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 add an additional item in respect of the VAT issue. The property valuation is stated as £490,000 based on a commercial rental valuation as per the letter dated 26 January. Further, having reviewed the contents of that letter, it clearly states that no liabiliy for taxation on disposal, whether actual or notional and that the valuation reflects costs of acquisition, but not realisation. As this is an acquistion by the Trustees, I have therefore assumed that VAT does not need to be deducted from the property valuation.

The VAT element does 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 settled as VAT are not a corporation taxed deductible business expense for pension purposes. If you are not in agreement with this position, do let me know.

Reflecting that 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.

Wholly and Exclusively for the purposes of trade

A pension contribution by Longar in respect of any director or employee 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 for more 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 with you.

Land Registry

I have noted from the title dees that there are restrictions, in paricular 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 disponor 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 actioned by a conveyancer to ensure correct registration of the title at the land registry and payment of stamp duty.

SDLT

Chargeable consideration includes any value added tax (VAT) that is payable in respect of a land transaction. 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
* the transfer meets all the conditions set down in the relevant VAT law no VAT will be payable.

The chargeable consideration will therefore be a VAT exclusive amount.

However if the conditions for a transfer of a going concern set down in the relevant VAT law are not met and VAT is payable, the chargeable consideration will be the VAT inclusive amount. I would recommend that you consider whether there is a transfer of going concern as the whole of the property is being transferred. I have made a number of 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 could generate additional corporation tax saving of 20% and avoid the VAT costs you were concerned about, so hopefully you will consider this agreeable.

Subject to certain exceptions, the supply by a person of the 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. SI 1995/1268, Art 5(1) 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. SI 1995/1268, Art 5(1)
* 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. Selling a few assets on their own will not constitute a TOGC. VAT Notice 700/9, para 2.3
* There should be no significant break in the normal trading pattern before or immediately after the transfer

HMRC states that the main conditions of transfer of going concern for a property are:

* the assets must be sold as part of the transfer of a ‘business’ as a ‘going concern’
* the assets are to be used by the purchaser with the intention of carrying on the same kind of ‘business’ as the seller (but not necessarily identical)
* where the seller is a taxable person, the purchaser must be a taxable person already or become one as the result of the transfer
* in respect of land which would be standard rated if it were supplied, the purchaser must notify HMRC that he has opted to tax the land by the relevant date, and must notify the seller that their option has not been disapplied by the same date
* where only part of the ‘business’ is sold it must be capable of operating separately
* there must not be a series of immediately consecutive transfers of ‘business’

Therefore, if the tenants of the property are to remain the same and above conditions are met, under TOGC rules the property is transferred and no VAT is charged on the sale of the property. This also means that no VAT is charged on the SDLT payment also.

 I would recommend that you seek clarification from your accountants on this, but the advice I have been given without formal instruction is that TOGC applies to this transfer of property if the above is met.

Where we are applying TOGC, then whilst that scheme still registers for VAT in the usual way, it is undertaken as a condition of the transfer and as such VAT5L may also need to be completed and filed to HMRC, which I attach herewith.

**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 and a further payment of £115,000 (plus VAT) on 6 April 2016. This will need to be filed at the Land Registry and subject to the restrictions being addressed by the Conveyancer,

In the interim, when returning these documents would you please also enclose a cheque for £1500 plus VAT for the in-specie transfer. I enclose an invoice in support of this.

**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.