

## **VATR 3**

### **Facts**

- a) A company is incorporated in December 2002 to take over retrospectively as from January 2002 the entire business of five companies as a going concern. It has applied for VAT Registration as from 1 January 2003.
- b) All the business assets less liabilities excluding borrowings of the five companies are to be transferred to the newly incorporated company and the five companies are to apply for cancellation of registration. However, for the period 1 January 2002 to 31 December 2002 a claim is to be made by the newly incorporated company to each of the five companies for all the revenues received by them on its behalf. Similarly, a claim is to be made by each of the five companies to the newly incorporated company for the expenses incurred by them for the same period.
- c) The five companies are engaged mainly in making zero-rated supplies and make claims for repayment regularly.

### **Points at issue**

- a) Whether the transaction described above falls under section 63(3) of Value Added Tax Act.
- b) Whether VAT is chargeable on the claims for refunds of revenues/expenses.
- c) Whether VAT credits due to the five companies as at the date of their deregistration will be refunded by the VAT Office.

### **Ruling**

- a) The transfer as a going concern of the whole business of each of the five companies to the newly incorporated company falls under section 63(3) of the Value Added Tax Act.
- b) The transfer of the five companies as a going concern to the newly incorporated company takes place on 1 January 2003, the date on which the latter has been registered for VAT. No VAT is chargeable on the claims for the refund of revenue accrued and expenses incurred during the period 1 January 2002 to 31 December 2002 as they form part of the arrangement for the transfer.
- c) Any amount standing to the credit of each of the five companies as at the date of cancellation of registration is to be repaid after a thorough audit has been carried out on submission of the claims for repayment.