

InTouch

with indirect tax news



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Australia

- Self assessment of indirect taxes
- Simplifying GST on cross-border transactions
- GST Joint Ventures
- GST governance and risk management
- GST grouping
- Case laws

India

- Key highlights in the Union Budget 2011–2012

Japan

- Special extension of filing deadline – East Japan Great Earthquake

New Zealand

- Foreign currency tax invoices
- GST on non-deductible entertainment expenditure

Singapore

- Legislative changes
- New e-tax guide
- 2011 Budget Statement

South Korea

- Extended scope of taxable medical and educational services
- Extended scope of VAT exempt goods and services
- Increased tax benefits for issuance of electronic tax invoice

Taiwan

- Amendment to the Value-added and non-Value-added Business Tax Act

Thailand

- Changes in regulations

Vietnam

- Supporting documents for input VAT claim
- Allocation of input VAT by banks before 2009
- In-country export-import scheme

Welcome to the April 2011 issue of InTouch*. The major developments in the first quarter of 2011 include updates and recent case laws in Australia, key highlights of the Union Budget and the proposed GST in India, Singapore Budget update and VAT/GST changes in South Korea, Taiwan, Thailand and Vietnam. Please feel free to reach out to any of the PwC contacts on the back of this issue.

Australia

Self assessment of indirect taxes

The Australian government is drafting legislation to introduce a generic self assessment framework for GST and other indirect taxes. The amendments will reduce the complexity of the tax law associated with having different administrative regimes for indirect taxes and income tax and will result in a reduction in compliance and administrative costs in the long term. The changes are to have effect from 1 July 2011.

Simplifying the GST on cross-border transactions

The Assistant Treasurer recently released a discussion paper on reforms to how the GST is applied to cross-border transactions. These changes will apply from 1 July 2012 and aim to simplify the cross-border rules to ensure the GST system does not unnecessarily draw in non-residents.

GST Joint Ventures

Two retrospective legislative determinations have been made to update existing rules in relation to GST joint ventures. The determinations, which apply from 1 July 2010, have been updated to remove references to the provision that requires entities to apply for approval to form a GST joint venture.

GST governance and risk management

The Australian Tax Office released its GST governance and risk management guide on 28 September 2010. The guide provides a self-assessment which will assist businesses in achieving indirect tax function effectiveness and in identifying weaknesses, areas for improvement as part of the process for correctly accounting for GST.

GST grouping

With effect from 1 July 2010, entities are allowed to self-assess their eligibility to form, change and dissolve a GST group, and to do so at any time during a tax period. Further, members of a GST group are allowed to enter into an indirect tax sharing agreement (“ITSA”) with a representative member in relation to their indirect tax law liabilities. Entering into an ITSA will limit the indirect tax law liabilities of the members for tax periods in which they are a member of the GST group.

Case laws

Travellex Ltd v Commissioner of Taxation

deals with the GST treatment of the supply of foreign currency to a traveller who had passed the customs barrier at Sydney airport. The majority of the High Court held that a sale of foreign currency is a supply in relation to the rights that attend upon ownership of that currency, and “where it is evident that the currency is to be used overseas”, the rights that attach to the currency are GST-free.

Qantas Airways Ltd v Commissioner of Taxation deals with the issue of whether GST is payable on an air fare where a passenger subsequently cancels the booking or does not turn up for the flight and does not receive a refund. The Administrative Appeals Tribunal (“AAT”) found for the Commissioner and held that Qantas has made a taxable supply and was liable for GST in respect of cancelled bookings and no-shows where no refund was made to the passenger.

Commissioner of Taxation v Luxottica Retail Australia Pty Ltd

concerns the sale of frames and lenses of which only the former is a taxable supply. The taxpayer ran promotions which discounted the frames (which were taxable) and not the lenses. The Full Federal Court has upheld the decision of AAT which ruled in favor of Luxottica, confirming that there was no need to apportion the discount offered for frames under promotions as between the frames and the lenses.

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India

Key highlights in the Union Budget 2011-2012

Service tax

- With effect from 1 April 2011, the time when the services shall be deemed to be provided will be the earliest of the following dates:
 - i. Date on which service is provided or to be provided;
 - ii. Date of invoice; or
 - iii. Date of payment.
- The rate of interest for delay in payment of taxes is increased from 13% to 18% p.a. with effect from 1 April 2011.

CENVAT Credit

- Definition of inputs and input services has been amended to exclude:
 - i. Inputs or input services used for construction of building/civil structure, laying of foundation, etc.

ii. Inputs and inputs services primarily used personal use or consumption of employees and input services such as outdoor catering, health insurance, life insurance, etc. has been specifically excluded.

iii. Input services exclude trading activity.

- Service tax paid under reverse charge to qualify as an eligible credit.

Developments in the proposed GST

- Proposal to introduce the constitution amendment bill in the current session of Parliament.
- Positive indications of aligning the present tax/duty structures to be consistent with the proposed GST.

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Japan

Special extension of filing deadline – East Japan Great Earthquake

Following the East Japan Great Earthquake and Tsunami, a taxpayer who faces difficulty in filing the tax return is allowed to apply for extension of deadline in filing the tax return and payment in the following circumstances:

- The taxpayer suffered a direct loss of the house etc. due to the disaster
- The taxpayer needs to participate in emergency and rescue activities
- Interception of transportation and communication, power failure (including rolling blackout), etc.
- Loss of books and documents, damage of data
- The taxpayer is unable to obtain consultation from the tax office due to closure

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New Zealand

Foreign currency tax invoices

In a recent update, the Inland Revenue has highlighted the denial of input tax deduction not supported by a valid tax invoice, even in situation of minor defects.

GST on non-deductible entertainment expenditure

For GST purposes, the non-deductible portion of entertainment expenditure is deemed to be payment for a supply and GST must be accounted for on the non-deductible portion and included in the GST return covering the earlier of the date on which the income tax return is filed or is due.

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Singapore

Legislative changes

Definition of “residential properties”

There is an amendment to the definition of the term “residential properties” under the Fourth Schedule of the GST Act which prescribes the supplies which are exempt from GST.

Changes to the Approved Contract Manufacturer and Trader (“ACMT”) Scheme

With effect from 1 January 2011, a person under the above scheme (i.e. ACMT person) who receives treated or processed goods from another ACMT person but does not deliver the goods to another ACMT person or a customer of the overseas client will be treated as having himself made a supply of the goods in the course and furtherance of his business and must account for output tax on the market value of the goods.

New e-tax guide

On 5 January 2011, the IRAS has published a new e-tax guide “GST guide for Free Trade Zones, Warehouses and Excise Factories” to explain the GST treatment of goods stored in these locations.

2011 Budget Statement

The following changes were announced by the Minister for Finance in the 2011 Budget Statement:

Biomedical sector

- Businesses will enjoy GST relief on the importation of clinical trial materials into Singapore. The relief will be granted regardless of whether these materials are for local testing, re-export or for disposal in Singapore. The ACMT scheme (currently exclusive to the semiconductor and printing industry) will be extended to the biomedical sector.

Logistics sector

- A new GST scheme will be introduced to allow zero-rating for certain prescribed services supplied to overseas persons where the services are performed on high-value collectible items (e.g. art and antiques) stored in approved specialised warehouses.

Marine sector

- A new GST scheme will be introduced to allow “approved marine customers” to buy or rent goods free of GST as long as the goods are for use or installation on a commercial ship that is wholly for international travel.

The IRAS and Singapore Customs will publish circulars to explain the above changes and operational details by September 2011.

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South Korea

Extended scope of taxable medical and educational services

Under the recently revised VAT Law of Korea, certain medical and educational services that were previously exempt from VAT shall be taxable from 1 January 2011. The taxable services include medical expenses which are not covered under healthcare insurance and educational services relating to recreational sports or driving.

Extended scope of VAT exempt goods and services

The scope of VAT exemption is extended to include the following:

- Supply of wood pellet for the purpose of supporting the initial market growth and expansion of low carbon renewable energy resource from 1 January 2011 to 31 December 2012
- The supply of maintenance, security and janitorial services relating to elderly welfare homes from 1 January 2011

Increased tax benefits for issuance of electronic tax invoice

To further promote the implementation of electronic tax invoice, tax credit available for electronic tax invoices issued from 1 January 2011 to 31 December 2011 is increased from KRW 100 to KRW 200 for each electronic tax invoice issued (up to a maximum of KRW 1,000,000 per year).

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Taiwan

Amendment to the Value-added and non-Value-added Business Tax Act

The Presidential Officer promulgated the amendment to the Value-added and non-Value-added Business Act on 26 January 2011. Significant changes are highlighted below:

- To avoid double taxation, certain situations will no longer be deemed as sales and subject to VAT for non-profit-seeking organisations and VAT-exempt business entities whose input VAT were not claimed as credits against the output VAT.

- 0% VAT can be applied to sales of goods or services to enterprises located in bonded areas for their business operations and sales of goods by enterprises located in bonded areas to enterprises located in taxable zones, where such goods are exported directly or stored in certain bonded areas for subsequent export instead of delivered to taxable zones.
- Where a Taiwanese financial institution purchases services exclusively for its own businesses from a foreign enterprise having no fixed place of business in Taiwan, the statutory business tax rate is 3%. However, the payment of reinsurance premium shall only be subject to 1% business tax.
- Under normal circumstances, the tax office shall assess VAT returns filed by taxpayers within 6 months and notify the taxpayers of the assessment results.
- A company obtaining the Governing Uniform Invoice issued by a company which is not the actual sales counterparty can be exempt from penalties if certain conditions are met.

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Thailand

Changes in Regulations

- With effect from 1 February 2011, a traveller who purchases goods from the registrant for export, has the right to apply for refund of the VAT that has been collected. The value of the goods shall be at an amount of not lower than 2,000 baht, and shall be purchased from each supplier not lower than 2,000 baht per day.
- With effect from 8 February 2011, the exemption of VAT has been extended to include the provision of services pertaining to Loan Management Fund for Public Debt Restructuring and Development of Domestic Debt Instrument Markets under the law governing public debt management.
- Under Royal Decree No. 513, businesses who donated goods aiding the flood victims from 1 September 2010 to 31 December 2010 shall receive exemption on VAT under the conditions prescribed by the Director-General of Revenue Department.

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Vietnam

Supporting documents for input VAT

On 26 November 2010, the Ministry of Finance (“MoF”) issued Official Letter (“OL”) 16053/BTC-CST providing further guidance on substitute supporting documents for claiming input VAT refund of exported products where payment vouchers via bank are not available in the following situations:

- The foreign purchaser is insolvent;
- The defective exported goods are destroyed overseas; and
- The exported goods are damaged overseas.

Allocation of input VAT by banks before 2009

On 28 February 2011, the MoF issued OL 2624/BTC-CST providing guidance on the allocation of input VAT by banks for the period prior to 1 January 2009. According to the OL, if banks failed to allocate input VAT for VAT-able and non VAT-able goods and services for the period prior to 1 January 2009 in accordance with Circular 120/2003/TT-BTC and OL11469/BTC-CST, they are now not required to make any adjustments to correct this.

In-country export-import scheme

On 24 January 2011, the MoF issued OL 1135/BTC-TCT providing guidance for 0% VAT applicable to in-country export-import scheme.

According to the OL, local tax departments are required to review those situations where goods were sold to foreign companies but delivered to local companies. The 0% VAT only applies if these goods are used for further processing of exported finished goods. Goods not used for export processing but for local consumption would be treated as domestic sales and subject to normal VAT.

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