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Business transfers — VAT-free or VAT due?

The tax treatment of corporate reorganizations such as mergers, demergers and carve outs, is highly complex. Both the seller and the buyer need to fully understand how the sale will be treated for both direct taxes and value-added tax (VAT), which is levied in most jurisdictions, worldwide.

One area of uncertainty involves the sale of business assets. If the transaction involves the transfer of a business as a going concern (TOGC), special VAT treatment may apply. Given the large sums often involved, it is crucial to identify whether VAT applies to the sale or not. This is not always a simple call. But uncertainty can lead to errors with substantial financial consequences — such as large VAT payments and penalties for the seller or VAT recovery disputes by the buyer.

According to EY [Worldwide VAT, GST and Sales Tax Guide 2023](#), in 103 out of 143 jurisdictions, a TOGC sale is VAT-free if certain conditions are met, whereas 40 jurisdictions do not apply this provision. Even in the jurisdictions that do, the details of how these rules apply differ greatly. For example, in most cases, there must be a transfer of a whole or an independent part of a business capable of separate operation. However, rules may differ based on the buyer's status or intentions for how the assets will be used. Each transaction must be examined on its own merits.

Not surprisingly, disputes about these transactions can lead to protracted controversy. It is crucial that the VAT treatment and any qualifying conditions are considered carefully right from the outset. And where available, the parties may consider seeking a ruling on the treatment from the tax administration.

Read more: [Worldwide VAT, GST and Sales Tax Guide 2023](#)

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