

## VAT PRACTICE NOTE: NO 4

25 September 1991

### Time of Supply (Section 9)

#### 1. Estate agents' commission

Where an estate agent (who is a registered vendor) earns a commission in respect of the sale of a property, the agreement of sale in question will not be regarded as an invoice for determining the time of supply of the agent's services in terms of section 9(1) of the Act.

The estate agent will therefore be required to account for the output tax on the commission in his tax return for the tax period during which the commission is actually paid to him (or released from his trust account for this purpose) or during which he issues a separate invoice to the seller for the commission payable, whichever is the earlier.

#### 2. Retention monies

2.1 Where a building or other contract provides for a retention amount to be withheld from a particular progress payment or other contractual payment, the contractor will not have to charge or account for output tax on the retention amount at the time of the progress or contractual payment. The retention amount only becomes due or is paid by the client at a later date in accordance with the terms of the contract and the contractor is therefore only required to account for the output tax on the retention amount at that later date.

2.2 If a retention amount becomes payable after 30 September 1991, but it relates to construction services (or any other services which were not taxable services for sales tax purposes) performed prior to 30 September 1991, then notwithstanding the above rule the contractor will not have to charge or account for output tax on the retention amount. (See section 78(5)(ii)(aa) of the Act).

#### 3. Sale of fixed property

In terms of section 9(3)(d) of the Act, a sale of fixed property is deemed to take place on the earliest of :

- (i) six months after the date on which the sale is entered into (or the date on which an underlying option or right of pre-emption to acquire the property was exercised) ; or
- (ii) the date of registration of transfer of ownership ; or
- (iii) the date on which any payment is made in respect of the purchase price.

3.1 For the purpose of (i) above, the date on which the sale is entered into or the option or right is exercised, will be regarded as being the date of last signature by the parties to bona fide agreement. This will apply even if the agreement is subject to a number of suspensive conditions which are only fulfilled at a later date.

3.2 The rule in 3.1 above will also apply for the purposes of section 78(9)(a) of the Act which deems a sale of fixed property not to be a taxable supply if the agreement is concluded before 30 September 1991.

3.3 For the purposes of (iii) above, a deposit (whether refundable or not) will not be considered as "any payment" unless or until the deposit is released and applied as part payment of the purchase price or is forfeited by the purchaser.