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MMJS UPDATE
TOGC GUIDE

NBR has released a guide on 16 August 2020 titled "VAT Transfer of a Going Concern (TOGC) Guide" which provides insightful details on VAT applicability at the time of surrender of economic activity or in cases of businesses restructuring.

What is TOGC?

- TOGC is the transfer of economic activity, in part or full, from one person (transferrer) to another (transferee), whether for a consideration or not
- TOGC may include transfer of assets (tangible and intangible) and liabilities (bank loan, creditors, etc.)

VAT Implications of TOGC

- TOGC is considered to be outside the scope of Bahrain VAT
- Hence, no VAT is payable on transfer of assets and liabilities from transferor to transferee, thereby eliminating huge cash outflow by both the parties
- Though Qualifying TOGC is outside the scope of VAT, the input VAT on cost relating to the Qualifying TOGC can be recovered by the Transferor and the Transferee, except in case of exempt businesses
- If the Input VAT is charged by a Transferor incorrectly on the qualifying TOGC, the Transferee is not entitled to recover VAT and should request for refund of VAT from the Transferor

Conditions to qualify a TOGC

- The Transferor must be a registered for VAT as on the date of TOGC
- There must be a transfer of an economic activity
- The transfer must result in carrying on the business without any interruptions
- It must enable the transferee to run the business independently
- Transfer can be a part or whole business
- The Transferee must be VAT registered, or the transfer should obligate the transferee to register for VAT (exceed the mandatory limit for VAT)
- The Transferee must start the same or similar business immediately

Transfer of Commercial Registration (CR)

Transfer of CR is relevant, but the following cases should be understood before determining transfer of going concern

- If CR is transferred along with assets, whether partially or completely, it must result in independent functioning of the business
- An independent business need not require the transfer of commercial registration
- The transferee may use his Commercial Registration for the assets acquired without acquiring the transferee's commercial registration
- The absence of Commercial registration need not imply economic activity does not exist or the part or the all of business is capable of being operated independently

Other considerations and compliances

In case of a Qualifying TOGC, both the Transferor and the Transferee must independently **notify the NBR** of the transaction **within 30 days of the sale / transfer.**

- **For assets transferred over a period of time**, both parties will need to consider whether each transfer is a separate supply or forms part of the TOGC
- The Transferee **shall not sell** the business assets acquired through TOGC **immediately** to a third party. This will not be a qualifying TOGC and both transfers will be subject to VAT
- The TOGC provisions do not require a Transferor to provide the Transferee with **business records** relating to his conduct of the economic activity prior to the transfer. However, it is a good practice to provide the records to the Transferee
- Transferor may be obliged to **de-register** for VAT within 30 days of transferring of business

Transactions after a Qualifying TOGC

- **Returned goods / discount or rebate:** For any adjustment to a supply made before a Qualifying TOGC, transferee can issue a credit note and to make an adjustment on its VAT return
- **Goods under warranty:** Transferee can claim input VAT on repair / warranty costs incurred in relation to supplies made by a Transferee provided the Transferor would have been entitled to claim such input VAT if it had not entered into the Qualifying TOGC
- **Bad Debts:** In case of debts becoming bad, Transferee will be allowed for bad debt relief provided all of the conditions set out in Article 30 of the VAT Executive Regulations
- **Deemed supplies:** The Transferee will be liable for VAT on a deemed supply of assets where the assets were transferred to him as part of a Qualifying TOGC and the Transferor originally reclaimed input VAT on the purchase of those assets

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Transfer of exempt assets

- **Real Estate:** Where real estate assets which are occupied for business purposes are transferred as part of a Qualifying TOGC, it will be outside the scope of VAT
- **Investment/Rental property:** The transfer of real estate such as a rental property may be treated as a Qualifying TGOC. However, if property rental is the only economic activity carried out by either or both of the Transferor or Transferee, the conditions for a Qualifying TOGC will not be met as either or both parties will not be registered for VAT purposes
- **Shares:** A transfer of the management activity with the shares may therefore constitute the transfer of a business and may be a Qualifying TOGC

Application of TOGC rules for VAT groups

Transfer of business assets within a VAT group	Transactions between members of a VAT group, including those that may otherwise fall within the TOGC provisions, will be outside the scope of VAT. TOGC provisions does not apply
Transfer of business assets out of a VAT group	Transfer from member(s) of VAT group to outside the VAT group will be a Qualifying TOGC if it meets the conditions set out
Transfer of business assets to a VAT group	Transfer to another VAT group will be a Qualifying TOGC if it meets the conditions set out. Any transfer within the Transferee's VAT group will not make the transfer to be non-qualifying as long as they are not acquired to be merely consumed within the group and are used to make supplies outside the group