

*Royal College of Pediatricians v HMRC* TC 2617 provides some welcome judicial guidance regarding transfers of a going concern (TOGC) for VAT purposes.

This is important because, during the course of the hearing, HMRC confirmed that it does not give clearances about whether a transaction constitutes a TOGC nor does it give post-transaction rulings. The tribunal noted that there is no possibility of the parties being able to ascertain HMRC's views on whether the sale of a particular property would qualify as a TOGC. So every bit of guidance helps.

The Royal College of Pediatricians is a charity which occupied premises in London. It entered into an agreement for a lease with another charity and then sold the property as a TOGC for £17.5m. No VAT was charged on the transaction in accordance with this treatment. However, HMRC took the view that this was not a TOGC and sought VAT on the transfer.

The argument for HMRC was that there was only an agreement for a lease; the lease had not actually been entered into when the property was transferred to the third party. There was, therefore, no transfer as a going concern.

The VAT notice on the subject gives the following example of when a business can be transferred as a going concern: "If you own a property and have found a tenant, but not actually entered into a lease agreement when you transfer the property to a third party (with the benefit of the prospective tenancy but before a lease has been signed), there is sufficient evidence of intended economic activity for there to be a property rental business capable of being transferred."

Just because HMRC says something in the manuals or VAT notices does not make it right—although it is asking to be judicially reviewed if it acts contrary to its published guidance. Fortunately, these issues have been avoided because the tribunal found that the sale was a TOGC and no VAT was payable.

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