



Understanding Law Matters

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UNDERSTANDING THE EFFECT OF THE VAT INCREASE ON YOUR PROPERTY TRANSACTION:

In his Budget Speech on 21 February 2018 the Minister of Finance announced that the standard rate of VAT will increase from 14% to 15% with effect from 1 April 2018.

Two of the common complaints that have arisen in the aftermath of the Budget Speech are that:

- a. the effective date of 1 April 2018 does not give vendors much time to amend their systems and to implement procedures to ensure that VAT is correctly accounted for from that date; and
- b. there is uncertainty as to when supplies still qualify for VAT at 14% and when VAT should be levied at 15%.

In order to deal with the uncertainty highlighted in (b) above, regard must be had to Section 67A of the VAT Act which contains the transitional rules which deal with a VAT increase, whilst S67A(4) provides for a special concession in relation to the sale of residential properties in particular.

Residential Properties:

S67A(4) applies to the sales of the following types of residential properties:

*“the sale of fixed property consisting of any dwelling together with land on which it is erected;
Any real right conferring a right of occupation of a dwelling;
Any sectional title unit where such unit comprises a dwelling;
Any share in a share block company that confers a right to or interest in the use of a dwelling;
The sale of fixed property consisting of land for the sole or principal purpose of the erection by or for the purchaser of a dwelling as confirmed by the purchaser in writing; or
The construction by a vendor carrying on a construction enterprise of any new dwelling.”*

S67A(4) provides that where:

- (1) The price of the sale or construction of the residential property was determined and stated in an Agreement of Sale;
- (2) Which Agreement of Sale was signed by all of the parties thereto before 1 April 2018 (*ie.* the “effective date” is before 1 April 2018); and
- (3) The date of registration of transfer is only on or after 1 April 2018,

then, VAT will be payable on that transaction at the rate of 14%.

It is important to note that provided that the abovementioned requirements have been met, VAT will be payable at the rate of 14% regardless of the fact that such Agreement may be subject to a suspensive condition that will only be fulfilled after 1 April 2018.

Commercial Properties:

Under the VAT Act there are no special transitional rules which apply in relation to commercial property. This means that the normal "time of supply" rule contained in S67A must be applied in order to determine the rate of VAT applicable to a particular transaction. If the date of registration of transfer into the name of the purchaser is effected and payment is released to the seller on or after 1 April 2018, VAT at 15% will be payable by the seller. This is notwithstanding the date on which the agreement of sale was concluded or what rate of VAT was stipulated in the Agreement.

Article by David Campbell

Yours Faithfully

A handwritten signature in black ink, appearing to read 'Bruce Forrest', with a long horizontal stroke extending to the right.

Bruce Forrest

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