for the legislative basis
- How to address the common situation where a business has applied for VAT registration before transfer but registration has not been granted by HMRC (because of the time it can take for registration to be processed).

- The need for a clearer definition of what is meant by a ‘business’. This is particularly relevant because the UK uses ‘same kind of business’ whereas EU law talks of ‘taxable person’ and ‘economic activity’.
- Interpretation of the Abbey National Case C-408/98 – looking at the business outputs of the asset/business sold, and if they only made taxable supplies then the selling costs are fully deductible.
- The impact of merger accounting and absorbing assets, where the business assets continue to be exploited.
- Providing a named contact and email address to send comments to about the Notice.

We hope to see the updated version published soon.