

# TAX & EXCHANGE CONTROL ALERT

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### THE VAT RATE INCREASE AND REAL ESTATE TRANSACTIONS

On 21 February 2018, former Finance Minister Malusi Gigaba delivered the annual budget speech. During this speech, what proved to be a very controversial decision was revealed: the Value Added Tax (VAT) rate would be increased from 14% to 15%, effective 1 April 2018. This marks the first VAT increase since 1993 (when we saw an increase of 4%).

# THE VAT RATE INCREASE AND REAL ESTATE TRANSACTIONS

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VAT is payable on many real estate transactions, and in those cases it is usually payable by the seller of the property. Accordingly, conveyancing is not immune to the VAT rate increase. What conveyancers have to grapple with, however, is the applicability of the new VAT rate of 15% to current real estate transactions, and especially those involving residential property. Will all currently contemplated transactions be subjected to 15% VAT as of 1 April 2018?

The general rule with regards to the sale of fixed property is that VAT is payable by the seller on the earlier date of when the property is registered in the name of the purchaser, or when any payment is made in respect of consideration for the supply of such property, and the VAT rate in place at such time is applicable. However, with regard to a VAT rate increase, the real estate industry is afforded an exception regarding residential property.

Section 67A(4) of the Value Added Tax Act, No 89 of 1991 (VAT Act) provides that:

- where a written and signed agreement is concluded before 1 April 2018 for the sale of a dwelling (including a unit in sectional title and a share in a share block scheme and the construction of a new dwelling by a construction contractor), and

- the price was agreed upon and stated in the contract,
- but the registration of transfer of the immoveable property only takes place, and payment is made after 1 April 2018,
- then the rate applicable will be the rate which "would have been levied had the supply taken place on the date on which such agreement was concluded", ie 14%.

Thus, as long as a signed sale agreement, which contains a clear stipulation of the agreed price, was concluded before 1 April 2018, the VAT payable will be calculated using the outgoing rate of 14%, despite the fact that transfer may only take place after 1 April 2018.

Unfortunately the exception provided by s67A(4) only applies to dwellings, that is buildings or structures intended for use predominantly as a place of residence or abode of natural persons. Commercial property transactions will be subject to the general rule ie, regardless of when the agreement of sale was concluded, should the transfer only take place and payment is made on or after 1 April 2018, the VAT rate applicable will be 15%.

# THE VAT RATE INCREASE AND REAL ESTATE TRANSACTIONS

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*Sellers of residential property who are also VAT vendors for purposes of the transaction may very well be inclined to accept offers to purchase more willingly than usual before 1 April 2018.*

However, for commercial properties, where a written sale agreement was concluded before 1 April 2018 and the purchaser makes any payment of the purchase consideration to the seller (other than a deposit to the transferring attorney) in the period from 21 February 2018 (the date of announcement of the VAT rate increase) to 31 March 2018, and the property is then registered in the name of the purchaser on or before 22 April 2018, the VAT rate of 14% will still apply.

Further, with regard to commercial properties, where the agreement of sale was concluded prior to 1 April 2018 in terms of which the sale consideration was stipulated as being subject to VAT at 14%, but VAT is actually payable at 15%, that is when the exception does not apply, the seller is in terms of s67 of the VAT Act

entitled to recover from the purchaser the additional amount payable as a result of the VAT rate increase, unless the agreement specifically stipulates otherwise.

In light of the above, sellers of residential property who are also VAT vendors for purposes of the transaction may very well be inclined to accept offers to purchase more willingly than usual before 1 April 2018, in order to avoid the implication of the VAT increase. However, caution must still be practiced for all fixed property sales and no sale agreement should be entered into without the input of legal advice. The effects of an undesirable sale agreement could very well outweigh the extra 1% VAT that would be payable.

*Gerhard Badenhorst  
and JD van der Merwe*

## Who's Who Legal

Emil Brincker has been named a leading lawyer by *Who's Who Legal: Corporate Tax – Advisory* and *Who's Who Legal: Corporate Tax – Controversy* for 2017.

Mark Linington has been named a leading lawyer by *Who's Who Legal: Corporate Tax – Advisory* for 2017.



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Ludwig Smith ranked by CHAMBERS GLOBAL 2017 - 2018 in Band 3: Tax.

## OUR TEAM

For more information about our Tax and Exchange Control practice and services, please contact:



**Emil Brincker**  
National Practice Head  
Director  
T +27 (0)11 562 1063  
E [emil.brincker@cdhlegal.com](mailto:emil.brincker@cdhlegal.com)



**Mark Linington**  
Private Equity Sector Head  
Director  
T +27 (0)11 562 1667  
E [mark.linington@cdhlegal.com](mailto:mark.linington@cdhlegal.com)



**Jerome Brink**  
Senior Associate  
T +27 (0)11 562 1484  
E [jerome.brink@cdhlegal.com](mailto:jerome.brink@cdhlegal.com)



**Gerhard Badenhorst**  
Director  
T +27 (0)11 562 1870  
E [gerhard.badenhorst@cdhlegal.com](mailto:gerhard.badenhorst@cdhlegal.com)



**Candice Gibson**  
Senior Associate  
T +27 (0)11 562 1602  
E [candice.gibson@cdhlegal.com](mailto:candice.gibson@cdhlegal.com)



**Petr Erasmus**  
Director  
T +27 (0)11 562 1450  
E [petr.erasmus@cdhlegal.com](mailto:petr.erasmus@cdhlegal.com)



**Heinrich Louw**  
Senior Associate  
T +27 (0)11 562 1187  
E [heinrich.louw@cdhlegal.com](mailto:heinrich.louw@cdhlegal.com)



**Dries Hoek**  
Director  
T +27 (0)11 562 1425  
E [dries.hoek@cdhlegal.com](mailto:dries.hoek@cdhlegal.com)



**Gigi Nyanin**  
Senior Associate  
T +27 (0)11 562 1120  
E [gigi.nyanin@cdhlegal.com](mailto:gigi.nyanin@cdhlegal.com)



**Ben Strauss**  
Director  
T +27 (0)21 405 6063  
E [ben.strauss@cdhlegal.com](mailto:ben.strauss@cdhlegal.com)



**Varusha Moodaley**  
Senior Associate  
T +27 (0)21 481 6392  
E [varusha.moodaley@cdhlegal.com](mailto:varusha.moodaley@cdhlegal.com)



**Mareli Treurnicht**  
Director  
T +27 (0)11 562 1103  
E [mareli.treurnicht@cdhlegal.com](mailto:mareli.treurnicht@cdhlegal.com)



**Louis Botha**  
Associate  
T +27 (0)11 562 1408  
E [louis.botha@cdhlegal.com](mailto:louis.botha@cdhlegal.com)

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### JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

### CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.  
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@cdhlegal.com](mailto:ctn@cdhlegal.com)

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