

# InTouch

with indirect tax news



Issue 01/17

## Cambodia

- Tax obligations for enterprises that carry out multiple projects
- Implementation of invoice serial numbers for taxpayers under self-declaration regime
- Claim of input tax credits

## China

- VAT treatment of asset management products
- Simplifying the current VAT rate categories among the major tasks for 2017 Government Work Report

## India

- Notifications/Circulars for VAT
- VAT case laws
- Notifications/Circulars for Service Tax
- Service Tax case laws

## Japan

- Amendments to the Japanese Consumption Tax

## Malaysia

- Tourism tax

## New Zealand

- Change of GST treatment for services connected to land
- GST on remote services

## Philippines

- Prescribing the regulations governing applications for VAT credit

## Singapore

- Updated guidelines on GST treatment for input tax on medical expenses incurred by insurance companies
- Proposed introduction of customer accounting for certain prescribed goods

## Taiwan

- New VAT regime for cross-border B2C electronic service

Welcome to issue 01/17 of InTouch\* which covers developments in VAT/GST in Asia Pacific during the period January 2017 to March 2017.

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.

# Cambodia

## ***Tax obligations for enterprises that carry out multiple projects***

The Cambodian government has issued Prakas No. 1127 MEF.BrK which states the tax obligations for any enterprise that carries out multiple projects (i.e. a number of different business activities) and receives different profit tax exemption periods and/or is subject to different tax on profit rates.

The Prakas requires various accounting and tax procedures which include:

- 1) A method of allocating common income and overhead costs among the projects;
- 2) Maintenance of stock or inventory records of each project;
- 3) Depreciation of fixed assets
- 4) Utilisation of tax loss brought forward; and
- 5) A claim for input VAT for each project.

Any enterprise that carries out multiple non-Qualified Investment Projects shall be subject to tax on profit at the same rates despite its many business activities. The enterprise shall comply with consolidated tax obligations such as registration and tax identification numbers, accounting record maintenance, and the submission of annual and monthly tax returns, among other tax obligations under the tax regulations.

## ***Implementation of invoice serial numbers for taxpayers under self-declaration regime***

The General Department of Taxation (“GDT”) has provided further instructions on the issuance of invoice serial numbers for taxpayers as follows:

- 1) Medium and large taxpayers shall issue their invoices with numbers in sequential order for a full year and keep the documents for 10 years for tax purposes. For small taxpayers, the retention period is three years.
- 2) Taxpayers can use letters in front of serial numbers on an invoice to identify the location of the head office or branches issuing the invoices, which are recognised by the GDT. The invoice serial numbers must be in accordance with one standard only (e.g. PPCI-0001, PPCI-0002, PPCI-0003,... and PPTI-0001, PPTI-0002, PPTI-0003,... or SRCI-0001, SRCI-0002, SRCI-0003,... and SRTI-0001, SRTI-0002, SRTI-0003,...). Taxpayers who have many branches shall separately issue invoices from each branch and from the head office, and shall separately issue tax invoices and commercial invoices.
- 3) Taxpayers shall not use different letters in front of an invoice serial number for the purpose of dividing invoices according to customer type, product, area, activity or other types.

- 4) Taxpayers issuing invoices using point of sale (“POS”) billing machines can issue invoices with serial numbers for each POS machine, but the machine identification numbers must be on the invoices. In addition, taxpayers must properly report the number of the machine(s) by the end of January 2017 and notify the GDT of any change of the machines.

## ***Claim of input tax credits***

The GDT issued Instruction No. 21406 to provide guidelines on the implementation of Articles 28, 40, 77, 79 and 98 of the Law on Taxation and other tax regulations. The details in the instruction on how enterprises can claim input tax credits are as follows:

- 1) For all claims of input tax credits in the monthly returns, buyers must attach invoices issued by sellers in accordance with the format and Instruction no. 1127 GDT dated 26 January 2016. Instruction no. 1127 covers the issuance of invoices for taxpayers who are registered under the self-declaration regime.
- 2) Any enterprise that does not update its information will not be allowed to claim input tax credits or VAT refunds until the information is updated through the new registration system.

# China

Non-issuance of invoices or issuance of improper invoices will be considered an obstruction of the implementation of tax regulations and will be penalised under Articles 133 and 136 of the Law on Taxation. This includes a penalty of up to Riel 10 million (approximately USD2,500) and/or imprisonment.

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## ***VAT treatment of asset management products***

In January 2017, the Ministry of Finance (“MOF”) and the State Administration of Taxation (“SAT”) jointly issued Supplementary Notice (Caishui [2017] No.2, Circular 2) to further clarify the VAT treatment of asset management products under Circular 140.

With effect from 1 July 2017, taxable activities during the operating period of asset management products shall be subject to VAT and their product manager shall be the VAT taxpayer. For taxable activities during the operating period of the asset management products that occurred before 1 July 2017, if the relevant VAT has not been paid, the payment shall no longer be required. If the taxpayer has paid the VAT, such amount could be credited against the VAT payable of the following months.

Further details on the implementation rules would be released by the SAT.

## ***Simplifying the current VAT rate categories among the major tasks for 2017 Government Work Report***

On 5 March 2017, Premier Li Keqiang spoke on the Government Work Report for the year 2017 and that the government is looking to simplify the VAT rate categories.

After the comprehensive roll-out of the B2V Reform since 1 May 2016, except for certain exempt activities and zero-rated taxable

activities, there are four VAT rate categories and two VAT levy rates:

- The rate for sale/import of general goods, provision of processing, repairing or replacement services and tangible movable properties leasing services is 17%;
- The rate for sale/import of specific goods (e.g. agricultural products, natural gas, books, etc.) is 13%;
- The rate for transportation services, postal services, basic telecommunication services, construction services, immovable property leasing services and sale of land use right or immovable properties is 11%;

# India

## Notifications/Circulars for VAT

### Haryana

- Schedule B of the Haryana Value Added Tax Act 2003 has been amended to treat the sale of Bio-Diesel (B-100) as exempt.

### Goa

- Rule 16 of the Goa Value Added Tax Rules 2005 has been amended to exempt specified dealers from the need to apply for renewal of registration and pay renewal fees.

### Karnataka

- The Karasamadhana Scheme 2017 has been introduced and is a scheme for waiver of penalty and interest under various Karnataka state Acts subject to prescribed conditions.

### Maharashtra

- The VAT exemption on the sale of liquor was reduced. VAT is now payable on the amount arrived by applying the formula “MRP\*35/135”.

## Rajasthan

- The Amnesty scheme 2017 has been introduced with effect from 8 March, 2017 and is valid until 30 April 2017 for dealers or eligible persons as prescribed to pay tax. The interest and penalty may be waived to a certain extent subject to prescribed conditions.

## Tamil Nadu

- With effect from 5 March 2017, the tax rate of petrol had been increased to 34% and the tax rate of high speed diesel oil has been increased to 25%.

## VAT case laws

- In the case of Vizien Organics (TS-27-SC-2017-VAT), the Delhi High Court held that the furnishing of statutory forms under the CST Act in terms of Section 38(7)(c) & (d) of the DVAT Act is not a mandatory requirement for processing refund claims by the authorities. The said requirement would disrupt or suspend the time frame of 1-2 months stipulated under Section 38(3) for processing refund claims. According to the High Court, the above-mentioned sections do not state that the original paper declarations in CST forms must be furnished. Revenue would be bound to examine the claim in terms of the local law (i.e. DVAT Act and Rules) thereunder.

- The rate for other taxable activities such as financial services, consumer services and transfer of intangible assets excluding land use right is 6%; and
- The VAT levy rates for small-scaled VAT payers and those in certain industries are 3% and 5%.

The Work Report states that the current four VAT categories will be simplified to three so as to build a more concise, transparent and fair taxation environment. While it is speculated that the 13% rate category will merge with other rate categories, the detailed regulation to implement the initiative has yet to be released.

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- The High Court in the case of Kirloskar Oil Engines Ltd [TS-44-HC-2017(BOM)-VAT] held that “bearings” manufactured for motor vehicles and agricultural tractors are covered under Entry C-II-146 of the Bombay Sales Tax Act and not under Entry C-II-102 as “auto parts” or Entry C-II-135 as “tractor parts”. The High Court accepts Revenue’s reliance on the SC ratio in Bradma of India Ltd. to contend that since Entry C-II-146 is a specific entry covering all types of bearings, there is no question of classifying bearings sold by the assessed to motor vehicle/tracker manufacturer as “auto parts” or “tractor parts”. The High Court observed that “when there is a specific Entry in the schedule to a Taxing Statute, the same would override a general Entry. In fact, resort should be taken to the general Entry only when a liberal construction of the specific Entry would not cover the goods in question”.
- The Madras High Court in the case of JKM Graphics Solutions Private Limited and Others [TS-42-HC-2017(MAD)-VAT] held that input tax credit is not reversible by the purchasing dealer under the TNVAT Act where there is a mismatch of returns filed by the purchasing dealer with that of the selling dealer. The High Court notes that the statute is silent on the procedure to be adopted while matching the transactions. However, various circulars have been issued to mitigate the difficulties faced while matching the transactions. The

High Court further states that the Principal Secretary and Commissioner of Commercial Taxes in consultation with his officers should lay out a detailed procedure as to how to deal with cases of mismatch.

### ***Notifications/Circulars for Service Tax***

- Notification No. 25/2012 - Service Tax has been amended to exempt various specified services and included new entries for granting exemption from Service Tax. The notification has also been amended to rationalise the abatement for tour operator services.
- The Central Board of Excise and Customs has provided clarification on the applicability of Service Tax to the services of transporting goods by a vessel from a place outside India to the customs station in India with respect to the goods intended for transshipment to any other country outside India.

### ***Service Tax Case Laws***

- The High Court in the case of Visteon Automotive Systems India (P) Ltd. (TS-538-HC-2016(MAD))-ST allowed CENVAT credit on tour operator services used for transportation of employees to and fro the factory as well as rent-a-cab services used for official purposes. The High Court observed that the word “includes” in the definition of “input services” under Rule 2(l) of CENVAT Credit Rules

connotes wider meaning, covering services “in relation to manufacture or clearance of final products” or “in relation to providing output services”. The High Court observed that as per the Oxford Dictionary, the word “business” means commercial enterprise or establishment and the availing of such services is necessary for business operations.

- The Gujarat High Court in the case of Larsen and Toubro Ltd (“L&T”) (2016-TIOL-3098-HC-AHM-ST) held that L&T’s Special Economic Zone (“SEZ”) unit and Domestic Tariff Area (“DTA”) units are although distinct and separate, since services rendered by the SEZ unit to the DTA unit are without any charge/value, the chargeability of service does not arise. In addition, the appeal was dismissed following the dismissal of Revenue appeals in identical issues.
- The Madras High Court in the case of Perfect Vending India Pvt Ltd (2017-TIOL-442-HC-MAD-ST) has relied upon the ruling held by the Apex Court in the case of Tamil Nadu Kalyana Mandapam v. Union of India that in order to attract the levy of service tax under the taxable Outdoor Catering Service, there should be a personalised service provided to the customers. In the present case, the appellant is engaged in the business of selling coffee and tea through vending machines installed at the customer’s premises and has charged the customer on a per cup basis. The High Court held that the

activities undertaken by the appellant do not have the predominant element of personalised service and therefore there is no liability for the appellant to pay any service tax.

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## Japan

### **Amendments to the Japanese Consumption Tax**

On 27 March 2017, a proposal for the 2017 Japanese tax reform was approved at the plenary session of the Upper House and was enacted.

The following amendments were made to the Japanese Consumption Tax ("JCT"):

- 1) Duty-free system available for goods sold by duty free shops outside Japan to inbound passengers coming to Japan is expanded to goods sold by duty free shops upon arrival into a Japan airport with effect from 1 April 2017.
- 2) The transfer of virtual currencies such as bit coins prescribed under the Payment Services Act is treated as non-taxable without credit with effect from 1 July 2017.

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## Malaysia

### **Tourism tax**

The Malaysian Government will be introducing a new indirect tax called "tourism tax". The tourism tax is to be imposed on tourists staying in any accommodation premises in Malaysia which should include hotels, boarding houses, hostels, rest houses, lodging houses, inns, etc. The operators of the tourist accommodation premises will be responsible to collect the tax for the Royal Malaysian Customs Department from the tourists.

The Tourism Tax Bill 2017 was passed in the lower house of the Parliament on 5 April 2017. However, the effective date of implementation of the tax and the rate of tax have yet to be announced.

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# New Zealand

## **Change of GST treatment for services connected to land**

The New Zealand Parliament has recently passed legislation to impose GST at the standard 15% rate to services that are “supplied directly in connection with –

- (A) land situated in New Zealand or any improvement to the land; or
- (B) moveable personal property, other than choses in action or goods to which paragraph (h) or (i) applies, situated in New Zealand at the time the services are performed” (Goods and Services Tax Act 1985).

The Inland Revenue has provided examples of services that will attract GST at 15% or 0%.

Providers of services covered by the new rules will need to determine if the services will be subject to 15% or 0% GST. Non-resident recipients of such services may need to factor GST into the price and/or whether there is scope to recover any GST imposed.

## **GST on remote services**

Sellers of remote services to New Zealand resident consumers under the remote services rules that took effect in October 2016 will soon be filing their first GST returns for the period October 2016 to March 2017. The first filing due date is 8 May 2017. These new rules capture a broad category of services, including digital content, online gambling/betting, and operators of electronic marketplaces.

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# Philippines

## ***Prescribing the regulations governing applications for VAT credit***

The Bureau of Internal Revenue has released Revenue Regulations No. 1-2017 which prescribes the regulations on applications for VAT credit/refund that were made prior to the Revenue Memorandum Circular (“RMC”) No. 54-2014 dated 11 June 2014. The main points of the Regulation are as follows:

1. The Regulation was issued to clarify the prospective application of RMC No. 54-2014 which requires applications for VAT refunds to be accompanied by complete supporting documents, otherwise the claimant is barred from submitting additional documents – in light of the decision in “Pilipinas Total Gas, Inc. vs. The Commissioner of Internal Revenue (G.R. No. 207112 dated 8 December 2015)”.
2. Claimant-taxpayers, who filed and had pending claims prior to the effectivity of RMC No. 54-2014, have 2 years after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must have submitted the complete documents in support of the application filed.
3. In all cases, whatever documents the taxpayer intends to file to support the claim, the Commissioner of Internal Revenue or the duly authorised representative should have decided on the claim for refund within 120 days from submission of complete documents or from the date of filing of the application, if no additional documents were submitted.
4. Pending administrative claims prior to the effectivity of RMC No. 54-2014 shall be processed by the concerned offices based on available documents submitted within the two-year statutory period. The result shall be communicated in writing by the concerned revenue official.
5. The following claims are not covered by the Regulation:
  - a) filed beyond the two-year statutory period;
  - b) denied in writing by the approving authority;
  - c) approved or granted fully or partially by the approving authority; and
  - d) appealed to and pending with the Court of Tax Appeals (“CTA”) unless proof of withdrawal of the case is filed with the CTA.

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# Singapore

## **Updated guidelines on GST treatment for input tax on medical expenses incurred by insurance companies**

The Inland Revenue Authority of Singapore (“IRAS”) has issued updated guidelines to clarify the GST treatment for input tax on medical expenses incurred by insurance companies. The updated guidelines are set out in the 2nd edition of the e-tax guide: “GST Guide on Insurance: Cash Payments and Input Tax on Motor Car Expenses” which was published on 3 April 2017.

The IRAS has clarified that all cash payouts under medical health policies should be considered for deemed input tax claims only (and not as normal input tax claims) if the existing contract between the insurer and the medical service provider is only to cover payment arrangements. This is because the insurer does not have any obligation to contract for or provide any medical services to the insured under medical/health policies.

As a concession, insurers who have been claiming normal input tax on payments made to medical services providers are not required to make any adjustments for the past periods. Insurers should adopt the revised treatment with effect from 3 April 2017.

## **Proposed introduction of customer accounting for certain prescribed goods**

The government has announced that it intends to implement customer accounting to better address non-compliance relating to transactions of certain prescribed goods with effect from 1 January 2018. The following categories of goods would be covered under the customer accounting rules:

1. mobile phones
2. memory cards
3. off-the-shelf software (which is distributed in the form of a compact disc or other similar storage medium)

Under customer accounting, the responsibility for accounting for output tax on the sales of the above goods will be shifted from the GST-registered supplier to the GST-registered customer. Based on the draft e-tax guide released by the IRAS, the proposed rules would apply to local sales of the above goods made to a GST-registered customer where the value of the sale (excluding GST) exceeds S\$5,000. The IRAS is seeking feedback from GST-registered businesses dealing in the above goods on the implementation of customer accounting. The above would require changes to be made to the GST legislation and the Ministry of Finance would also be carrying out a public consultation exercise in May 2017 on the draft amendments to the GST legislation.

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# Taiwan

## ***New VAT regime for cross-border B2C electronic service***

The amendment to the Value-Added and Non-Value Added Business Tax Act was passed by the Legislative Yuan towards the end of 2016, and will come into force with effect from 1 May 2017 as announced by the Executive Yuan. Based on the Tax Registration Threshold regulations further promulgated by the Executive Yuan, foreign corporate sellers without a fixed place of business in Taiwan that sell electronic services to Taiwan consumers will need to perform tax registration, file VAT returns and pay corresponding VAT payable if their annual sales exceed the promulgated threshold of TWD 480,000.

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