

InTouch

with indirect tax news

Asia Pacific VAT/GST Alert



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InTouch has been very well received and we thank you for the positive feedback. In this edition, PricewaterhouseCoopers' (PwC) indirect tax network continues to keep you abreast of major VAT/GST developments in Asia Pacific that may impact your business in the region.

Australia

ATO's compliance plan for GST

The Australian Taxation Office's (ATO) latest Compliance Program includes a special focus on GST. The ATO highlights that weaknesses in business systems that capture, process and collate GST data to prepare Business Activity Statements (GST returns) is a particular area of risk for large businesses. Errors often arise around business restructures, accounting system changes and transactions outside the ordinary course of business.

Other areas of focus for the ATO for 2007/8 include GST compliance in respect of property transactions including the use of the margin scheme and the method for determining value and apportionment. For the financial services industry, areas of focus are the GST treatment of supplies of services to associated entities at less than market value, the recovery of GST using a fair and reasonable apportionment methodology and GST recovery on costs related to mergers and acquisitions.

The ATO's response to these issues is expected to include issuing public rulings, education, audits and advice to Treasury to amend the GST law where the law is not operating as intended.

Increase in GST registration threshold and tax invoice threshold

Effective 1 July 2007, the threshold for requiring entities to register for GST has increased from AUD50,000 to AUD75,000. Entities whose turnover fall below the threshold may continue to elect for a GST registration.

In addition, the value at which businesses must hold an approved tax invoice in order to claim input tax credits for purchases has also been increased from a GST-exclusive value of AUD50 to AUD75.

ATO to appeal decision on security deposits

The ATO has sought special leave to appeal to the High Court against a recent decision of an appeal bench of the Federal Court finding that no GST was payable on the forfeiture of a security deposit. The Federal Court's decision is in contrast to the views expressed by the ATO in its ruling concerning deposits held as security for the performance of an obligation. Clients seeking a refund for GST paid on a forfeited security deposit should notify the Commissioner in writing to ensure they are not prejudiced by the time limits on refunds.

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India

Implementation of VAT in the Union Territory of Puducherry

VAT has been implemented in the Union Territory of Puducherry with effect from 1 July 2007.

Implementation of VAT in the State of UP

The State of U.P. is likely to implement VAT before the end of the fiscal year.

Joint Working Group on GST to submit report on "Roadmap for implementation of GST"

The Joint Working Group (JWG) on GST will submit a report on "roadmap for implementation of GST" to the Empowered Committee (EC) by November. The JWG has formed four sub-groups to give suggestions regarding the tax structure, credit mechanism, computerisation and procedural matters. After the roadmap is submitted, the EC, in consultation with the Central Government, will finalise the GST model most appropriate for India.

Phasing out central sales tax by March 2010

The Empowered Committee of State Finance Ministers has approved the draft compensation package offered by the Central Government for phasing out central sales tax by March 2010. The package includes transfer of 77 existing and new services to the States for taxation and appropriation, imposition of value added tax on tobacco and on inter-State Government departmental purchases.

Case law on sales of SIM cards

The Punjab and Haryana High Court, in Escotel Mobile Communication Ltd. Vs. State of Haryana [920070 30 PHT 276], following the Supreme Court's decision in the Bharat Sanchar Nigam Ltd. Case [(2003) 27 PHT 268], has held that SIM cards are goods for the purposes of levy of sales tax. However, the charges collected for activation of the SIM card do not constitute goods and therefore cannot be liable to sales tax.

Extension of service tax payment deadline

A notification (no. 39/2007-ST dated 12 September 2007) has been issued to extend the last date of payment of service tax through electronic mode from the fifth to sixth of the succeeding month.

Refund mechanism in relation to service tax paid on certain services

The Central Government has notified a refund mechanism in relation to service tax paid on the following taxable services, which are not in the nature of 'input services' but which could be linked to export of goods:

- all port services
- goods transport agency services relating to transport of goods from the ICD to the port of export
- transport of goods in containers by rail services from the ICD to the port of export

The refund is, however subject to fulfillment of certain conditions as specified in the Notification.

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New Zealand

IRD watch – GST issues arising for developers, proprietors and operators of retirement village

Exposure draft IS3571 suggests that any payments made by occupants in relation to compulsory care services could result in an otherwise exempt dwelling being treated as commercial and taxable. The Commissioner also suggests that refundable deposits paid by the occupants of commercial dwellings could

in certain circumstances be subject to GST as it is non-monetary consideration. The deposit is controversial as deposits have traditionally been treated as exempt financial services. PwC made a detailed submission on behalf of the industry.

GST anti-avoidance decision by the Court of Appeal – Glenharrow Holdings Limited v Commissioner of Inland Revenue (15 August 2007)

The case concerned the purchase of a mining licence by a GST-registered person from a non-registered vendor, and the value of consideration for GST purposes between unrelated parties. The Court disallowed a huge portion of the GST claimed. This was on the basis that the amount, which was to be paid through vendor finance, was conditional on the success of the mining operation in economic (although not legal) terms. Despite accepting that the parties were unrelated and genuinely believed they had bought and sold the licence for the amount paid, the Court held that the transaction was avoidance as the amount paid was grossly inflated so as to defeat the intent and application of the GST Act.

The case is on appeal to the Supreme Court.

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Singapore

New GST audit program by the Inland Revenue Authority of Singapore

The Inland Revenue Authority of Singapore (IRAS) has launched a new GST audit program known as the GST Compliance Assurance Program (CAP), which is aimed at MNCs. Unlike the normal substantive audits which focus on specific business transactions and the GST treatment, the IRAS is embarking on a systems approach to verify the company's accounting process and procedures in relation to the reporting of GST.

Rate increase from 1 July 2007

From 1 July 2007, the standard rate of GST has increased from 5% to 7%.

GST Advance Ruling System

An advance ruling system which is legally binding came into effect on 1 July 2007. Charges apply for an application for an advance ruling under the new system.

Administrative concession for public liability insurance

Under the GST legislation, a GST-registered company is not allowed to claim any GST incurred on public liability insurance unless the company is able to separately identify

the amount of GST incurred on the premiums relating to the cover of medical expenses to third parties and exclude that portion of GST from input tax claims.

With effect from 1 October 2007, the IRAS has introduced an administrative concession to allow a full input tax claim on the GST incurred on public liability insurance even if the premiums relating to the cover of medical costs to third parties cannot be separately identified. However, the basis must be that such insurance is incurred to protect the company's business and constitutes a genuine business cost.

Changes to the requirement to file GST F7

With effect from 1 October 2007, the threshold for filing a GST F7 (Disclosure of Error on GST Return) form for any errors with net GST amount is increased from S\$500 to S\$1,500.

New/revised e-guides

The IRAS issued the following new/revised e-Tax guides on GST:

Guide to retailers operating the Tourist Refund Scheme and Guide to Visitors on Tourist Refund Scheme (issued on 1 August 2007).

- i) Zero-rating of tools used in manufacturing goods for export to overseas customers (revised on 19 July 2007).

- ii) GST Guide for the Insurance Industry to explain the GST principles that are applicable to the insurance industry. It also clarifies the distinction between life business and life policies (issued on 16 October 2007).

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Taiwan

Zero percent (0%) VAT on services contracted with a foreign customer but provided to domestic enterprises in bonded areas

The Taiwan Ministry of Finance has recently issued a tax ruling no. 9604521120 stipulating the 0% VAT application on services contracted with a foreign customer but provided to domestic enterprises in bonded areas. The rationale is that the services are provided in bonded areas and such provision of services derives foreign exchange proceeds.

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