

Issue: VAT – Transfer of a Going Concern (“TOGC”)

Background:

Two parties to the sale of a high-value real estate asset considered that the transfer should be the transfer of a going concern. The buyer was not prepared to risk 20% of the sales proceeds being subject to VAT if HMRC queried the tax treatment in the future.

Issue:

Due to the rules on TOGCs and the lack of certainty provided by legal advice on the point, the buyer would not complete the transaction without escrow or insurance.

Solution:

An insurance policy was issued to the buyer as the seller was certain the sale was a TOGC and therefore did not wish to contemplate a lengthy escrow. The underwriting process was complete within 48 hours of being instructed.

