

InTouch

with indirect tax news

Asia Pacific VAT/GST Alert



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Welcome to the fourth issue of InTouch for 2010. The major highlights of this issue are updates in Australia and New Zealand, further developments on the proposed GST system in India, a draft amendment bill in Singapore, new VAT Circulars in Vietnam as well as VAT/GST developments in other Asia Pacific countries. Please feel free to reach out to any of the PwC contacts listed at the end of this issue.

Australia

Announcements

- The recently elected Australian Federal Government has announced its legislative agenda to introduce amendments of the GST third-party payment adjustment provisions to remove an opportunity to artificially reduce GST liabilities in certain situations.
- Following the changes to the indirect tax rulings regime, the Australian Taxation Office (ATO) has modified a number of its Industry Partnership Issues Registers to identify specific issues which constitute public rulings for GST purposes. These include the Financial Services Issues Register, Property and Construction Issues Register and Health Industry Partnership Issues Register.
- In a recent ATO Interpretative Decision, the Commissioner has concluded that non-resident royalty withholding tax should be based on the GST-inclusive amount.

Court decision on late payment fees

The majority of the Full Federal Court in *American Express International Inc v Commissioner of Taxation* [2009] FCA 683 allowed the Commissioner's appeal, finding that late fee payments made by cardholders to American Express (AMEX) constitute consideration for a financial supply and should be input taxed.

Court decision on GST anti-avoidance provisions

In *The Taxpayer and Commissioner of Taxation* [2010] AATA 497, the Administrative Appeals Tribunal (AAT) found partly for the Commissioner and partly for the taxpayer in a case concerning the application of the GST margin scheme and anti-avoidance provisions to arrangements for the sale of residential units by a GST group.

The AAT determined that for supplies prior to the introduction of the 'single entity rule' (to take all supplies and acquisitions within a GST group out of the GST system), the taxpayer was entitled to apply the margin scheme on the basis that the consideration for the acquisition was the sale price between the representative member and the GST group member.

The AAT also considered the application of the GST anti-avoidance provisions. The Tribunal rejected the taxpayer's argument that the arrangement was attributable to the making of a choice, finding that the GST benefit did not arise as a consequence of the choices, but was attributable to the use of the higher amount as the consideration for the acquisition used in the calculation of the margin under the margin scheme rules.

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India

Recent developments in the proposed Goods and Services Tax (GST) system

The Union Finance Minister met the Empowered Committee of State Finance Ministers (EC) on 21 July 2010, detailing recommendations to the design and implementation of the proposed GST in India. The following are the key highlights of the Finance Minister's speech:

- GST Rates

Single rate structure with unification of the rate for goods and services to be achieved in both Central GST (CGST) and State GST (SGST) in a phased manner as set out below:

	Goods		Services
	Standard rate	Lower rate	
Year one: 2011 – 2012	10%	6%	8%
Year two: 2012 – 2013	9%	6%	8%
Year three: 2013 – 2014	8%	8%	8%

- Threshold limits
 - The threshold limit for goods and services under CGST and SGST would be uniform at Rs.10 lakhs turnover per annum.
 - The threshold compounding for small dealers would also be uniform under CGST and SGST at either Rs. 50 lakh turnover per annum or Rs. 1 Crore per annum.
- Exemption
 - Exemptions from Central Excise duty will be reviewed so that the list of goods exempt from CGST is aligned to the SGST.
 - The 99 items currently exempt from VAT will be reviewed for exemption from both components of GST.
- Purchase Tax
 - Purchase Tax will be subsumed under the GST regime.
- IT Infrastructure
 - Information technology (IT) will be used in order to facilitate simplification so that physical interface between the taxpayer and the administration is minimised.
 - IT infrastructure system is to be in place well before the actual introduction of GST in April 2011.

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Japan

Medical corporations sue Japanese government

According to some sources, four medical corporations in the Hyogo Prefecture have filed a lawsuit with the Kobe District Court on 28 September 2010 to reclaim consumption tax refund totalling 40 million yen (approximately US\$500,000) from the Japanese government by insisting that the Consumption Tax Law violates a principle of equality under the Constitution of Japan.

Medical institutions bear unrecoverable input consumption tax cost when buying medical equipment since insured medical fee revenues are exempt from consumption tax without credit. The Ministry of Health, Labour and Welfare is taking a position that there is no problem as the consumption tax portion is already included in the insured medical fee when revised.

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New Zealand

New zero-rating model for land transactions

The Taxation (GST and Remedial Matters) Bill 2010 has confirmed that a compulsory zero-rating regime for land transactions in a business-to-business context will apply from 1 April 2011. The regime will apply to any supply involving land between two GST-registered parties where the land is acquired with the intention of using it to make taxable supplies and the land is not intended to be used as the purchaser's (or its associates') principal place of residence.

Other GST changes have also been introduced by the bill, including significant reforms to rules governing recovery of GST, change in use adjustments and legislative clarification for supplies where a named purchaser nominates a third party to take title.

GST rate increase transitional rules

Special transitional rules have been introduced to allow businesses in some situations to continue to account for GST at 12.5% even after 1 October 2010 (the effective date of GST rate increase to 15%). This includes the following situations:-

- Subject to certain conditions, businesses may be able to lock in GST at 12.5% for contracts (with a term of 396 days or less, or are reviewed annually) entered into before 1 October 2010 and receive periodic payments.

- Periodic payments under a finance lease may be held at 12.5% in certain circumstances.
- New tax invoices issued after 1 October 2010 may be able to be issued at 12.5% provided that it relates to a credit that was given to a supply that arose before 1 October.
- Businesses may account for GST at 12.5% on invoices dated in September 2010 but physically posted by 11 October 2010, and the invoice is due to be paid within 60 days.

All of the transitional rules are optional. Some rules require GST to be adjusted (and paid) at 12.5% in the September 2010 GST return. Businesses therefore need to immediately assess the commercial and systems compliance impact and proceed accordingly.

Cockburn v CS Development No 2 Ltd [2010] NZCA 373

The sale of a business as a going concern may be zero-rated in certain circumstances. There has been litigation over the years on whether a sale was a zero-rated going concern or not. In a recent appeal case on the sale of a commercial property, the Court of Appeal upheld the decision that the sale was not a going concern as the property was sold with vacant possession.

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Singapore

Draft GST (Amendment) Bill 2010

The draft GST (Amendment) Bill proposes the following legislative changes to effect the following:

- Tax changes announced in Budget 2010
 - Expansion on the scope of zero-rating of GST for the marine and aerospace industries.
 - Accounting of GST on most supplies to the earlier of invoice date or payment date.
 - New scheme to defer the payment of import GST.
- Other proposed changes that include:
 - Clarification that GST is not chargeable on imported goods that are supplied and remain within Free Trade Zones, Zero-GST or Licensed Warehouses; and goods that are locally manufactured, supplied and remain within warehouses licensed under the Customs Act.
 - Update to the GST Act to align the methods of valuation prescribed in Customs legislation or the last selling price (where applicable), for the purpose of valuation of imported goods and thus the levying of import GST.
 - Clarification on the definition of residential property for the purpose of GST exemption.

New e-tax guide on imports

The Inland Revenue Authority of Singapore (IRAS) has issued a new e-tax guide “GST Guide on Imports” on 1 September 2010. The guide provides information on GST matters relating to importation of goods including GST reporting requirements, goods imported on behalf of an overseas company and the related schemes available.

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South Korea

Fees on payment guarantee for offshore subsidiaries

Under a recent new tax ruling released by the Ministry of Strategy and Finance (MOSF), the consideration received in foreign currency through a foreign exchange bank in return for payment guarantee by a domestic company on the borrowing of the foreign borrowing shall be viewed as a service rendered from overseas which is eligible for a zero-rate VAT under the Korean VAT law. This ruling is in contrast with previous rulings which concluded that such consideration received shall not be included in the scope of service eligible for zero-rate VAT.

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Taiwan

Relief from fines for False Declaration of Transit Goods

In accordance with Tax Ruling Tai-Tsai-Kuan No. 09900289310 announced on 13 August 2010 for goods passing through Taiwan without being imported into Taiwan or goods returned overseas after being imported, penalties shall be relieved if the items reported on the Customs Declaration Form are inconsistent with those that actually arrived. The reason for such relief is that as the goods do not enter Taiwan, any import duty penalties including customs duty and VAT should not be applied. It is anticipated that there will be a growing willingness for companies to select Taiwan as the transshipment center after the announcement of this ruling.

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Thailand

7% VAT rate maintained

Under the Cabinet resolution dated 3 August 2010, the rate of VAT is to be maintained at the reduced rate of 7% for the sale of goods, the provision of services or the importation of goods in all cases during the period from 30 September 2010 to 30 September 2012.

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Vietnam

Input VAT credit for employees' housing rental

On 22 July 2010, the General Department of Tax issued Letter 2696/TCT-CS providing clarification on the creditability of input VAT incurred on housing rent provided to expatriate employees.

- If the expatriate employee is under an employment contract with a Vietnamese company to hold a management position in the company and receive salary from the company, the input VAT on the housing rent paid by the company for the expatriate is not creditable.
- If the expatriate employee is seconded to work in Vietnam under an employment contract with a foreign company and on the foreign company's payroll, the input VAT on the housing rent paid by the Vietnamese company for the expatriate is creditable provided that there is a written agreement between the foreign company and the Vietnamese company specifying that the expatriate's accommodation costs in Vietnam will be borne by the Vietnamese company.

Vietnam

Additional guidance on temporary VAT refund for exported goods

On 30 June 2010, the Ministry of Finance issued Circular 94/2010/TT-BTC (Circular 94) to replace Circular 04/2009/TT-BTC (Circular 04). Circular 94 allows a temporary refund up to 90% of the input VAT in relation to exported goods for which bank payment documents are not yet available.

New guidance on VAT refunds for imported fixed assets

Previously under Circular 205/2009/TT-BTC (Circular 205), the import VAT incurred on goods which could not be domestically produced and imported to form the fixed assets of the importer, is refundable to newly established entities and certain investment projects which are in pre-operation stage if certain conditions are met.

On 17 June 2010, the Ministry of Finance issued Circular 92/2010/TT-BTC (Circular 92) to replace Circular 205 with effect from the signing date. Key changes under Circular 92 include:

- The condition that requires investment projects to be an important national project approved by the National Assembly, or a project under Group A as stipulated in Decree 12/2009/ND-CP under Circular 205, has been removed.

- Circular 92 applies a minimum value of VND200 billion to the imported asset, instead of VND200 million to the import VAT payable amount.
- Circular 92 shall be applied to any VAT refund claims under the previous Circular 205 which were submitted to the tax authorities prior to the effective date of Circular 92 but which have not yet been approved.
- Enterprises that meet the conditions for a VAT refund under Circular 92 are entitled to a 60-day deferral of payment of the import VAT with respect to the same assets.

VAT treatment of banking services

The Ministry of Finance has recently issued various letters providing the following updates on the VAT treatment of banking services:

- Services which are associated with securities business are subject to VAT at 10% if they are not specifically listed under the exemption category in VAT Circular 129/2008/TT-BTC.
- Letters of credit issuance, confirmations and notifications are treated as guarantee services, and are exempt from VAT.
- Only input VAT relating to revenue that is subject to VAT under the “deduction method” is creditable.

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