Summary - VATP 015: Transfer of a Business as a Going Concern

- Transfer of a business, commonly known as a “transfer of business as a going concern” or a “TOGC”, is not subject to VAT
- In a share sale, there is transfer of ownership and consequently assets and liabilities are getting transferred. Whereas in asset sale, primarily there is a transfer of title in the assets. However, no liabilities are transferred in asset sale
- A transfer of business as a going concern is a type of an asset sale, not a share sale.
- Sale of assets by a taxable person is treated as a taxable supply
- Assets are sold as part of a transfer of a business as a going concern, the transfer is not a supply at all and therefore no VAT is charged.
- Requirements for a TOGC:
  - There must be a transfer of whole or an independent part of a business;
  - The transfer must be made to a taxable person; and
  - The recipient intends to continue the business which was transferred.
- To qualify as a going concern, the transferred business must be operational before and at the time of transfer.
- The transfer of a business as a going concern does not relieve the supplier from its tax obligations incurred during its ownership of the business and the underlying assets.
- This requirement of” intends to continue the business” will be met as long as the recipient of the business intends to carry on the same kind of business which it acquires. This condition will not be met if the recipient has fundamentally changed, or did not use, the business after acquiring it.
- Where the supply has been incorrectly treated as a TOGC, VAT may be retrospectively due on the supply.
- The parties should consider the potential consequences of any such errors when entering into contractual arrangements.