Asia Pacific VAT/GST Alert

InTouch

with indirect tax news

Issue 02/16

pwc

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Welcome to issue 02/16 of InTouch* which covers developments in VAT/GST in Asia Pacific during the period April 2016 to June 2016.

Please feel free to reach out to any of the PwC contacts on the back of this issue if you have any questions on the news items.

China

Release of various Business Tax to VAT ("B2V") circulars

In the first quarter of 2016, the Ministry of Finance ("MOF") and the State Administration of Taxation ("SAT") jointly released Caishui [2016] No. 36 on the Comprehensive Roll-out of the B2V Transformation Pilot Program, under which the construction sector, real estate sector, financial services and consumer services will be transformed from business tax to VAT with effect from 1 May 2016. In the subsequent months, the MOF and SAT released a series of circulars on the detailed requirements and additional regulations to ensure successful implementation of the B2V Pilot Program. The SAT also revised the VAT returns together with explanatory notes to reflect the policy changes.

Guidance on VAT exemption on cross-border taxable activities

On 12 May 2016, the SAT released Public Notice No.29 "Administrative Measures on VAT Exemption for Cross-border Taxable Services under the B2V Pilot Program (Trial)", which clarifies the detailed implementation requirements and standardises the record-filing procedures for cross-border taxable activities eligible for VAT exemption. The Notice provides clearer guidance to guide taxpayers in assessing their eligibility for VAT preferential treatment.

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India

Notifications/Circulars for VAT

Delhi

- Digital signatures have been made mandatory for filing of periodical returns with effect from 1 April 2016.
- The Delhi VAT department had started a facility of obtaining registration through a mobile application called the "DVATMsewa App".
- With effect from 7 May 2016, the VAT rate on the sale of diesel (high speed diesel, super light diesel oil and light diesel oil) has been reduced from 18% to 16.75%.
- All registered dealers are required to display their registration certificate at their principal place of business and a certified copy of the registration certificate at all other places of business. They are also required to display their TIN and ward number outside the main entrance of their place of business in Delhi.

Haryana

- The due date for filing of online quarterly return for the period ending 31 March 2016 has been extended to 31 July 2016 for dealers who were affected by the reservation agitation in Haryana in February and have lodged a claim for compensation with the designated authorities.
- With effect from 14 June 2016, a facility has been introduced for obtaining registration certificates within one working day. This facility will apply to industrial units that are being set up on self-owned premises/land subject to the submission of the prescribed documents.
- With effect from 1 June 2016, a single ID system has been introduced wherein a dealer can access the system for the Haryana VAT, Central Sales Tax ("CST"), Luxuries Tax and Entertainment Tax using its VAT TIN number.

Maharashtra

- With effect from 1 April 2016, the VAT rate on the sale of goods covered under schedule C of the Maharashtra VAT law, except declared goods, has been increased from 5% to 5.5%.

VAT Case Laws

- In Ingram Micro India Pvt. Ltd. vs. Commissioner, Department of Trade & Taxes (TS-192-HC-2016(DEL)-VAT), the Delhi High Court held that the issue of C forms to dealers towards concessional CST on inter-state purchases could not be denied on the ground that inter-state purchases were not reported in the revised returns due to a genuine mistake by the dealer. The High Court observed that the inter-state purchases claimed by the dealer were genuine, with no adverse impact on the revenue of the State.

Notifications/Circulars for Service Tax

- The Point of Taxation Rules have been amended to provide that in cases where there is a change in the liability or extent of liability of the person liable to pay service tax under a reverse charge, the point of taxation would be the date of issue of invoice, if the service has been provided and the invoice for such services is issued before the effective date of such change.
- The Service Tax Valuation Rules have been amended to provide for levy of service tax on interest chargeable on deferred payment, where payment for services provided by the Government is allowed to be deferred on payment of interest or any other consideration.

- The CENVAT Credit Rules have been amended to provide that CENVAT credit of service tax paid on one-time charges payable upfront or in instalments, for assignment of the right to use natural resources shall be spread equally over a period of three years, instead of being spread over the period for which the rights were assigned as per the previous provision. The time limit of one year for availing of CENVAT credit is not applicable to CENVAT credit of service tax paid on the assignment of right to use any natural resource.

- The Krishi Kalyan Cess ("KKC") is exempted where the services are exempted from service tax, or are not subject to service tax. It is further provided that the abatement from levy of KKC equal to the abatement available for service tax would be available. It is also clarified that the value of taxable services for the calculation of KKC would be the value computed in terms of the Valuation Rules.

- Rebate is allowed of KKC paid on input services used for providing output services which are exported.

- CENVAT credit of KKC paid on input services is allowed to a service provider. The notification further provides that CENVAT credit of any other duty will not be allowed to be utilised for payment of KKC, and CENVAT credit of KKC paid on input services can be utilised for payment of KKC on output services.

- Representational services provided by senior advocates have been brought under the reverse charge.

- KKC has been exempted in cases where the invoice for the service was issued on or before 31 May 2016, if the provision of the service was completed on or before 31 May 2016.

- Services provided by a senior advocate by way of legal services to a person other than a business entity and to a business entity with a turnover up to INR 1,000,000 in the preceding financial year have been exempted.

Service Tax Case Laws

- In N Bala Baskar vs. UOI and Others (2016-TIOL-824-HC-MAD-ST), the Madras High Court held that in the case of joint development agreements, where the developer constructed and handed over the agreed share of the built-up area to the land owner in consideration for a share in the undivided land and ownership of the balance built-up area, such activity of construction for the land owner was subject to service tax.

- In Suresh Kumar Bansal vs. Union of India and Ors. (TS-231-HC-2016(DEL)-ST), the Delhi High Court held that no service tax could be levied on the sale of under-construction property in the absence of any provision under the law or under any rules to determine the value of taxable services in composite contracts involving the sale of land. The Court held that grant of abatement by notification could not overcome the lack of statutory provisions to ascertain the value of taxable services.

- In Mega Cabs Pvt. Ltd. vs. Union of India and Ors. (2016-TIOL-1061-HC-DEL-ST), the Delhi High Court held that rule 5A(2) of the service tax rules, which authorised the service tax authorities to seek production of documents, was ultra vires the Finance Act, 1994 (that governs the levy of service tax) and struck it down. The Court also held that verification as mentioned in the Finance Act, 1994 could not be construed as audit of accounts of the party being assessed.

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Japan

Suspension of consumption tax rate hike

The Japanese Prime Minister, Shinzo Abe, announced at a press conference on 1 June 2016 that the consumption tax rate hike to 10% (scheduled to take effect from 1 April 2017) will be suspended for 2.5 years until 1 October 2019.

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Malaysia

Price control and anti-profiteering measures

The anti-profiteering framework introduced by the Ministry of Domestic Trade, Co-operatives and Consumerism has been extended by another 6 months until 31 December 2016.

Notification on claim of bad debt relief

The Royal Malaysian Customs Department ("RMCD") has announced that with effect from 20 June 2016, if a supplier chooses not to claim a bad debt relief in the taxable period immediately after the expiry of the sixth month from the date of supply, a notification must be made through the RMCD's Taxpayer Access Point ("TAP") to the Director General of Customs to defer such claims.

Court proceedings

The RMCD has initiated court proceedings against businesses which have not filed their GST returns and refused to respond to the follow ups from the RMCD.

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New Zealand

In some situations, an "electronic marketplace" or intermediary will be required to register instead of the principal offshore seller.

Deductibility of GST incurred on capital raising costs

GST registered businesses will be able to recover GST associated with capital raising costs. Traditionally, the Inland Revenue has taken the view that an issue of shares or bonds to raise capital is an exempt supply of a financial service. This led to irrecoverable input tax where zero-rating under the B2B rules and offshore zero-rating was not possible. To allow businesses to recover this GST, the proposed changes to the law will treat certain supplies of financial services to be zero-rated (rather than exempt).

These financial supplies will qualify for zero-rating to the extent the funds raised will be used for making taxable supplies. Apportionment will be required if the funds are used to make both taxable and exempt supplies. Exempt supplies will include financial services (that are not zero-rated) and residential accommodation.

This proposed amendment will apply from 1 April 2017.

GST apportionment for large businesses

This proposed amendment will allow large businesses to apply alternative methods of input tax apportionment. Under the current rules, only financial services providers are eligible to agree an alternative method with the Commissioner. If enacted, the new rule will allow businesses to proactively seek an apportionment method suited to their particular business. This should reduce the compliance burden for businesses as well as provide more certainty.

However, the current draft legislation only allows businesses with annual turnover exceeding $24 million to apply for an alternative method. Industry associations will also be able to seek the Commissioner's agreement (regardless of turnover). Businesses meeting the threshold and currently performing input tax apportionments should consider whether they would benefit from using an alternative method.

GST on services to non-residents in connection with land in New Zealand

The current general zero-rating rule allows services to be zero-rated if they are performed for a non-resident who is outside New Zealand, provided the services are not "directly in connection with" land or goods in New Zealand.

The proposed amendments will narrow the current zero-rating rule so that services "intended to enable or assist a change in physical condition, or ownership or other legal status" of land in New Zealand will be standard-rated.

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Singapore

New e-Tax Guide on determining the belonging status of supplier and customer

The Inland Revenue Authority of Singapore ("IRAS") has published a new e-tax guide "GST: Guidelines on Determining the Belonging Status of Supplier and Customer" on 25 May 2016. The e-Tax Guide aims to help businesses who make supplies of services to or in Singapore to determine:

(a) whether they are considered to belong in or outside Singapore; and

(b) whether their customers belong in or outside Singapore.

The rules stipulated in the said e-Tax Guide are relevant for GST purposes only.

New guidelines on fringe benefits

The IRAS has issued new guidelines on when a GST-registered person is allowed to claim the GST incurred on fringe benefits and whether a GST-registered person is required to account for GST when these benefits are given free to employees.

This guidance is set out in the updated edition of the e-tax guide: "GST: Fringe Benefits" and takes effect from 16 May 2016. No retrospective adjustments to the input tax claims is required for input tax claimed on the provision of fringe benefits before this date.

What is new in the e-tax guide is that the IRAS has introduced a "close nexus" test to determine if the fringe benefit is incurred for business purposes and hence claimable as input tax.

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South Korea

Determination of service provider where the receivables have been transferred before the supply price is determinable

In a recent Supreme Court case, a Special Purpose Company ("SPC") was established in Korea between a foreign company ("Company A") and a local government for a bridge construction project. In relation to the bridge construction project, the employees of Company A provided various consulting and engineering services, including the preparation of a business plan from December 1999 to March 2003 at the head office of the SPC located in Korea. Company A transferred the results (including the business plan) of its services performed to another foreign company ("Company B") in May 2003. After due diligences performed on the services provided by Company A, the amount of the service fee for the services was determined and the SPC paid the service fee to Company B.

When Company A did not file and pay VAT since it was believed Company A did not have a permanent establishment ("PE") in Korea, the tax authority asserted a PE of Company A for the provision of services by the employees in Korea and assessed VAT on Company A by treating Company A as the service provider liable for VAT, although the related receivable was transferred to Company B before the service fee was determinable.

Company A argued that since the results of the services provided were transferred to Company B and the SPC paid the service fee to Company B, the service provider liable for VAT should be Company B.

The Supreme Court judged that in the case where a supplier of services completed the provision of the services and transferred the related receivable for the services to a third party for which the supply price is determined later after the transfer of the receivable, the original supplier (i.e. Company A) of the services should be viewed as a supplier liable for VAT and the transfer of the receivable would not have any impact on the status as the supplier for VAT purposes.

As a result, the Court decided that the service provider should be Company A rather than Company B which was the mere owner of the transferred service receivables and therefore, the VAT from the supply of the services should be paid by Company A.

Determination of service provider where a foreign company supplies services via an open market operated by another entity

According to Article 53 of the VAT Law, if a foreign enterprise having no PE in Korea supplies services in Korea through a commission agent, a quasi-commission agent, or an agent which is subject to business (VAT) registration, the services would be deemed to be supplied by the commission agent, the quasi-commission agent, or the agent.

The Ministry of Strategy and Finance ("MOSF") interpreted that if a foreign company having no PE in Korea supplies applications, etc. to domestic consumers through an open market operated by a mail order sales intermediary as defined according to Article 2 of the Law for Consumer Protection in E-Commerce and the open market operator collects the payment from consumers and remits the payment to the foreign company after deducting its own commission or service fee, the open market operator would be deemed to provide the services in Korea. The open market operator is thereby liable for VAT payment on behalf of the foreign company.

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Building sales price may be adjusted by the tax authority for business entities selling buildings at a loss

Under the old property tax regime, land and buildings are taxed separately. The sale of land is exempt from VAT and corporate income tax ("CIT"), but subject to land value incremental tax based on the increase in government announced value. On the other hand, the sale of building is both subject to VAT and CIT assessment. This results in an incentive for business entities subject to the old property tax regime to allocate a higher sales price to land (where capital gain is tax exempt) and a lower sales price to building (resulting in minimal taxable capital gain or even a loss), where the building sales price is usually lower than fair market value.

According to Article 17 of the Value-Added and Non-Value-Added Business Tax Act and Article 25 of the Enforcement Rules of the Value-Added and Non-Value-Added Business Tax Act, in the event a business entity sells goods or services at a price unreasonably lower than the market price, the competent tax authority may determine the sales price based on the market price and adjust VAT accordingly.

If after investigation, the tax authority finds that the building sales price is lower than the market price, or the allocation between the land sales price and building sales price is abnormal, and the business entity is unable to provide sufficient reason and supporting documentation for the pricing allocation, the competent tax authority will adjust the building sales price to reflect the higher market price, and additional VAT and CIT will be due as a result of the adjustment.

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Vietnam

Amended law on VAT

The National Assembly has approved an amended law on VAT which takes effect from 1 July 2016. The key changes include the following:

- Minor changes are made to the list of supplies exempt from VAT and those not subject to output VAT, including:
  - exported goods which are processed from natural resources where the natural resources and energy costs comprise at least 51 % of the cost of the goods shall be exempted from VAT;
  - elderly/disabled people care services shall be exempted from VAT; and
  - sales of certain un-processed or semi-processed products relating to cultivation, aquaculture, etc. are in some cases not subject to output VAT.
- VAT refunds will no longer be allowed where taxpayers have accumulated input VAT outstanding for 12 months or more. Taxpayers have to carry forward the input VAT instead. VAT refunds will only be paid in cash in certain situations (e.g. exporters, new projects). In all other cases, excess VAT credits need to be carried forward for future offset. The amended regulations are unclear as to whether a VAT refund application must be lodged before 1 July 2016, but it is recommended that companies ensure applications are submitted before this date.
- For input VAT incurred on investment projects, VAT refunds shall not be granted in the following circumstances:
  - projects with a registered charter capital which has not been fully contributed or investment projects in conditional sectors which do not satisfy the regulated conditions; and
  - projects licensed after 1 July 2016 for exploring natural resources and in the manufacturing sector where the natural resources and energy costs account for at least 51% of the cost of the goods sold.
- For exports, the "VAT refund first, tax audit later" scheme will only be applied to taxpayers who have not violated any tax and customs regulations for 2 consecutive years and are not classified as "high tax risk" entities.

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