

InTouch

with indirect tax news

Asia Pacific VAT/GST Alert



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Welcome to our first issue of InTouch for 2010. In this issue, we present the latest VAT/GST developments in Asia Pacific and provide insight into upcoming trends for the new year. Thank you for your support in the past year. We welcome you to contact any of the PwC VAT/GST network contacts on the back of this issue on any of the topics that may be of interest and relevance to your business.

Australia

Proposed reforms to Australian GST

The Australian Federal Treasury released a draft Exposure Bill for public comment. The draft Exposure Bill addresses several concerns relating to the administration of the GST and includes the following measures.

- i. broadening the operation of the GST agency provisions;
- ii. introducing a bulky goods refund system for residents of Australia's external territories;
- iii. clarifying the Commissioner's power to recover overpaid refunds;
- iv. imposing a modified four-year limit on claiming input tax and fuel tax credits;
- v. clarifying the GST law concerning gambling supplies to persons outside Australia;
- vi. clarifying the interaction of the associate rules with other GST provisions; and
- vii. increasing the adjustment note threshold.

A second draft Exposure Bill has also been released and includes recommendations made by the Board of Taxation, including clarifying that input tax credits can be taken into account in later tax periods and allowing GST adjustments for third party payments.

Recent Cases

- i. The Federal Court found in *Leaseplan Australia Limited v Commissioner of Taxation* that the taxpayer's business purpose in acquiring vehicles from non-registered vendors was to lease them and to sell them at the end of each lease. The Court accepted that the whole transaction was a composite operation where the disposal of vehicles was integral to the taxpayer's business, and accordingly the taxpayer was entitled to claim input tax credits under the second hand goods provisions;
- ii. The Commissioner of Taxation has lodged an appeal before the Full Federal Court following the decision by the Federal Court in *American Express International v Commissioner of Taxation*. In this case, the Court held that the payment of liquidated damages and late payment fees did not constitute consideration for a financial supply.

Recent Rulings

The Australian Tax Office has released the following draft rulings:

- i. Miscellaneous Tax Ruling 2009/D1 concerning restrictions on GST refunds under section 105-65 of Schedule 1 to the Taxation Administration Act 1953; and

- ii. GST Determination 2009/D2 concerning the GST consequences where a land owner engages the services of an associate to arrange construction of residential premises for lease.

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India

Release of Discussion Paper on Goods & Services Tax

The first Discussion Paper on Goods & Services Tax (GST) in India was released on 10 November 2009. The key highlights include:

- i. GST shall have two components, one levied by Centre (CGST) and the other levied by States (SGST). The CGST & the SGST would be applicable to all transactions of goods and services made for a consideration except for exempted goods and services, goods which are outside the purview of the GST and transactions which are below the prescribed threshold limits.

A two tier rate structure for goods will apply at both the CGST and the SGST levels. For services, a single rate is expected to apply at the Central and State levels.
- ii. The input tax credits (ITC) for the CGST & SGST would be available for utilisation only against the output payment of CGST & SGST respectively.

Cross utilisation of ITC between the CGST & the SGST would not be allowed except in the case of inter-State supply of goods and services governed under the Integrated GST (IGST) model.

- iii. The threshold for CGST for goods is proposed to be at Rs.1.5 crores and for services at an appropriately high level. In the case of SGST, a threshold of gross annual turnover of Rs.10 lakh both for goods and services is proposed.
- iv. Exports would be zero-rated and similar benefits may be extended to processing zones of the Special Economic Zones (SEZs) in India. Sales from an SEZ to Domestic Tariff Area would not be zero rated.
- v. Both CGST and SGST will be levied on import of goods and services into the country. Full and complete set-off will be available on the GST paid on import of goods and services.
- vi. Tobacco products would be subjected to GST with ITC. Alcoholic beverages and petroleum products like crude, motor spirit (including Aviation Turbine Fuel) and High Speed Diesel would be kept out of the purview of the GST. Sales Tax/VAT would be continued and the State Excise Duty may also continue.
- vii. The taxpayer will need to submit periodical returns, in common format, to both the CGST & SGST authorities. Each taxpayer would be allotted a PAN-linked taxpayer identification number with 13/15 digits.

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Japan

Restriction of consumption tax saving

On 22 December 2009, the 2010 Tax Reform Proposal was finalized in the 25th 2009 Tax Commission (Zeisei Chosakai) and in the Cabinet decision, which restricts consumption tax saving mainly in real estate liquidation as follows.

If “Fixed asset subject to adjustment” where per unit price (exclusive consumption tax) of asset other than inventory is one million yen or more is acquired during the following taxable period (excluding the taxable period when Simplified Taxation System is applied), Consumption Tax Exemption and Simplified Taxation System are not applied continuously for three years period including and from the taxable period when it was acquired. Thus, input consumption tax credit will be adjusted and decreased in the third year (by using three years average taxable sales ratio) in case of considerable change in taxable sales ratio.

Taxable period subject to this adjustment for this purposes will be:-

- i. Two years mandatory taxable period starting on or after 1 April 2010 where Consumption Tax Exemption is not applied by voluntary filing of tax report for election of taxable enterprise for consumption tax purposes made on or after 1 April 2010; or

- ii. Initial two years mandatory taxable period where the company is established on or after 1 April 2010 and its paid-in capital is 10 million yen or more.

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Malaysia

Release of GST bill

The Malaysian Government has tabled the long-awaited GST Bill 2009 in Parliament on 16 December 2009. A second reading is planned for March 2010. The likely implementation date will be the second or third quarter of 2011. The proposed law will be broad based with minimum exempt and zero-rated supplies and with a proposed rate of 4%.

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New Zealand

Retention of GST refunds by the Commissioner

The Court of Appeal recently overturned the High Court's decision in CIR v Contract Pacific Limited [2009] NZCA 568, holding that the Commissioner may retain a GST refund indefinitely while he conducts an investigation, provided that the taxpayer is notified of the investigation.

GST changes affecting inbound tour operators

New GST legislation has been introduced to ensure that commissions charged by inbound tour operators to offshore tour operators are subject to GST at the standard rate.

The new legislation will apply retrospectively from 1 July 2007. To minimise any adverse effects, a transitional provision allows the commissions to be zero-rated for the period 1 July 2007 to 1 July 2008.

Proposal for domestic reverse charge

The Government has released a discussion document proposing sweeping changes to the GST rules. The key proposals are the introduction of a domestic reverse charge on certain transactions and reforms to the rules governing input tax deductions and change-in-use adjustments.

If enacted, these changes are anticipated to be effective from early 2011.

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Singapore

Revised e-tax guides

The Inland Revenue Authority of Singapore (IRAS) has revised the following e-tax guides:

- i. Clarification on “Directly in Connection With” and “Directly Benefit” (revised on 1 October 2009);
- ii. Fringe Benefits (revised on 14 October 2009);
- iii. Do I need to Register (revised on 2 December 2009);

and published a new e-tax guide “GST Treatment of Vouchers: Sale and redemption” on 9 Oct 2009.

Fringe benefits

The IRAS has clarified that GST incurred on the preparation of an employee’s income tax return is recoverable as input tax credit if the benefits are provided for in the employment letter or contract as part of the company’s contractual obligations to the employee.

Voluntary GST registration - new requirements

From 19 Oct 2009, businesses applying for voluntary registration are required to be on a GIRO payment plan for GST payment and/or refund.

From 9 Dec 2009, the director of the company/sole-proprietor/partner/trustee of the business is required to complete the e-Learning course “GST-Before I Register” and its quiz before the company can apply for voluntary registration.

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South Korea

One year grace period for electronic VAT invoicing

The enforcement of mandatory implementation of electronic VAT invoicing which was planned to take effect from 1 January 2010 (see Intouch issue 04/09) will be delayed for one year to 2011. The corporate taxpayers will be able to elect either the existing paper VAT invoicing or electronic VAT invoicing for the year 2010. The relevant penalties for non compliance will be imposed in two phases, a lower penalty rate for year 2011 and 2012, and a higher rate after 2013.

In an effort to encourage the early adoption of electronic VAT filing, the Korean government plans to grant certain tax incentives (i.e. KRW100 tax credit per case, waiver of the submission of VAT invoicing summary) to the corporate and individual tax payers for early adoption of the proposed electronic VAT invoicing system.

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