

InTouch

with indirect tax news



January 2011 • Issue 01/11

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Welcome to the first issue of InTouch* for 2011. The major highlights of this issue are updates in China, VAT and service tax notifications in India, the increase in service tax rate in Malaysia, new time of supply rules in Singapore and VAT/GST developments in other Asia Pacific countries. Please feel free to reach out to any of the PwC contacts on the back of this issue.

China

Introduction of new surcharges for foreign invested enterprises

Pursuant to a recently issued circular, the Urban Construction and Maintenance Fee (“UCMF”) and Education Surtax (“ES”) will now apply to foreign invested enterprises, foreign enterprises and individuals for sales made on or after 1 December 2010. Foreign invested enterprises, foreign enterprises and individuals will be required to account for the two surcharges in addition to their existing VAT, Business Tax (“BT”) and/or Consumption Tax (“CT”) obligations, thereby increasing their overall indirect tax costs. Previously, the UCMF (calculated at the rate of either 7%/5%/1% of the above total turnover taxes paid) and ES (calculated at the rate of 3% of the above total turnover taxes paid) were only imposed on domestic enterprises.

The Ministry of Finance (“MOF”) has issued another notice to unify the Local Education Surcharge (“LES”). The standard unified LES will apply to all enterprises and individuals (including foreign invested enterprises, foreign enterprises and individuals) and will be imposed at the rate of 2% of their VAT, BT and CT liabilities. For any provincial-level financial and governmental authorities in the region where no LES is levied or less than 2% is imposed, the relevant authorities are required to formulate or revise and submit their local LES policy to MOF by 31 December 2010 for approval.

Reviews of export VAT refunds for certain commodities

The State Administration of Taxation (“SAT”) issued a circular recently on abnormal VAT refunds for export of electric circuit parts. While the export of goods from China is not subject to VAT, there are some restrictions on the extent to which exporters can recover VAT on their related inputs.

The notice also sets out detailed requirements to local-level state tax bureaux to reinforce the review of export VAT refund for certain commodities and to investigate any suspected cases where errors may have arisen.

VAT treatment of futures transactions

The MOF and SAT have jointly issued a notice that allows VAT exemption to future transactions of bonded commodities conducted and settled on the Shanghai Future Exchange with effect from 1 December 2010.

Import tax treatment for aviation equipment

The MOF, General Administration of Customs and SAT have jointly issued a notice to exempt import duty and import VAT on aviation equipment used for maintenance by domestic airline companies operating regional routes. The exemption period will be from 1 January 2011 to 31 December 2015.

For more information, please contact:

Alan Wu
alan.wu@cn.pwc.com
+86 10 6533 2889

India

Notifications on VAT

Andhra Pradesh

- The filing of a duly certified copy of the Profit and Loss Account, Balance Sheet and Annual Report has been made compulsory for all VAT traders.

Orissa

- Provisions for obtaining advance ruling on disputed questions have been introduced.
- Threshold limit for dealers opting to pay turnover tax in lieu of VAT has been increased from Rs 20 lacs to Rs 40 lacs.
- Tax period for regular dealers has been changed from a ‘month’ to a ‘quarter’, except for specified dealers.

Rajasthan

- Electronic filing of returns has been made mandatory for dealers with gross turnover (including turnover under the CST Act) of more than Rs 50 lacs during the previous year.

Notifications on Service Tax

- The right to use canned software intended for single use subject to payment of the applicable excise duty by the manufacturer/importer of software and fulfilment of other conditions which had been exempted from the payment of service tax has now been rescinded.

- The consideration for a right to use canned software has been exempted from service tax, subject to certain conditions.

Case laws

- In the Association of Leasing & Financial Service Companies Vs. UOI (2010-TIOL-87), the Supreme Court has held that “financial lease” and “hire-purchase” were services, and the levy of service tax on these transactions was within the powers of the Parliament, even though VAT was chargeable thereon as well.
- In Shubh Timb Steels Ltd. Vs. UOI (2010 (20) STR 737), the High Court has held that the aspect of service element in the renting of immovable property is independently covered under the Union List of the Constitution and does not encroach upon the corresponding entry in the State List thereof. Thus, the levy of service tax on such transactions is valid. It has further held that the retrospective applicability of service tax on renting of property from 1 June 2007 is valid.
- In Sumangalam Suitings (P) Ltd. Vs. CCE (2010-TIOL-1284), the Tribunal has held that an importer of goods cannot be held liable to pay service tax on transportation services provided by an overseas supplier for delivery of goods to the importer’s premises in the absence of an express agency relationship between the two parties.

- In APITCO Ltd. Vs. CST (2010 (20) STR 475), the Tribunal has held that grants given by the Central/State Government to private agencies for specific social economic reasons were not in the nature of consideration for services provided and hence no service tax was payable.

For more information, please contact:

S.Madhavan
s.madhavan@in.pwc.com
+91 11 4115 0505

Japan

Proposal to restrict consumption tax exemption

The Government Tax Commission submitted the following proposals to restrict the consumption tax exemption during a meeting on 10 December 2010:

- Two-year Consumption Tax Holiday to be halved

When a business has taxable sales and salary expenses both of which exceed JPY 10 million in the first six months of the current fiscal year, it would automatically become a taxable enterprise for Japanese Consumption Tax (JCT) purposes from the next fiscal year (beginning on or after 1 October 2012).

- Partial restriction of input tax credit

If more than 5% of total sales consist of supplies that are non-taxable without credit, input JCT allocated to such non-taxable without credit cannot be credited against output JCT.

When a taxable enterprise has taxable supplies exceeding JPY 500 million during the “base period”, input JCT allocated to non-taxable sales without credit cannot be credited against output JCT from the tax year beginning on or after 1 April 2012.

For more information, please contact:

Masanori Kato
masanori.kato@jp.pwc.com
+81 3 5251 2536

Kotaku Kimu
kotaku.kimu@jp.pwc.com
+81 3 5251 2713

Malaysia

Increase of Service Tax rate

The rate of service tax will be increased from 5% to 6% with effect from 1 January 2011. The Malaysian Customs authority has issued transition rules that focus on the provision of services and payments received to determine whether service tax should be levied at the old or new rate. Another feature of the transition rule is a requirement to prepare and submit a “normal” and “supplementary” return for a period of 12 months to provide information on tax that the taxpayer has accounted for based on the old and the new rate.

Paid broadcast television services have also been added as taxable supply with effect from 1 January 2011.

For more information, please contact:

Wan Heng Choon

heng.choon.wan@my.pwc.com

+60 3 2173 1488

New Zealand

New GST rules from 1 April 2011

The Taxation (GST and Remedial Matters) Bill 2010 was enacted on 20 December 2010. It has confirmed the application of the compulsory zero-rating regime for land transactions for parties who buy or sell land in a business-to-business setting.

The new rules will also be relevant to taxpayers who:

- enter into certain commercial leases with a lumpy consideration component;
- are not fully taxable for GST purposes;
- are currently making ongoing adjustments for exempt or private use of goods or services;
- are involved in nominee transactions; or
- provide residential or commercial accommodation.

Case laws

Contract Pacific Limited v Commissioner of Inland Revenue [2010] NZSC 136

The Supreme Court has held that Inland Revenue (“IR”) can indefinitely retain GST refunds if timely notification of an investigation of the GST return is given.

The taxpayer was an inbound tour operator. After the taxpayer filed a GST return claiming a refund, the IR notified their intention to investigate the return. This notice was given within the 15-day limit set out in the GST Act, but a request for further information was then made outside of the 15-day limit.

The Supreme Court held that the IR’s subsequent request for information did not fall outside of the 15-day limit as an investigation includes further requests for information from the taxpayer. The Court also held that a GST refund is not required to be paid until the IR has determined that the refund is payable.

Stiassney and Ors v Commissioner of Inland Revenue HC AK CIV-2008-404-0549 4 November 2010

The High Court has held that the receivers of two corporate partners of a GST-registered partnership were not personally liable for the GST debts of the partnership. This meant the bank (as the secured creditor) had priority over IR for the GST owing by the partnership. According to the High Court, the provision imposing a personal liability on the receivers had a limited scope and imposed a personal liability only in respect of the taxable activities of the companies in receivership, and not in respect of the taxable activities of some other person registered in respect of those activities (i.e. the partnership). The Commissioner is appealing.

TRA case 3/2011, 17 November, 2010

The Taxation Review Authority (TRA) held that the Commissioner was correct in declining to de-register a taxpayer for GST retrospectively. The taxpayer (a trust) asked for its GST registration to be cancelled retrospectively with effect from the date of registration but IR declined. Although the trust had exercised its option to register for GST voluntarily, the cancellation of the registration could not be made retrospectively.

For more information, please contact:

Eugen Trombitas

eugen.x.trombitas@nz.pwc.com

+64 9 355 8686

Gary O'Neill

gary.oneill@nz.pwc.com

+64 9 355 8432

Jared Otto

jared.a.otto@nz.pwc.com

+64 9 355 8073

Singapore

Electronic Tourist Refund Scheme

A new electronic Tourist Refund Scheme (eTRS) will be developed to make it easy for a tourist to claim GST refunds in cash or via credit card at Changi Airport. The new Scheme will remove the need for tourists to complete forms at the point of purchase in order to obtain the refund.

The eTRS will be implemented in phases from mid-2011 and will be fully implemented by third quarter of 2012.

New time of supply rules

With effect from 1 January 2011, the time of supply will be triggered by the earlier of:

- a) When payment in respect of the supply is received; and
- b) When invoice in respect of the supply is issued.

Under the new time of supply rule, the reference to when performance of services or delivery of goods and the 14-day rule has been removed.

For more information, please contact:

Koh Soo How

soo.how.koh@sg.pwc.com

+65 6236 3600

May SY Ng

may.sy.ng@sg.pwc.com

+65 6236 3739

South Korea

Business place issue under VAT Law

According to a VAT ruling published by the Ministry of Strategy and Finance, where a foreign corporation stores its own products in a bonded warehouse located in Korea and delivers the products through an independent third-party logistics company to the local manufacturer's place within the bonded area, the warehouse shall not be considered a business place in Korea of the foreign corporation for VAT purposes. This interpretation is applicable when the foreign corporation carries out other activities such as taking orders, entering into sales contracts, etc from overseas and the warehouse does not constitute a permanent establishment of the foreign corporation under the Corporate Income Tax Law of Korea. This new ruling will be effective for transactions after 10 November 2010.

For more information, please contact:

Dong-Keon (D.K.) Lee

dklee@samil.com

+82 2 709 0561

Taiwan

Penalties for VAT shortfall reduced

Article 51 of Value-added and Non-value-added Business Tax Act (“Business Tax Act”) has been amended to reduce the penalty for a VAT shortfall (from one to tenfold to under five times the VAT shortfall amount). For companies in violation of Article 51 of Business Tax Act who have already filed for administrative remedy, the tax authorities or the court should apply the reduced penalty (after the amendment comes into force). However, if a taxpayer violates both Article 51 of Business Tax Act and Article 44 of Tax Collection Act, the taxpayer will be liable for the penalty under Article 51 of Business Tax Act or Article 44 of Tax Collection Act, whichever is higher.

For more information, please contact:

Lily Hsu

lily.hsu@tw.pwc.com

+886 2 27296666 Ext. 26207

Li-Li Chou

li-li.chou@tw.pwc.com

+886 2 27296666 Ext. 23684

Vietnam

VAT applicable to credit and guarantee activities

On 9 November 2010, the Ministry of Finance issued Official Letter 15221/BTC-CST (“OL 15221”) providing further guidance on the VAT treatment of credit and guarantee activities. OL 15221 provides that fees collected by banks or credit organisations for those services which are not governed in any regulation, but which are confirmed by the State Bank as part of a credit or lending process, are also exempted from VAT.

For more information, please contact:

David Fitzgerald

david.fitzgerald@vn.pwc.com

+84 8 3824 0116

Contacts

Australia

Patrick Walker, Partner
Email: patrick.d.walker@au.pwc.com
Tel: +61 2 8266 1596

Cambodia

Sira Intarakumthornchai, Partner
Email: sira.intarakumthornchai@th.pwc.com
Tel: +662 344 1244

Heng Thy, Director
Email: heng.thy@kh.pwc.com
Tel: +855 23 218 086

China

Alan Wu, Partner
Email: alan.wu@cn.pwc.com
Tel: +86 10 6533 2889

India

S.Madhavan, Partner
Email: s.madhavan@in.pwc.com
Tel: +91 11 4115 0505

Indonesia

Jim McMillan, Partner
Email: jim.f.mcmillan@id.pwc.com
Tel: +62 81 1180 1657

Abdullah Azis, Senior Manager
Email: abdullah.azis@id.pwc.com
Tel: +62 21 5289 0601

Japan

Masanori Kato, Partner
Email: masanori.kato@jp.pwc.com
Tel: +81 3 5251 2536

Kotaku Kimu, Senior Manager
Email: kotaku.kimu@jp.pwc.com
Tel: +81 3 5251 2713

Laos

Thavorn Rujivanarom, Partner
Email: thavorn.rujivanarom@th.pwc.com
Tel: +662 344 1444

Malaysia

Wan Heng Choon, Senior Executive Director
Email: heng.choon.wan@my.pwc.com
Tel: +60 3 2173 1488

New Zealand

Eugen Trombitas, Partner
Email: eugen.x.trombitas@nz.pwc.com
Tel: +64 9 355 8686

Gary O'Neill, Director
Email: gary.oneill@nz.pwc.com
Tel: +64 9 355 8432

Philippines

Mary Assumption Bautista-Villareal, Principal
Email: mary.s.bautista-villareal@ph.pwc.com
Tel: +63 2 459 2004

Singapore

Soo How Koh, Partner
Email: soo.how.koh@sg.pwc.com
Tel: +65 6236 3600

May SY Ng, Manager
Email: may.sy.ng@sg.pwc.com
Tel: +65 6236 3739

South Korea

Dong-Keon (D.K.) Lee, Partner
Email: dkleee@samil.com
Tel: +82 2 709 0561

Sri Lanka

Hiranthi Ratnayake, Director
Email: hiranthi.c.ratnayake@lk.pwc.com
Tel: +94 11 4719838

Taiwan

Lily Hsu, Partner
Email: lily.hsu@tw.pwc.com
Tel: +886 2 2729 6666 Ext. 26207

Thailand

Thavorn Rujivanarom, Partner
Email: thavorn.rujivanarom@th.pwc.com
Tel: +662 344 1444

Somboon Weerawutiwong, Partner
Email: somboon.weerawutiwong@th.pwc.com
Tel: +662 344 1000 ext 1247

Darika Soponawat, Director
Email: darika.soponawat@th.pwc.com
Tel : +662 344 1015

Vietnam

David Fitzgerald, Partner
Email: david.fitzgerald@vn.pwc.com
Tel : +84 8 3824 0116

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