



Understanding Law Matters

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UNDERSTANDING THE EFFECT OF THE VAT INCREASE ON ESTATE AGENT'S COMMISSION

It has come to our attention that some confusion has arisen with regards as to whether or not the special concession that applies to the sale of residential property as contained in Section 67A(4) of the VAT Act applies to the VAT that is payable on Estate Agent's Commission earned on such transactions.

Please note that this is a special concession that only applies in specific circumstances, it does not impact on what the rate of VAT charged on Commission will be.

In determining the tax period during which a supplier is required to declare output tax, and the tax period that a recipient may be entitled to deduct input tax on goods or services acquired, regard must be had to the time of supply.

The general rule for the time of supply is the earlier of: an invoice being issued, or payment of the consideration being made.

The supply of fixed property however has a special time of supply, which is the earlier of:-

1. The date of registration of transfer of the property in the Deeds Registry; or
2. The date on which any payment in respect of the consideration for the supply is made.

It is important to note that any payment that is made into the Trust Account of an attorney or a third party in respect of a property sale, pending registration of transfer in the name of the purchaser, will not trigger the time of supply. Such funds must actually be made available to the seller before "payment" has occurred.

As a result of the above, an Estate Agent is required to declare output tax on the date of registration of transfer. The effect of this is that the VAT charged on such commission will be calculated at the rate that is applicable when registration occurs, and not the rate applicable when the Agreement of Sale was negotiated and signed.

A proviso to the above is that if an Agreement of Sale specifically states that an Agent will not be entitled to charge VAT at a percentage higher than the applicable rate at the time, such Agent will still have to account for VAT at 15% (if transfer is registered on or after 1 April 2018) on their Commission, but will not be able to recover the additional consideration from the Seller. We have yet to see a Sale Agreement with such a provision.

Article by David Campbell

Yours Faithfully

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