The significance of a business as opposed to just assets for VAT purposes 50 years on

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As we celebrate the 50-year anniversary of VAT being introduced in April 1973, it seems appropriate to focus on a complex VAT case.

We start with the fact that there are many tribunal cases where the need to establish that a business existed is of prime importance. Such cases range from the need for a trade for Business Property Relief (BPR) to prove the business was not holding investments under s105(3), for example, *Mr Bruce Firth & Mrs Rita Firth as Trustees of the L Bately 1984 Settlement v HMRC [2022] TC8542* and the apart-hotel case. There are other areas, for example *Babylon Farm Ltd v HMRC [2021] UKUT 224*, a VAT case concerning the disallowance of input tax. Also *Valyrian Bloodstock Ltd v HMRC [2022] TC08578* that denied Enterprise Investment Scheme (EIS) relief of buying and keeping horses. Also in the case of Stamp Duty Land Tax (SDLT) an "ongoing business" can have strong tax planning implications.

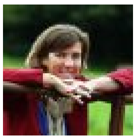
The treatment of VAT on both land and business sales are very complicated. Here we consider a Transfer of Going Concern (TOGC) case.

In *Haymarket Media Group Limited v HMRC [2022] TC08495*, the First-tier Tribunal (FTT) found that the sale of Teddington TV studios to a property developer could not qualify as a Transfer of a Going Concern (TOGC) for VAT purposes. The vendor, Haymarket, and buyer, Pinenorth Properties Limited (PPL), were not carrying on the same kind of business. The case is relevant to farmers who are having to sell off property and parts of their farming business to survive financially.

The facts were that the site was occupied by the Haymarket Group as its business premises, along with tenants to whom leases had been granted or assigned by Haymarket. In 2013, Haymarket applied for planning permission to develop the site, with a view to selling it with the benefit of planning consent after demolishing the offices on the property.

Haymarket, a well-known publisher, spent £870,000 in consultancy fees and two years of management time to gain planning consent to demolish its offices in Middlesex so it could build 213 flats and six houses in its place. It had a small amount of passive rental income from the property, but its main activity was to trade as a publisher. Haymarket wished to sell the land and buildings to reduce its borrowings.

A failed TOGC can have some serious adverse consequences for a seller. If HMRC determines that a property sale does not qualify for TOGC after the fact, the seller will be liable for any VAT due and might have problems of recovery from the buyer. The case highlights, as many of those mentioned, the need to plan the genuine business status before the sale and before death and before the VAT transaction etc. Plan ahead! The question of business can also apply to the intention to trade for VAT – see Hedge Fund Investment Management Ltd [2022] UKFTT 340 which was successful on the question of whether there was an intending trader at the time the input VAT was claimed.



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