

Agreement for lease and TOGC

A recent tribunal case considered whether the sale of two plots of land with agreement to lease was a TOGC or not. The land, which was opted to tax, was sold with the benefit of a formal agreement to lease and the land owner had entered into a number of agreements but as the buyer had warranted its intention to continue to let the property immediately after completion on the terms of the existing agreement to lease, the land owner sought confirmation from HMRC that any transfer would fall within the TOGC provisions.

HMRC refused to give such confirmation and issued an assessment for £4.3 million, the land owner contending that as the sale was subject to the agreement to lease this should be sufficient to constitute the transfer of a going concern. The Tribunal was quite scathing in its rejection of Customs' arguments and commented that HMRC in arguing in this case that a dealer in land could not transfer the land as a going concern to an investor before actual development takes place was against HMRC's own practice. The Tribunal also expressed concern about the Commissioner's misunderstanding of the concept of "agreement for lease" with the Chairman commenting that in his opinion the author of HMRC's statement of case had no idea what an agreement for lease was and failed to recognise that such agreement was as good as a lease. He further commented that the commissioners should give legal advice to their officers and clarify their own published guidance in Notice 700/9, The Transfer of a Going Concern leaflet. Needless to say the appellant was successful in its appeal.