

Carlo Arrigoni
Longar Industries Limited
Unit 25 Glenmore Business Park
Weyhill Road
Andover
SP10 3GZ

15 March 2016

Dear Carlo,

PCM

Please find the documents in respect of the transfer of Unit 24 to the pension scheme

I need to cover with you the valuation basis of the property and its treatment for VAT for pension contribution purposes.

The property valuation is stated as £490,000 based on a commercial rental valuation as per a letter dated 26 January from the Valuer. Having reviewed the contents of that letter, it clearly states that the valuation has been arrived at on the assumption of no liability for taxation on disposal, whether actual or notional and that the valuation reflects costs of acquisition, but not realisation. As this is an acquisition by the Scheme, I have read the valuation letter literally and therefore VAT does not need to be deducted from the property valuation of £490,000.

The VAT element does also not constitute a contribution for taxation purposes, therefore the contribution paid is £375,000 and £115,000. I have seen some correspondence with your accountants on this and would advise that pension contributions in-specie settled as VAT being part of the consideration are not a corporation tax deductible business expense for pension purposes. If you are not in agreement with this position, do let me know as the enclosed paperwork will need to be altered in parts.

On the basis that you agree with my position, I enclose two sets of in-specie transfer documents for signing which are on the same basis as previous years. Please return the originals to me once you have had these signed.

There are a number of other considerations that apply which I set out here:

Wholly and Exclusively for the purposes of trade

A pension contribution by Longar in respect of any director will be an allowable expense unless there is a non-trade purpose for the payment. In cases where the contribution is part

of a remuneration package paid wholly and exclusively for the purposes of the trade, then the contribution is an allowable expense.

You each have an annual allowance, which in the current tax year is £40,000 and after 6th April there is a taper relief allowance being introduced. I would suggest at this time, you allocate a share of the property up to your annual allowances and hold the balance in a general account within the scheme (as per previous years) to meet future pension liabilities. There are pro's and con's of both options, but to undertake tax planning for each of you given the reduction in the lifetime allowance to £1m per person I would need to undertake a separate instruction.

Land Registry

I have noted from the title deeds that there are restrictions, in particular the following items are recorded:

(13.01.2004) RESTRICTION: No disposition of the registered estate other than a charge by the proprietor of the registered estate is to be registered without a certificate signed by the solicitor of the disponee that the provisions of Clause 3.4 of the Deed of Grant dated 30 March 2001 and made between (1) Culverhay Developments Limited and (2) Glenmore Investments Limited have been complied with.

4 (13.01.2004) RESTRICTION: No disposition of the registered estate other than a charge by the proprietor of the registered estate is to be registered without a certificate signed by the solicitors of both the disponent and disponee that the provisions of Clause 6.1 of the Transfer dated 17 December 2003 have been complied with.

Accordingly, this will need to be addressed by a conveyancer to ensure correct registration of the title at the Land Registry and payment of stamp duty.

Stamp Duty

Chargeable consideration includes any value added tax (VAT) that is payable in respect of a land transaction. Therefore, the valuation of £490,000 would need to be uprated by 20% and SDLT is payable on the whole sum. This is also the case where the VAT charged is recoverable from HM Revenue & Customs as input tax.

Where there is a transfer of a going concern and the transfer meets all the conditions set down in the relevant VAT law no VAT will be payable. The chargeable consideration of £490,000 will therefore be a VAT exclusive amount.

Transfer of Going Concern

I have made a number of general enquiries for you on this with both HMRC and a VAT specialist over the last few days, for which I must charge for that time spent. It will, if successful, substantially reduce certain costs. Quite simply under Transfer of Going Concern there would be no VAT charged on the stamp duty or VAT to recover.

Subject to certain exceptions, the supply by a person of assets of his business to a person to whom he transfers that business (or part thereof) as a going concern is neither a supply of goods nor a supply of services provided all the following conditions are satisfied:

- The assets are to be used by the transferee in carrying on the same kind of business as that carried on by the transferor. It is not essential that the buyer pursues the same type of business as that carried on by the seller prior to the transfer.
- In a case in which the transferor is a taxable person (i.e. registered or liable to be registered for VAT), the transferee must already be a taxable person or immediately become, as a result of the transfer, a taxable person.
- In relation to a part transfer, that part is capable of separate operation. It does not matter whether it will, in fact, be operated separately from any other business the new owner carries on.
- The effect of the transfer must be to put the new owner in possession of a business which can be operated as such. A sale of capital assets is not in itself a TOGC but if the effect is to put the purchaser in possession of a business, then it is such a transfer even if the assets are transferred on different dates.
- There should be no significant break in the normal trading pattern before or immediately after the transfer

There are additional considerations that apply in respect of property being treated as a transfer of going concern. These broadly include matters such as whether the property was built less than 3 years ago, whether there is subsequent re-financing and substantial refurbishment costs for the property.

We cannot advise you whether TOGC should apply here, only that it should be explored. I recommend that you obtain specific advice in this regard and we can pursue that for you if you wish.

Declaration of Trust

I enclose a declaration of trust for signing, this records the pension contribution in kind of £375,000 (plus vat) on 17 March 2016. This will need to be filed at the Land Registry and subject to the restrictions being addressed by the conveyancer. We will need to liaise with the conveyancer the transfer of full title after 5 April the balance of £115,000 and you will need to have the pension scheme account for the SDLT that would be payable.

In the interim, when returning these documents would you please also enclose a cheque for £1700 plus VAT for the in-specie transfer and VAT registration. I enclose an invoice in support of this.

Can you please advise whom you wish to undertake the conveyance and preparation of the subsequent lease for this property.

VAT Registration

I enclosed a pre-prepared VAT1 form herewith, would you please have a read through this, in particular the part relating to your personal data and let me know of any corrections. I will then submit this online so that the application is in with HMRC for registration.

Yours sincerely

Gavin McCloskey
For Pension Practitioner. Com

Enc.