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REAL ESTATE ALERT

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ISSUE

THE VAT INCREASE IS *REAL*

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 INCREASE IS REAL

Will all currently contemplated transactions be subjected to 15% VAT as of 1 April 2018?

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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 immovable 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 structure intended for use predominantly as a place of residence or abode of natural persons. Commercial property transactions will be subject to



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THE VAT INCREASE IS REAL

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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.

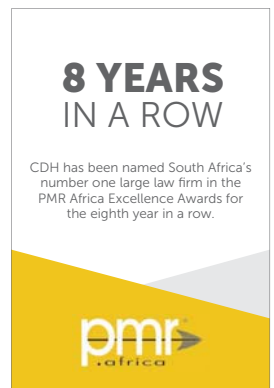


the general rule ie, regardless of when the agreement of sale was concluded, should the transfer only take place and payment is made on or after 1 April 2018, the VAT rate applicable will be 15%.

However, 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%, 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.

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