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REAL ESTATE ALERT

IN THIS ISSUE

PARLIAMENTARY PROCESS REGARDING THE PROPOSED "EXPROPRIATION OF LAND WITHOUT COMPENSATION"

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THE VAT RATE INCREASE AND CONSTRUCTION CONTRACTS

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PARLIAMENTARY PROCESS REGARDING THE PROPOSED "EXPROPRIATION OF LAND WITHOUT COMPENSATION"

The matter has been referred to the Constitutional Review Committee, which must report back to Parliament by 30 August 2018.

CDH will keep its clients informed of further developments, specifically in regard to public hearings and opportunities to submit comments or propose solutions.

South Africans are closely monitoring the media to establish whether the Constitution will be amended to allow the expropriation of land without compensation.

On 14 March 2018, the Cabinet met at the Tuynhuys in Cape Town to discuss this controversial amendment. Cabinet subsequently released a statement confirming that it welcomes the motion to amend the Constitution of the Republic of South Africa, 1996 to allow the expropriation of land without compensation. The matter has been referred to the Constitutional Review Committee, which must report back to Parliament by 30 August 2018. Thereafter, a series of public hearings are to be held, followed by Parliamentary committee meetings, to inform the recommendations

to the National Assembly. In the interim, the Cabinet calls on all stakeholders for their input and confirmed that "as a caring and people-centred government, all stakeholders will be engaged during this process".

CDH will keep its clients informed of further developments, specifically in regard to public hearings and opportunities to submit comments or propose solutions.

Janke Strydom and William Midgley



THE VAT RATE INCREASE AND CONSTRUCTION CONTRACTS

The Value-Added Tax Act, draws a distinction between construction contracts in relation to the construction of new dwellings, and other construction activities.

Where construction activities (other than in relation to a dwelling) commence before, and end after 1 April 2018, the contractor is required to apportion the value of goods delivered and services performed.

Following the recent announcement of the increase of the Value Added Tax (VAT) rate to 15%, effective 1 April 2018, there has been much concern regarding the rate of VAT applicable to progressive supplies of goods and services such as construction activities.

The Value-Added Tax Act, No 89 of 1991 (VAT Act) draws a distinction between construction contracts in relation to the construction of new dwellings, and other construction activities. The impact of the VAT increase in relation to each type of construction activity follows.

Construction contracts for new dwellings concluded before 1 April 2018

Where a construction contract, in which the construction price is stated, has been concluded before 1 April 2018 for the construction of a new dwelling, the construction services will attract VAT at 14% irrespective of when the construction services are rendered or completed.

A 'dwelling' in this context means a building or structure which is used, or which is intended to be used, predominantly as the residence of a natural person.

Construction contracts other than for new dwellings

To the extent that construction services are performed or goods delivered before 1 April 2018, such goods or services are subject to VAT at 14%. Charges for construction services performed or goods delivered (other than in relation to a dwelling) on or after 1 April 2018 will be subject to VAT at 15%. These rules apply irrespective of when the invoice for such goods or services is issued (ie before or after 1 April 2018).

Construction activities commencing before 1 April 2018 and completed after 1 April 2018

Where construction activities (other than in relation to a dwelling) commence before, and end after 1 April 2018, the contractor is required to apportion the value of goods delivered and services performed on a fair and reasonable basis between the period before 1 April 2018, and the period on or after 1 April 2018.



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THE VAT RATE INCREASE AND CONSTRUCTION CONTRACTS

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The implications of the VAT rate increase can prove to be a challenge in respect of construction contracts and in the presence of any uncertainty, legal advice should be sought.



The portion of the consideration payable for construction goods delivered and services performed (other than in relation to a dwelling where the contract is concluded before 1 April 2018) which is attributable to the period before 1 April 2018 will attract VAT at 14%, whereas the portion of the consideration payable for the construction goods delivered and services performed for the period on or after 1 April 2018 will attract VAT at 15%.

Where a construction contract was concluded before 1 April 2018 for any construction other than a new dwelling, which stipulates VAT payable at 14%, s67(1) of the VAT Act provides the contractor with relief when VAT becomes payable at 15%. Section 67(1) entitles the contractor to

recover from the recipient the additional amount of VAT that becomes payable on supplies made on or after 1 April 2018 as a result of the VAT rate increase.

The contractor will, however, not be entitled to recover the additional amount payable from the recipient if the contract specifically excludes the entitlement of the contractor to recover the additional VAT amount in the event of a VAT rate increase.

The implications of the VAT rate increase can prove to be a challenge in respect of construction contracts and in the presence of any uncertainty, legal advice should be sought.

*Gerhard Badenhorst and
JD van der Merwe*



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