A vibrant state of change

The AsiaPac digital indirect taxation story

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Introduction

The growing digital economy has caused an explosion in indirect taxes rules around the globe and this has created both complexity and opportunity. The Asia Pacific (AsiaPac) region is no exception to this phenomenon.

Very soon the number of countries with electronically supplied services (ESS) (or remote services) rules will exceed 100 and this will continue to grow. The AsiaPac region has seen a massive change in this area and nearby countries like Ukraine, Uzbekistan and Kazakhstan will also follow down this digital VAT path.

The next big wave of indirect tax changes (not dealing with digital services) will be a proliferation in the introduction, or modification, of existing low value imported goods (LVIG) rules in many countries; for example, New Zealand has (from 1 December 2019) followed the likes of Australia, Sweden and Switzerland, with Norway (from 1 April 2020) and the rest of Europe following closely behind. The AsiaPac region can also expect to see changes in this area and the comprehensive China VAT reform will introduce a fascinating new dimension.

At a global level, even the non-VAT countries are reacting to the digital tsunami of change. The U.S. sales tax landscape has been massively transformed since the Supreme Court decision in *South Dakota v Wayfair, Inc* (585 U.S (2018)). There are now greater obligations placed on offshore sellers and platforms on sales of digital commodities – physical presence in the relevant state is no longer relevant for tax nexus purposes.

The OECD in its report *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales* (20 June 2019) stated that *"the increasing digitalisation of the economy has fundamentally changed the nature of retail distribution channels for sales of goods and services to private consumers."* (1.2.1)

As a result of the changing nature of consumption, *"global B2C e-commerce sales of goods alone are now estimated to be worth in the region of USD 2 trillion annually, USD 1 trillion of which is estimated to be cross border e-commerce. Currently, approximately 1.6 billion consumers [are] buying online."* (1.2.1)

Interestingly, *"recent research suggests that 57% of cross-border supplies of goods are purchased via only the three biggest digital platforms [and] as a result, it is estimated that approximately two in every three e-commerce supplies of goods are made via digital platforms."* (1.2.1)

Moving forward to 2020, as the recent OECD report *Tax and Fiscal Policy in Response to the Coronavirus Crisis: Strengthening Confidence and Resilience* (15 April 2020) suggests, there is significant work to be done in the future in relation to the correct tax policy settings. Digital taxation will be a vital pillar in this regard, both in relation to direct tax and indirect tax. Consensus in relation to international taxation regimes will be important as will be the need to maintain smoothly functioning global supply chains. In the area of indirect taxes, the various digital (or e-commerce) rules for goods and services discussed in this publication will play an important role for years to come.

We will first discuss the country regimes with particular focus on practical insights. We will conclude by commenting on the global policy indirect taxes settings and make some remarks about the likely future state in this area. We trust you find this publication interesting and topical.

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A vibrant state of change

To keep up with the explosion in e-commerce, the indirect taxes regimes in the AsiaPac region have not been standing still. In this special edition of digital indirect taxes insights, we will explore the rules in 14 AsiaPac countries covering the basic scope of the rules as well as practical insights.

As the theme of this publication suggests, the AsiaPac indirect taxes story is a story of vibrant change in relation to digital services – there is also an emerging story in relation to rules concerning imported goods. Whether the rules refer to remote services, digital services, electronic services or inbound intangibles, there is a growing theme to impose VAT or GST (or some other form of local tax) on foreign sellers or platforms of the digital services.

The early adopters of the digital services rules in 2015 were South Korea and Japan. From that point the number of countries with similar regimes expanded very quickly. Earlier this year, Singapore and Malaysia added to their indirect taxation regimes by implementing their own version of a consumption tax on digital services. Malaysia is a remarkable addition as it no longer has a fully fledged GST system, but it does deem it significant to impose a form of indirect tax on digital services. Vietnam and Indonesia are expected to follow suit in July 2020 and draft law is making its way through the legislative process in Fiji. By way of comparison, China does not have a fully fledged indirect tax on digital (or electronic) services, but it does tax remote services and licensing by an overseas entity in a digital business. China also has an elaborate imported goods taxation regime.

Every country decided to bring in a version of a tax on electronic services first and then took the LVIG rules under study. The goods rules require more careful consideration as there are more complexities and procedures with goods transactions. The only two countries who have the complete set of both rules (i.e. covering digital services and LVIGs) are Australia and New Zealand. In this regard, Australia was the first to complete this "double" as it introduced the remote services rules in July 2017 and the LVIG rules in July 2018. New Zealand spaced the remote services rules (start date 1 October 2016) and the LVIG rules (start date 1 December 2019). The New Zealand approach allowed it to learn from the remote services experience and make necessary changes (in the form of more business systems concessions) for the LVIG rules.

In all countries, careful policy considerations were given to the design of the rules and the Revenue authorities ran, and continue to run, significant education campaigns. This has been a positive feature. The preferred OECD policy of an offshore supplier model has been adopted across the board covering underlying sellers, platforms, marketplaces and, in the case of goods, re-deliverers. Very limited exceptions exist where banks can withhold the applicable taxes.

In countries like Australia and New Zealand, the Australian Taxation Office (ATO) and Inland Revenue adopted a "light touch" approach in the early stages of the tax regimes and this enabled offshore sellers and platforms to become accustomed to the new rules and make the necessary systems changes. Other countries have stated that they will be more strict on penalties (and in some cases market sanctions can be imposed) – the right balance will need to be struck to achieve the best outcomes and encourage offshore sellers to comply. Once the rules have been in place for several years, the audit activity by the Revenue authorities can be expected to increase. In Australia, the ATO has been using data matching technology and sourcing third party transactions to identify potential non-compliance. The use of technology by tax administrations will be more prominent in the future.

All countries provided flexibility in relation to the collection and payment of the tax. Many countries also allow local agents to collect and pay the tax, which gives options to offshore sellers and platforms. Ease of compliance is an important consideration to the ongoing success of the rules.

From a business perspective, a lead in time of at least 12 months – from the time of announcement (or tabling the draft rules) to implementation date – is important due the systems changes and planning required for businesses to be ready.

Features of the rules

In relation to the digital (or electronic) services rules, it would have been ideal to see more uniformity and this is a lesson for the future. Some country differences to note are:

- In most cases the rules tax B2C transactions with varying degrees of information required to prove the customer type;
- Some countries, most notably Malaysia, also tax B2B transactions;
- Many countries apply the tax as a "pay only" regime in relation to digital services, but some countries could require offshore sellers to pay tax on their other activities in that country by virtue of the digital services tax obligations (for example, Singapore);
- Not all countries have the ability to verify VAT/GST numbers and other alternatives have been put in place (such as use of business numbers) – where business are unsure the conservative way of proceeding has been to pay the tax;
- Many countries have relaxed (or business friendly) rules in relation to invoices that need to be issued by foreign suppliers, but this is not always the case (for example, India);
- The definition of remote/electronic services is broad but not every country adopts the same definition. Japan seems to have the most exclusions (for example, telecommunications services, software development and licensing of IP are not covered). By contrast, Malaysia has a broad definition and there is the potential for online banking (being a digital service) to be caught even though financial services are otherwise not taxed;
- In some cases, the definition of digital services is still developing (for example, in relation to the Singapore position concerning distance learning and video streaming where real time trainers or performers are involved);
- In Vietnam banks need to distinguish between e-commerce payments and non-e-commerce payments; and
- Due to overlapping regimes for services imported by businesses, Malaysia has had to resolve double tax issues arising under the reverse charge and the digital services tax payable by foreign services providers. Malaysia also adopts different collection mechanisms depending on the type of tax being collected.

Countries that are also introducing e-invoicing rules will need to consider how these rules apply to digital services sellers. India has provided an exemption for foreign sellers.

In relation to the LVIG rules, businesses found that more information was required to be provided at the time of customs clearance. The most significant difference between the Australian and New Zealand LVIG rules was that New Zealand introduced business systems concessions allowing businesses to pay GST (if easier from a systems perspective):

- On all goods (both low and high value) if the majority of the sales (based on a 75% test) are sales of low value goods; and
- On sales of low value goods to businesses if the overseas seller makes at least 50% sales to private consumers.

New Zealand also introduced limited safe harbour rules for marketplaces and redeliverers to help with compliance. The New Zealand model may be instructive for other countries, however, as the New Zealand rules are only 6 months old, more time is required to assess this properly.

Key messages

The indirect taxes digital picture in the AsiaPac region is a diverse one. Although there are many similarities with the rules in the countries examined, there are some key differences. Businesses need to take care in assessing their obligations and reviewing their processes in order to:

- Make sure that systems are able to identify B2C and B2B customers, as well as where the customer is located using a variety of proxies for this under the digital rules; and
- Be able to distinguish between different service types – some of which may be subject to tax and others not.

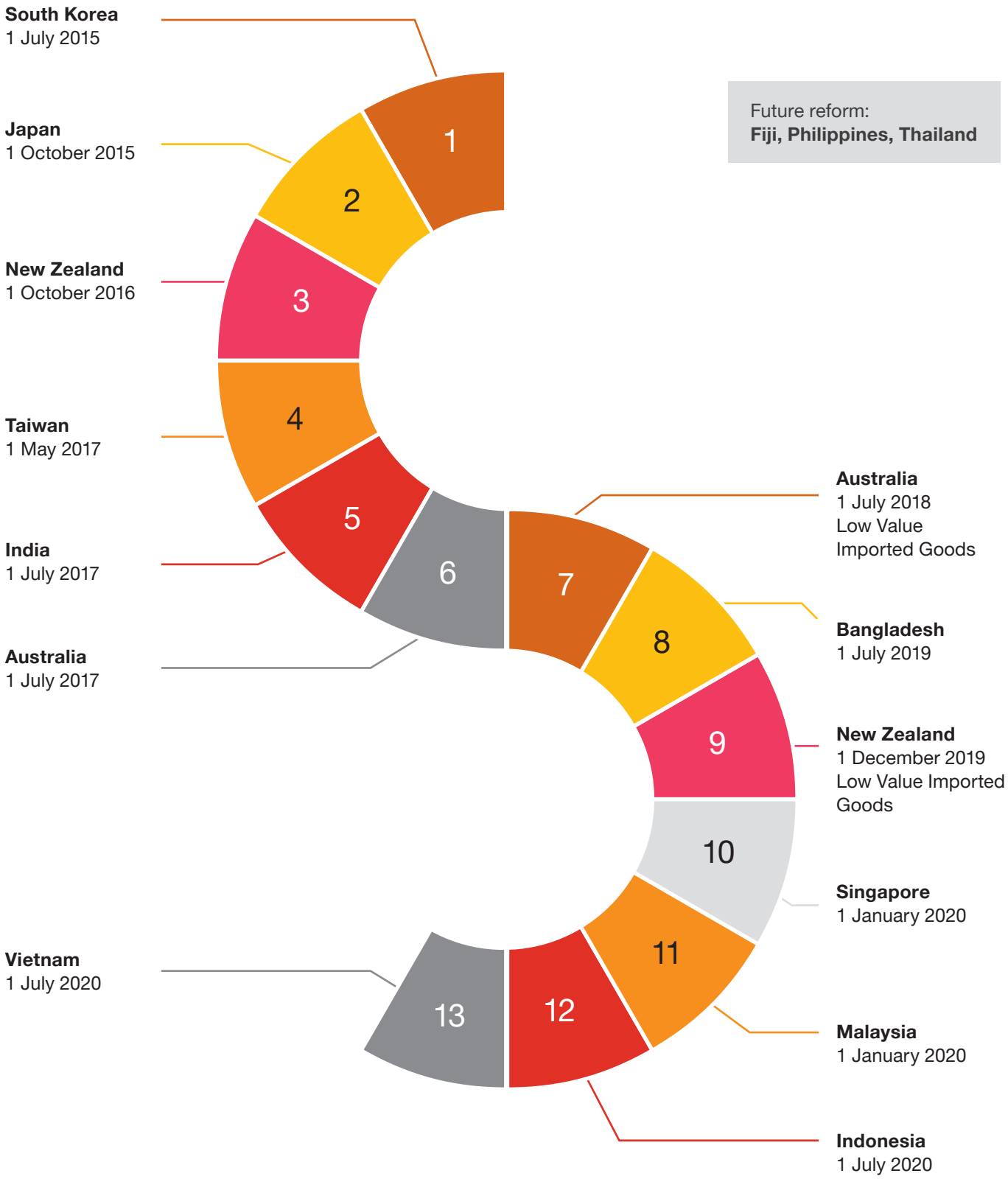
Even if only services are being taxed in a certain country at this point in time, over time it's expected that more countries will introduce a version of the LVIG rules, so sellers and platforms will need to be ready for this.

All businesses need to be prepared to review and increase prices in order to account for VAT/GST and duty costs (i.e. assess the margin impact) and review supply chain efficiencies.

At the conclusion of this report, we will focus on several future trends. There is little doubt that technology will play a significant role for the Revenue authorities and businesses alike as the state of indirect taxes vibrancy continues. The ongoing challenge for regulators will be to make sure that any new rules (or changes to the existing rules) limit compliance burdens on businesses – this can in large part be achieved by greater consistency with the rules.

Each country's summary is based on the law in effect as at 1 May 2020.

Introduction of digital services and LVIG rules across the AsiaPac region



Australia

GST on inbound intangible supplies

With effect from 1 July 2017, the Australian GST provisions were amended to bring inbound intangible consumer supplies within the GST ambit.

Inbound intangible consumer supplies refer to supplies of anything other than goods or real property that are made to an Australian consumer (broadly, an Australian resident that is not registered for GST in Australia) by a non-resident wholly through an enterprise that it carries on outside Australia.

A non-resident making inbound intangible supplies is required to register and remit GST to the Australian Taxation Office (ATO) if its GST turnover (current or projected) exceeds the prescribed threshold of AUD75,000. However, if the non-resident makes such a supply through an 'electronic distribution platform' (EDP) (for example a marketplace) the obligation to register and remit GST is on the operator of the EDP (and not on the non-resident supplier).

If the non-resident makes a supply to a GST registered recipient, the obligation to remit GST (if any) is on the recipient and not the non-resident (or EDP) (there is only an obligation where the GST registered recipient cannot claim full input tax credits).

An overview of relevant key provisions applicable for inbound intangible consumer supplies is provided below:

Particulars	Description
Ambit	Applicable on all intangible supplies (for example products such as streaming or downloading movies, apps/softwares, games, e-books, services) made to Australian consumers by a non-resident.
Liability to remit GST	Non-resident supplier or if the supplies are made through an EDP, the EDP.
GST rate	10%
Requirement to register	The non-resident supplier or the EDP is required to register if its GST turnover (current or projected) exceeds AUD75,000 during a rolling 12 month period. There is an option to obtain a simplified GST registration.
Reporting requirements	Quarterly GST lodgements
Tax invoice	There is no requirement to issue a tax invoice.

Practical insights

One of the key issues for most of the non-residents and EDPs has been how to determine whether a customer is an Australian consumer or not and accordingly, whether they are required to charge GST on the supplies. Determining applicability of GST involves obtaining necessary documentary information/evidence from customers, verifying Australian Business Number (ABN)/ GST registration status to establish that the customer is not an Australian consumer. The GST law imposes strict obligations on the non-resident suppliers/EDPs in this regard. Therefore, it is critical for businesses to ensure that the current processes are aligned to these requirements and enable them to report correctly to the ATO.

The non-resident suppliers/EDPs also need to be mindful of the requirements under the Australian consumer law which requires them to display a GST-inclusive price to the customer. As a non-resident/EDP may offer products to customers located in different countries through the same platform (for example a website or an application), one needs to consider whether its current processes are compliant with this requirement. In this regard, the non-resident/EDP may also need to consider if there is a need to amend any standard terms and conditions for its customers.

During the first year after implementation of these provisions, the ATO approached compliance in a more concessionary manner wanting to encourage suppliers to implement compliant systems/processes. However, given these measures have been in place for some time, one can expect the ATO to adopt a stricter approach towards compliance. The ATO has published that if necessary, it will use its data-matching technology and source third party transaction data from different sources for identifying non-compliant suppliers.

Given the above, it becomes critical that non-residents/ EDPs ensure that their processes for determining applicability of GST on supplies, GST reporting and price disclosure practises are aligned to the requirements under the GST.

GST on import of low value imported goods

With effect from 1 July 2018, GST is payable on the supply of low value imported goods that are purchased by Australian consumers. Prior to 1 July 2018, such supplies were not subject to GST unless the supplier of these goods was the importer of record.

Low value goods are goods (other than tobacco, tobacco products or alcoholic beverages) that have a customs value of AUD1,000 or less. If each of the goods supplied individually has a customs value of AUD1,000 or less, they will still be regarded as low value goods even if the total customs value of the transaction exceeds AUD1,000.

For GST purposes, the merchant, EDP or redeliverer may be liable for the GST on the supply of the low value goods.

An overview of relevant key provisions applicable for offshore supplies of low value goods is provided below:

Particulars	Description
Ambit	Supply of low value imported goods (i.e. goods that have a customs value of AUD1,000 or less) that are purchased by Australian consumers and brought into Australia.
Liability to remit GST	Merchant, EDP or redeliverer
GST rate	10%
Taxable value	Price payable by the recipient of the supply
Requirement to register	The entity that is responsible for GST on offshore supplies (i.e. merchant, EDP or redeliverer) is required to register if its GST turnover (current or projected) exceeds AUD75,000 during a rolling 12 month period. Non-resident supplies can opt for a simplified GST registration.
Reporting requirements	Quarterly GST lodgements
Tax invoice	No requirement to issue a tax invoice but there is a requirement to issue a document showing the GST paid by the Australian consumer.

Practical insights

The rules noted above do not apply to the import of goods that have a customs value of more than AUD1,000, in which case the normal rules for taxable importations apply and GST is payable at the border. The differential treatment for supply of low value imported goods and taxable importations makes it important for a supplier to be able to determine which rules will apply to a particular transaction (for example where there is a basket of goods which individually are less than AUD1,000 but together exceed). If a supplier believes that it doesn't supply low value imported goods (because the goods will be shipped together and therefore will be treated as a taxable importation), the supplier has to evidence that it has taken reasonable steps to obtain information to determine this. Therefore, it is critical for businesses to ensure that the current processes are robust enough to meet these requirements.

Pursuant to implementation of the above provisions, as part of the enforcement strategy, vendors are now required to provide additional information at the time of customs clearance of the goods. Suppliers generally use third party service providers (such as couriers and freight forwarders) to facilitate customs clearance. It becomes imperative for suppliers to ensure that these service providers provide correct information on declarations made at the time of customs clearance of the goods and that this information is aligned with the manner in which GST is reported by the suppliers on those supplies.

Price disclosure requirements noted above in relation to inbound intangible supplies are equally applicable for offshore supply of low value goods. Therefore, the suppliers of offshore low value imported goods must disclose the GST-inclusive price to Australian consumers. The suppliers must evaluate whether its current processes are compliant with this requirement.

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Bangladesh

The Value Added Tax and Supplementary Duty Act 2012 (VAT Act 2012) was amended and passed by the Parliament on 29 June 2019. The provisions under the VAT Act 2012 are effective from **1 July 2019** and applicable to non-residents supplying specified services in Bangladesh.

As a general principle, a registered service recipient is liable to pay VAT under the reverse charge mechanism in cases of import of services.

However, in cases of supplies of certain specific services to unregistered customers by a non-resident supplier, the VAT implications will depend on whether the services are deemed to have been supplied in Bangladesh.

The VAT Act 2012, provides a list of services, which, when rendered by a non-resident to VAT unregistered persons, would be considered as a supply made in Bangladesh. Such services include:

- Services that are physically provided in Bangladesh by the service provider staying in Bangladesh at the time of supply;
- Services that are directly related to land located in Bangladesh;
- Services of radio or television broadcasting or telecasting received at an address in Bangladesh;
- Electronic services delivered to a person located in Bangladesh at the time of supply; and
- Telecommunication service initiated by a person located in Bangladesh at the time of supply other than a telecommunications supplier or a person who is a global-roaming person temporarily staying in Bangladesh.

For the purpose of VAT Act, 2012, an "Electronic Service" is defined to mean the following services when provided or delivered on or through a telecommunications network, a local or global information network, or similar means namely:

- Websites, web-hosting or remote maintenance of programmes and equipment;
- Software and the updating thereof delivered remotely;
- Images, texts and information delivered;
- Access to databases;
- Self-education packages;
- Music, films and games; and
- Political, cultural, artistic, sporting, scientific and entertainment broadcasts and telecasts and events, including telecasts.

In terms of the above definition, any service provided or delivered on or through a telecommunication network would be considered as 'electronic service' and the types of services mentioned above are illustrative.

Since such electronic services provided by a non-resident to an unregistered person would be considered as 'supplies made in Bangladesh', the non-resident would be liable to pay VAT in respect of the supplies made to the unregistered person in Bangladesh.

The non-residents would need to identify whether the services are provided to registered customers or otherwise. If non-residents are unable to obtain the VAT registration numbers of its Bangladesh based customers, it would be prudent to treat such customers as not registered for VAT purposes in Bangladesh. For such services, non-residents will need to appoint a VAT agent in Bangladesh to discharge VAT.

The VAT agent bears all of the responsibilities and carries out the activities of the non-resident. The agent is jointly and serverally liable for payment of all of the VAT obligations of the non-resident. The VAT registration should be in the name of the non-resident. The VAT agent is appointed by the non-resident person while rendering B2C supplies of electronic services and is required to deposit VAT with the Government on behalf of the non-resident.

Only individuals such as a Chartered Accountant, Cost Accountant, VAT Consultant, lawyers, retired officials of the VAT department can be appointed as VAT agents and corporate entities are not eligible to be appointed as VAT agents.

In relation to the importation of services by an unregistered person which are not deemed to have been 'supplied in Bangladesh', the designated Bank would be liable to withhold VAT while making the payment to the non-resident supplier.

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China

Digital Services

Tax treatment

China does not have specific VAT rules or a Digital Service Tax on transactions arising from the digital economy. The current VAT regime applies to the provision of remote services/licensing by an overseas entity in a digital business.

The provision of remote service/licensing by an overseas supplier to an entity within China is subject to VAT, unless the service/licensing is consumed/used completely outside China.

The agent or service recipient in China would have to withhold the VAT amount and then pay the VAT on behalf of the overseas supplier. If the service recipient is a general VAT payer, it may claim the VAT withheld and paid on the service fee/license fee as its own input credit (provided the purchase is related to taxable activities of the service recipient).

The VAT amount is calculated as follows:

- Withholding VAT

  = Total amount payable to the overseas supplier/ (1+ Applicable VAT rate) x Applicable VAT rate
- The applicable VAT rate is 6% for most remote services that fall in the category of modern services and license fee that fall in the category of transfer of intangible assets.

Practical insights

- In practice, there are cases where the service recipient is an individual who may not be able to fulfill the withholding obligation. In such cases, technically speaking, the overseas service provider will be required to report VAT in China.
- For overseas suppliers providing services in relation to online promotion, there are still different views on whether it should be treated as technical service or advertisement service. In addition to VAT, the advertisement services would be subject to the Construction Fee for Culture Undertaking.

Low value imported goods

For imported goods, VAT is levied upon importation and collected by China Customs. In general, the VAT payable on goods imported by taxpayers is calculated according to the Composite Assessable Value (including Custom Duty ("CD") and Consumption Tax ("CT"), if applicable) and the VAT rate as specified by the VAT regulations. Meanwhile, Import Tax, also known as Post Luggage Duty ("PLD") is levied on the goods purchased by individual consumers from the overseas suppliers and delivered to China by couriers.

The China tax authorities have issued a series of circulars in recent years, to reiterate and set forth the taxation principles in relation to cross border retail e-commerce for individual consumers in China. In 2016, Caiguanshui [2016] No.18 ("Circular 18") was issued to set forth the import tax and Customs Duty policies in relation to cross border retail e-commerce for individual consumers. In 2018, Caiguanshui [2018] No.49 ("Circular 49") was issued to further relax the policy in Circular 18. In brief, individual consumers that purchase goods via qualified cross-border e-commerce channels under certain quota are eligible for preferential tax treatment. Please refer to the summary below:

	Import Tax treatment under General Trading	Import Tax or PLD for goods delivered to Chinese Individuals	Import Tax Treatment for Qualified Cross-border E-commerce Channel
Quota and Criteria			• Value of a single purchase is below RMB 5,000 • An individual's annual import quota is RMB 26,000 • The goods must be end products for use by the individual customers and should not be for resale in the domestic market
Tax Treatment	• CD = Dutiable Value x CD rate • CT = (Dutiable Value + CD) / (1-CT rate) x CT rate[2] • VAT = (Dutiable Value + CD + CT) x VAT rate	• PLD = Fixed Assessment Value[1] x PLD rate from 13% to 50%	Transaction below the quota: • CD: waived • CT and VAT: levied with 30% discount Transaction above the quota: • Treated as general trading

Practical insights

The introduction of Circular 18 and Circular 49 are for the accurate declaration of cross-border e-commerce retailers and to build up a similar business environment for cross-border internet sales, domestic internet sales of imported goods and traditional sales channels. In relation to consumer products for personal use, it also provides preferential tax treatments for transactions under certain quota.

Overseas cross-border e-commerce retailers/platforms are not required to establish a dedicated legal entity in special customs supervision zones. Instead, they can engage couriers and postal enterprises to submit data on behalf of e-commerce enterprises to the customs authorities in order to complete clearance procedures. The couriers and postal enterprises take the responsibility for the authenticity of the information submitted.

[1] If the actual value of the goods is lower than 50% of the assessment value or 100% higher than the assessment value, actual value applies upon proper evidence.

[2] CT is only levied on certain goods. For some categories of CT-payable goods, the CT is calculated based on volume.)

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Fiji

Digital economy

Currently, there are no specific rules under the Value Added Tax (VAT) Act for taxing the digital economy. However, the Fiji Revenue and Customs Service have recently been making presentations and invited submissions on a proposed new VAT Bill (introduced in late 2019) which in its current form seeks to impose VAT on the supply of remote services by non-resident entities including those transacted via electronic/ digital platforms.

The proposed law is still in draft form and has not yet been finalised or submitted to Parliament for consideration. This development represents a growing trend in the number of countries seeking to impose VAT on digital transactions with local consumers.

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India

As the digital economy experiences rapid growth in India, the Government of India introduced a tax on digital services in late 2016 by borrowing certain existing provisions from other jurisdictions along with some indigenous complications. Hence, addressing the tax challenges of the **digital service businesses** for foreign service providers across international borders has become even more indispensable.

Who does it apply to?

Foreign suppliers of services providing **specified services** to Government, local authorities or individuals or unregistered persons in India, who are receiving these services for any purpose other than commerce.

What are the specified services covered?

"Online information and database access retrieval" (OIDAR) service covers services:

- Whose delivery is mediated by technology over the internet or an electronic network; and
- The nature of the service renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology.

Is there a threshold limit for tax liability?

A threshold limit does not apply to these services. Foreign service providers registered in India under the Simplified Registration Scheme have an option to appoint an agent to meet registration and compliance requirements.

Key compliance

Foreign service providers shall raise a tax invoice and charge GST at the rate of 18% on the same. Separate monthly returns are prescribed and include payment of tax on a monthly basis within the prescribed due date.

Online platforms

Non-resident online platforms being intermediaries for such electronic services may be required to obtain registration and discharge GST liability on behalf of the actual foreign service providers subject to certain conditions.

Practical insights

Initiatives taken by Revenue

- With the introduction of tax obligations on digital services by foreign service providers, the Indian Government created awareness by releasing a flyer and education guide highlighting key guidelines for covered supplies and the related tax compliance requirements. Having said this, addressing certain practical challenges has taken time and ambiguities still prevail.
- The Government realizes that not every foreign supplier providing digital services to Indian customers is compliant with Indian GST obligations, primarily as this is voluntary compliance with limited powers to the Government to recover dues from foreign service providers.

Practical challenges

- Foreign service providers are under an obligation to pay tax to the Indian Government on supplies made to end consumers (customers who are not registered under India's GST law). On account of the practical challenge in identifying the tax status of the customers in India, whether the customer has a valid registration or not, it is typically seen that foreign service providers pay tax on a conservative basis.
- For the purpose of filing GST returns, foreign service providers do not have access to the Government portal through a foreign internet protocol (IP) address. This consequently leads to difficulties in filing GST returns and thus the need to have a compliance service provider in India to undertake this obligation becomes imperative.
- No specific exemptions are provided to foreign service providers on the invoicing requirements under the GST rules. Every supplier needs to insert details as prescribed under India's GST rules. This is important as non-compliance of these compliance requirements may attract penalties on digital service providers.

E-invoicing under India's GST rules

- With the introduction of e-invoicing requirements under India's GST rules from October 2020, the law provides that these requirements are applicable to all registered persons upon meeting a particular threshold criteria; however a specific exemption is provided to foreign service providers (registered under India's GST legislation) who are engaged in the supply of OIDAR services. Hence, e-invoicing requirements do not apply to them.

While foreign service providers have a huge market in India for their services, the compliance requirements under India's GST law are onerous with penal consequences as well.

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Indonesia

From 1 July 2020, Indonesia has introduced new tax obligations on cross-border e-commerce businesses, making them liable to account for VAT at 10%.

Income Tax

Foreign e-commerce players with a "significant economic presence" in Indonesia can be deemed as having a Permanent Establishment ("PE") in Indonesia. If a PE cannot be deemed under the existing rules of an applicable tax treaty, affected e-commerce players will be subject to an Electronic Transaction Tax ("ETT"). ETT will be imposed on direct sales or sales through the marketplace.

The "significant economic presence" PE will be determined based on the following factors:

- Consolidated gross turnover of group businesses;
- Revenue from Indonesian market; or
- Number of active users,

within certain thresholds that will be governed by the Minister of Finance ("MoF").

Foreign e-commerce players can appoint a representative in Indonesia to fulfil its tax obligations. Details on the taxation mechanism has not yet been regulated by the Government.

Value Added Tax

Utilisation of foreign intangible goods or services in Indonesia's Customs Area through e-commerce systems will be subject to Indonesian Value Added Tax (VAT) and follow the prevailing provisions in the VAT Law.

This includes supplies by foreign sellers, foreign service providers, or foreign e-commerce marketplace (collectively referred to as "foreign e-commerce players") and domestic e-commerce marketplace as appointed by the MoF. Details on VAT collection, payment, and reporting mechanism has not yet been regulated by the MoF.

A marketplace is defined as a business players providing an electronic communication platform to be used in e-commerce, while foreign sellers or service providers are defined as individuals or companies residing or domiciled outside of Indonesia which carry out transactions with domestic party in Indonesia through electronic platforms.

Foreign e-commerce players can appoint a representative in Indonesia to fulfil their VAT obligations.

Should a foreign e-commerce player fail to meet its Indonesian tax obligations (i.e. income tax and VAT) it will be subject to:

- Administrative penalties based on prevailing tax regulations; and
- Access to Indonesian markets will be disconnected by the Minister of Communication and Informatics.

Import duty on the import of low-value goods

Import duty is payable on the supply of low value imported goods (minimum value is USD 3 reduced from USD 75) that are purchased by Indonesian customers.

The Government also specifically protects domestic manufacturers that produce bags, footwear, and textile products by imposing higher import duty on the import of products under these categories.

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Japan

Digital Consumption Taxes Rules

*Consumption Tax (general overview)

Indirect tax type	Consumption Tax (“CT”)
Tax Rate	10%
Taxing the digital goods	Yes
Reverse charge	Yes
Can a foreign business register?	Yes, subject to conditions
Can a foreign business recover VAT/GST if it is not registered?	No
Filing frequency	Monthly, Quarterly, Annually
Filing due date	Two months after the end of the tax period
Payment due date	Same as the filing due date
Electrically filing	Yes

Taxation on digital services

Inbound digital services performed by an offshore service provider ("OSP") are subject to the CT. The digital service is defined as the provision of copyrighted articles (including licensing of the copyrighted articles) and other services via telecommunication lines. It includes the distribution of e-books, music, software, cloud services or advertisements.

Supplies outside the scope of digital services:

- Telecommunication carrier services (telecommunication, fax, data transmission, internet service);
- Software development and its delivery via the internet;
- Management and investment of assets located outside Japan (including internet banking) and reporting to customers via the internet;
- Information/data gathering or analysis (upon a specific request by a contracting customer) outside Japan and reporting to the contracted customers via the internet;
- Litigation in a foreign jurisdiction and its reporting to clients via internet; and
- Transfer/license of copyright.

Category of digital service transaction

For OSP, the compliance obligations for Japanese consumption tax regime on digital services differ based on whether it is classified as a "digital service for business" or not.

	Non-business digital service		Digital service for business	
Scope of transaction	Digital service other than business services, provided by an OSP		Digital service, provided by OSP, whose recipient is usually limited to business customers by the nature of the service or the terms and conditions	
Taxation method	OSP is required to file and pay the tax		Service recipient is generally liable to account for the tax under the reverse charge mechanism	
	OSP	Domestic service recipient	OSP	Domestic service recipient
	• Liable for filing return and tax payment. • OSP can apply for an ID number so that business customers can claim input tax credit	• Input tax credit is not allowed unless the service provider has an OSP ID number.	• Liable for notifying the recipient that the service is subject to the reverse charge mechanism	• For the time being taxpayers with a taxable sales ratio of 95% or more are not required to report in their CT returns any reverse charge transaction • Taxpayers with a taxable sales ratio of less than 95% are required to report in their CT returns both the reverse-charged sales and corresponding taxable purchases

Special registration for OSP ID number

In order to obtain an OSP ID number, the foreign digital service providers must meet the following conditions:

- Maintain a PE in Japan through which the digital services are provided in Japan or nominate a tax representative;
- A tax agent is designated;
- There is no delinquency in tax payment; and
- (if relevant) more than one year has passed from the revocation of a prior registration.

Practical insights

- Determination of the transaction category, business service or non-business service, is confusing. Even if the actual service recipient is a business customer, the service can be classified as a non-business service by the nature of the services or terms and conditions of an underlying contract, triggering CT filing and payment obligations at the foreign digital service provider. The background of this unique regime is that there is no taxpayer numbering system in Japan and the OSP cannot verify if its customers are a taxable person or not.
- The base period rules also apply to OSP unless an OSP ID number is registered. Thus, an OSP whose taxable supplies during the base period (the period two years prior to the current year) are JPY 10 million or less is generally exempt from filing a CT return and making CT payment (note exceptional rules may still be applied, especially in case of a newly incorporated business).
- With effect from 1 October 2023, a new qualified invoice regime will be introduced, under which a purchaser will be able to claim an input tax credit only if it maintains a qualified invoice issued by any suppliers including OSP.

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Malaysia

General overview

Type of tax	Service tax
Tax Rate	6%
Commencement date	B2B: 1 January 2019 B2C: 1 January 2020
Type of services covered	Via reverse charge mechanism (B2B only): All imported taxable services. Taxable services are specifically prescribed. Common examples include professional services (e.g. consultancy, management, training and information technology) and advertising services. With effect from 1 January 2020 digital services are also prescribed as taxable. Via overseas vendors registration (B2B and B2C): digital services Exemptions exist to mitigate double taxation arising from the two mechanisms acting simultaneously.
B2B, B2C or both	Both
Registration Threshold	The registration threshold for foreign service providers providing digital services to Malaysian consumers (B2B and B2C) is RM500,000 in a 12-month period. B2B: There is no minimum threshold for Malaysian businesses that are required to account and pay for service tax on imported taxable services.

Imported Taxable Services

The Malaysian service tax system seeks to tax specifically prescribed taxable services on a positive list. Unless a service is specifically prescribed as being taxable, service tax will not apply. A summary of taxable services can be found here: **Taxable Services.**

On 1 January 2019, the service tax framework was expanded to include a tax on "imported taxable services". In essence, this requires any Malaysian business who is the recipient of a service from outside Malaysia to assess whether that service is taxable and self account for service tax as appropriate. A return is filed on a monthly basis, unless the recipient is registered for service tax locally, in which case imported services can be filed in the normal service tax return due every two months.

It should be noted that, as well as the introduction of foreign vendor registration (refer below), on 1 January 2020, digital services were prescribed as taxable services meaning that digital services would be subject to the imported services rules. Prior to this date, many digital services would already have been captured as imported taxable services under the category of "information technology" services.

Digital Service Tax

Effective from 1 January 2020, Malaysia has introduced a tax on digital services provided by foreign service providers to consumers in Malaysia. As such, any foreign service provider providing digital services to Malaysian consumers in excess of the registration threshold RM500,000 (approx USD120,000) in a 12-month period would have an obligation to register for service tax in Malaysia and charge 6% service tax in respect of those services.

"Digital services" are defined as services which are:

- Delivered or subscribed over the internet or other electronic network;
- Cannot be obtained without the use of information technology; and
- Delivery of the service is essentially automated.

"Foreign service provider" means any person who is outside Malaysia providing any digital service to a **consumer** and includes any person who is outside Malaysia operating an online platform on which digital services are provided on behalf of other persons.

A person will be a "consumer" where at least two of the following are in Malaysia:

- Place of residence;
- Credit or debit facility used to make the payment;
- Internet protocol ("IP") address or international mobile phone country code.

It should be noted that the Malaysian definition of "consumer" does not distinguish between businesses and individuals. As such, foreign service providers ("FSPs") will need to register for and charge service tax even if they only provide digital services to businesses in Malaysia. Registered FSPs are required to file returns and pay the tax on a quarterly basis.

PwC comments

Malaysia is currently at the early stage of the introduction of digital service tax. As such, it is relatively early to discuss how successful this new tax is. Nonetheless, it is heartening to note that the Ministry of Finance and tax authority (Royal Malaysian Customs Department – "Customs") are open for discussion with FSPs or their representatives, to address some of the practical concerns faced by FSPs.

We also appreciate various initiatives taken by Customs to ease the administrative burden on FSPs and to make the digital service tax more "business friendly". For instance:

- There is no specific foreign exchange rate prescribed. FSPs can adopt the same exchange rate which they have been using in their home country or any other preferred exchange rate in preparing their returns.
- There is no requirement for the issuance of a defined credit note when there is a reduction in the value of digital services in the course of business. Where a credit note event occurs, the FSP may offset the amount of the credit against the service tax payable in the return. FSPs can choose to maintain any form of document to substantiate the reduction.
- The law requires FSPs to account for digital service tax on a payment basis. However, Customs have allowed FSPs to account for tax on an invoice basis, provided they complete and submit a declaration form to Customs.

Having discussed the flexibility allowed by Customs, we highlight below some areas which further consideration and planning may be required by FSPs:

'Consumer' test

Importantly, the scope of Malaysian digital service tax covers both business-to-consumer (B2C) and business-to-business (B2B) transactions. For the purposes of assessing whether the registration threshold will be exceeded and for the registered FSPs to correctly charge tax on digital services provided to all individual and business consumers in Malaysia, the FSPs need to ensure their systems can capture the required information to determine if the 'consumer' test is met. The required information is:

- Residence status;
- Location of debit or credit facility used to pay for the digital services;
- IP address; and
- International mobile phone country code.

In cases where it is not currently possible to directly capture any of the above information, FSPs may consider identifying a suitable proxy for the 'consumer' test and engage with Customs for a discussion to ensure Customs are satisfied with the alternative proxy proposed by the FSPs.

Invoicing requirements

Registered FSPs also need to ensure their systems are able to issue an invoice/receipt containing the prescribed particulars:

- Date;
- Registration number of FSPs;
- A description sufficient to identify the digital service provided; and
- The total amount excluding tax, rate of tax and tax chargeable shown separately.

However, as noted above, Customs have allowed FSPs to state the service tax inclusive amount (instead of stating the service tax amount separately) in the invoice/receipt, provided they complete and submit a declaration form to Customs. In addition, the law does allow an application to be made to Customs to exclude any of the other prescribed particulars from the invoice/receipt. This approval is given at the discretion of the Director General of Customs.

Payment of service tax

The value of digital services and service tax amount shall be declared in Malaysian Ringgit ("MYR") in the digital service return (DST-02). Therefore, it is expected that Customs would require payment of service tax to be made in MYR.

To facilitate the service tax payment, FSPs without a Malaysian bank account and an existing agent/representative in Malaysia may consider engaging a third-party service provider to handle the service tax payment on their behalf. It is important to agree upfront with the third-party service provider on the payment process to ensure the service tax payment is made to Customs on a timely basis.

Being a new scope of tax, there is still ambiguity in whether a service would fall within the scope of digital services. "Digital service" is defined under the legislation with reference to how it is delivered. Under the local legislation, services are defined as taxable by what they are. This leads to a potential conflict. For example, "Information technology ('IT') service" is one of the prescribed taxable services under the local legislation and is taxable for Malaysian businesses who provide or import such services. However, it is not specifically defined under the legislation and would generally be assessed based on the nature of the service. For instance, where software is downloaded from the internet, such a service by a foreign software developer could potentially fall within the scope of digital service. However, where the software is manually installed by foreign software developer, such a service may not be a digital service as it is not delivered "digitally" to consumers. But it is still IT in nature. It is important to differentiate whether a service provided by a FSP is a digital service or IT service as it would affect the registration liability of the FSP. It should also be noted that while IT services imported from "group" companies are exempt from the imported services rules, digital services acquired from "group" companies are not.

A further issue arises from the definition of digital services with reference to the delivery method. Consider an online banking transaction, provided from a foreign bank to a Malaysian consumer. In substance it is a financial service, but is delivered digitally. While financial services are not taxable, digital services are. As such, the online banking transaction delivered into Malaysia would fall within the scope of the digital service tax.

Mitigation of Double Taxation

As discussed above, the importation of digital services by Malaysian businesses would also be subject to imported services tax (effective 1 January 2019). However, to avoid this double taxation of the same service, an exemption has been provided to ensure that if the digital service tax is charged by the FSP, then the Malaysian business is exempted from self-accounting for service tax on the imported services. Nevertheless, Malaysian businesses acquiring digital services will need to be vigilant to ensure that if the FSP does not charge the service tax on the digital services, they will have to self-account for service tax on the imported taxable services.

Further exemptions have also been introduced and Customs have made several policy decisions that are aimed at reducing the cascading effect of service tax. However, these exemptions/refunds are subject to fulfilling various conditions and Malaysian businesses will need to put in place additional compliance measures before these exemptions/refunds can be applied.

Low value imported goods

Sales tax and/or import duty will be levied on goods imported into Malaysia, unless specifically exempted. Goods are specifically exempted based on their HS tariff code. However, a second exemption exists for low value goods imported into Malaysia via air freight. In such cases, the importer will be exempt from paying the sales tax and import duty, provided:

- The goods are imported using air courier service through the following airports:
    - Kuala Lumpur International Airport, Selangor;
    - Sultan Abdul Aziz Shah Airport, Selangor (Subang Airport);
    - Penang International Airport, Penang;
    - Senai International Airport, Johor;
    - Kota Kinabalu International Airport, Sabah;
    - Kuching International Airport, Sarawak; or
    - Langkawi International Airport (only for import duty exemption).
- The total value of the imported goods does not exceed RM500 per consignment; and
- Cigarettes, tobacco and intoxicating liquor are excluded from this exemption.

PwC comments

While the rules on digital services capture platform operators facilitating the sale of digital services into Malaysia, these rules do not capture goods at this time. There are currently no plans of which we are aware to tax the importation of low value goods.

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New Zealand

Remote services rules

New Zealand introduced the remote services rules on 1 October 2016, requiring offshore sellers of digital services made to New Zealand end consumers to return GST on a quarterly basis.

Type of tax	Goods and services tax
Tax rate	15%
Commencement date	1 October 2016
Type of services covered	All services (digital and non-digital) supplied to New Zealand recipients by an offshore seller.
B2B, B2C, or both	B2C supplies only
Registration threshold	Revenue of NZD60,000 in any 12 month period
Tax on online platforms?	Yes (unless the platform solely processes payments)

What is a remote service?

A remote service (i.e. New Zealand's equivalent of electronically supplied services (ESS)) is any service that, at the time of performance, has no necessary connection between the place where it is physically performed and the location of the recipient of the services.

The New Zealand rules are drafted broadly and are intended to cover both digital and non-digital services. Examples of services subject to the remote services rules include:

- Television and music streaming;
- Software services;
- Insurance;
- Consultancy and advisory services;
- Online gambling;
- Online betting; and
- Advertising services.

The rules do not include "on-the-spot services", such as accommodation or concerts.

Who is a New Zealand recipient?

A recipient is a resident of New Zealand based on two pieces of non-contradictory information in support of this conclusion. This information can include:

- The person's billing address;
- The person's bank details; or
- The person's internet protocol address.

B2C v B2B supplies

The rules are intended to apply to "B2C" supplies made to New Zealand recipients. However, the rules presume all supplies are B2C and therefore subject to tax unless the seller has confirmation of the customer's GST registration status or New Zealand Business Number, i.e. a "B2B" sale. This confirmation can be as simple as a declaration by the customer of their status as part of the check-out or on-boarding process.

Registration threshold

An entity must register for GST where its supplies subject to New Zealand GST exceed, or are likely to exceed, NZD60,000 over a 12 month period.

Compliance obligations

Once registered, a remote services seller is required to file returns and account for GST quarterly to Inland Revenue. The filing periods are:

- 1 January – 31 March (due 7 May);
- 1 April – 30 June (due 28 July);
- 1 July – 30 September (due 28 October); and
- 1 October – 31 December (due 28 January).

GST rate

Registered offshore sellers must return 15% GST (3/23rds of the GST-inclusive amount paid by customers) on all B2C supplies to New Zealand consumers.

Concessions

The remote services rules allow an offshore seller to agree an alternate method with the Commissioner of Inland Revenue to confirm whether a supply is treated as being made to a registered person (B2B).

When determining the alternate approach, the Commissioner can consider:

- The nature of the supply (e.g. would it generally only be acquired by a registered person in the course of their taxable activity?);
- The value of the supply; and
- The terms and conditions relating to the supply (e.g. would it only be made available to a registered person in the course of their taxable activity?).

B2B supplies are not subject to GST but offshore sellers can opt to treat these supplies as subject to 0% GST for the purpose of registering for and recovering New Zealand GST incurred on expenses.

Insights

Since the remote services rules were introduced in October 2016, New Zealand has had over 250 registrations and the annual GST collected is in excess of NZD125 million. Inland Revenue considers the implementation of the rules has been very successful.

Implementation

Inland Revenue placed a big focus on communicating the introduction of the remote services rules. Inland Revenue also conducted a significant global publicity campaign to spread news of the rules and inform businesses of the changes they would need to implement. This played a significant role in the successful roll out of the rules and the high number of voluntary registrations.

Inland Revenue opted to take a "light touch" approach to enforcement for the initial period after the rules were introduced. This included granting a number of B2B concessions and recognising the time it took businesses to update and adapt their systems to become compliant with New Zealand GST without imposing penalties.

Prevention of double taxation

New Zealand legislators also introduced rules to protect New Zealand suppliers of remote services to overseas customers from being subject to double taxation both in New Zealand and in the foreign jurisdiction where the supplies were consumed. The rules allow the New Zealand supplier to claim a GST deduction to the extent a supply has already been taxed in the foreign jurisdiction.

Ease of compliance

The remote services rules include a number of provisions designed to reduce the compliance burden on offshore sellers. These include:

- Allowing a New Zealand-based agent to carry out an offshore seller's tax compliance obligations, including filing returns and paying GST liabilities to Inland Revenue on the seller's behalf.
- Concessions in terms of how the remote services rules apply, including the ability for sellers to treat all remote services as B2B and therefore not subject to tax if certain criteria are met. To date, Inland Revenue has been liberal in granting these concessions. However, this attitude is changing and Inland Revenue now requires clear evidence to support whether supplies are B2B or B2C.
- The return system for offshore sellers is a simplified "pay only" registration system designed to minimise compliance costs where possible and minimise revenue risk.

Currency conversion

New Zealand also has a flexible approach towards the foreign currency exchange rates adopted by offshore sellers. Offshore sellers can select their prefered method from a number of options and must maintain this approach for the 2 years from when a method is adopted.

Registration status of consumers

Unlike a number of other jurisdictions, New Zealand does not have a publicly accessible register of GST-registered businesses. Instead, it is possible to search New Zealand Business Numbers **(NZBNs).** As discussed above, the NZBN is an alternative method of verifying a recipient's status for the purpose of treating a sale as B2B and therefore not subject to GST.

Vouchers

The GST treatment of vouchers in a cross-border context can be tricky. The purchase of e-vouchers could be a remote service. A recent law change allows suppliers to determine the GST treatment at redemption of the voucher (i.e. ignoring the issue of creation of the voucher).

Low Value Imported Goods (LVIG)

The LVIG rules were introduced on 1 December 2019 and require sellers of imported goods valued at or under NZD1,000 to account for New Zealand GST.

Type of tax	Goods and services tax
Tax rate	15%
Commencement date	1 December 2019
Type of services covered	Any imported goods supplied by an offshore seller valued at or under NZD1,000 supplied to New Zealand recipients.
B2B, B2C, or both	B2C supplies only
Registration threshold	Revenue of NZD60,000 in any 12 month period
Tax on online platforms?	Yes (unless the platform solely processes payments)

What is a LVIG?

From 1 December 2019, a LVIG (referred to in the legislation as a "distantly taxable good") is an item of goods that is subject to New Zealand GST where:

- It is supplied by an offshore seller, the supplier is an operator of a marketplace or a redeliverer, and the underlying supplier of the goods is a non-resident; and
- It is delivered to a New Zealand address; and
- It is valued at or under NZD1,000.

Assessing application of NZ$1,000 threshold

When assessing whether a good is above or below the NZD1,000 threshold, international shipping, duties and insurance costs should be **excluded** from the price paid.

Registration threshold

An entity must register for GST where its supplies subject to New Zealand GST exceed, or are likely to exceed, NZD60,000 over a 12 month period.

Where an offshore seller supplies both LVIGs and remote services to a New Zealand recipient it must look at the combined value of the supplies when assessing whether it exceeds or is likely to exceed the NZD60,000 threshold.

Compliance obligations

Once registered, a LVIG seller is required to file quarterly returns with Inland Revenue. The filing periods are:

- 1 January – 31 March (due 7 May);
- 1 April – 30 June (due 28 July);
- 1 July – 30 September (due 28 October); and
- 1 October – 31 December (due 28 January).

If an entity was already registered prior to the introduction of the LVIG rules, then its existing filing frequency continues.

GST rate and calculation

Registered offshore sellers must return 15% GST (or 3/23rds of the GST-inclusive amount paid by the customers) on all B2C supplies to New Zealand recipients.

When calculating GST payable on LVIG sales, the offshore seller must account for GST on the price paid by the customer, including shipping and insurance costs.

B2C v B2B supplies

The rules are intended to only apply to "B2C" supplies made to New Zealand recipients. However, all supplies are presumed to be B2C and therefore subject to tax unless the seller has confirmation of the customer's GST registration status, i.e. a "B2B" sale. This confirmation can be as simple as a declaration by the customer of their status as part of the customer check-out or on-boarding process.

Marketplaces

The LVIG rules provide that, where goods are sold through an electronic marketplace, the operator of the electronic marketplace and not the non-resident underlying supplier is required to register and account for New Zealand GST. This means that both non-resident and New Zealand resident electronic marketplaces can be subject to the LVIG rules.

The rules also provide an option for non-electronic marketplaces to register for and return GST on supplies made by their underlying non-resident sellers. However, this can only be done with agreement from the Commissioner of Inland Revenue.

Redeliverers

Under the LVIG rules, a redeliverer is considered an entity engaged to deliver or assist in the delivery of goods into New Zealand.

A redeliverer is required to register for and return New Zealand GST when, under an arrangement with the New Zealand based recipient, it does one or more of the following:

- Provides use of an address outside of New Zealand for the delivery of goods;
- Arranges or assists the use of an address outside New Zealand where goods are delivered;
- Purchases the goods outside New Zealand as an agent to the recipient; or
- Arranges or assists the purchase of goods outside New Zealand.

Documentation

The rules provide that offshore sellers of LVIGs are not required to issue tax invoices but they are required to provide a receipt. The receipt must include specific pieces of information, including the name and registration of the supplier and the price charged for the goods.

The supplier must also take reasonable steps to provide New Zealand Customs Service with sufficient documentation to confirm if GST has already been accounted for. The New Zealand legislation provides specific pieces of information that must be included by offshore sellers on all import documentation.

Concessions

New Zealand has introduced a number of unique concessions to ease the compliance burden. These include:

1. Alternative method of determining B2B customer status

As with the remote services rules, an offshore seller may agree an alternate method with the Commissioner of Inland Revenue for confirming whether a LVIG supply is made to a GST registered person (B2B).
The Commissioner can consider the following when assessing an application:

- The nature of the supply (e.g. would it generally only be acquired by a registered person in the course of their taxable activity?);
- The value of the supply; and
- The terms and conditions relating to the supply (e.g. would it only be made available to a registered person in the course of their taxable activity?).

2. Election to charge GST on low-value B2B sales

Offshore sellers that mainly make B2C LVIG sales may elect to also charge 15% GST on B2B LVIG sales. The test is that the seller must have a "reasonable expectation" that at least 50% of their total LVIG sales value in the 12 months from the date of election will be made to B2C customers.

Sellers that make this election must issue B2B customers with a tax invoice to support the customer's input tax deduction of the GST charged.

3. Election to charge GST on high-value B2C sales

Offshore sellers whose B2C sales are mainly of LVIGs can elect to charge 15% GST on all B2C sales, regardless of the sale value. The test is that the seller must have "reasonable grounds" to believe that at least 75% of their total value of B2C sales in the 12 months from the date of election will be of LVIGs (i.e. no more than NZD1,000 in value).

Offshore sellers must notify Inland Revenue of their intention to make this election via their registration form or via email (info.lvg@ird.govt.nz with "Election" in the subject line).

4. Limited safe harbour for Electronic Marketplaces and redeliverers

Inland Revenue has introduced limited safe harbour rules to protect electronic marketplaces and redeliverers where they have applied the default rules for determining the estimated customs value of goods that they bring into New Zealand. Additionally, there is also an opportunity for electronic marketplaces or redeliverers to enter into safe harbour agreements with the Commissioner by application.

These safe harbour rules mean that a marketplace operator or redeliverer cannot be held liable for GST that should have been returned to Inland Revenue where it was underpaid as a result of relying on incorrect or misleading information provided by another party.

Insights

New Zealand introduced the LVIG rules on 1 December 2019, over three years after the introduction of its remote services rules. This meant that not only could New Zealand learn from the implementation of the remote services rules, but it could also adjust and develop its GST law based on matters important to global businesses and the LVIG rules in other jurisdictions.

To prepare for the introduction of the rules, Inland Revenue ran a comprehensive educational campaign to raise awareness and ensure that as many suppliers as possible had their systems updated prior to the 1 December 2019 start date. This included the release of a comprehensive Special Report on the rules, which provided clear examples and guidance on the application of the rules.

To date, New Zealand has had over 550 LVIG registrations and expects to see this number increase with the first return under the rules filed by 7 May 2020 (for the period 1 December 2019 – 31 March 2020).

The New Zealand Government, Inland Revenue and the New Zealand Customs Service have worked together to ensure that the rules are relatively simple and easy to comply with. This has included the introduction of a number of concessions, flexibility on the method of currency conversion adopted by the offshore seller and policies that prevent double taxation.

Marketplace safe harbour rules

As the rules can apply to marketplaces and redeliverers, there have been safe harbour provisions introduced to provide more certainty and ease compliance. These rules allow marketplaces and redeliverers to engage with Inland Revenue and determine their GST obligations. This includes possible protection from liability for unpaid GST where they have relied on incorrect or misleading information provided by another party.

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Philippines

Digital economy

The Bureau of Internal Revenue (BIR) has been gradually issuing tax rulings, revenue regulations and memorandum circulars clarifying the tax treatment of persons engaged in online transactions and e-commerce. To date, these are as follows:

- Sale of products in digital or electronic format;
- Online business transactions;
- Persons engaged in business of land transportation; and
- Persons engaged in offshore gaming services.

The tax treatment provided in these issuances is quite general. Essentially, these businesses are taxed similarly to other industries. For example, in one memorandum circular, the BIR clarified that taxpayers engaged in online business transactions (such as online shopping/retailing, intermediary service, advertisement and auction) are on the same footing as physical stores. Hence, they are required to register the business, secure Authority to Print invoices/receipts, register and maintain books of accounts for use in business and issue registered invoice/receipts for each transaction.

At the time of publication House Bill No. 6765 (or the 'Digital Economy Taxation Act of the Philippines') was tabled and this proposes changes to the way the digital economy is currently being taxed in the Philippines. As part of the proposed changes that also cover income tax and e-invoicing, persons liable for VAT will include those who sell or exchange goods or properties that are digital or electronic in nature, and supply services including those supplied electronically. Income from such transactions would be subject to 12% VAT, and the 'electronic commerce platform' (as defined) would deduct and withhold the 12% VAT from the seller. The start date of the new rules will be determined as the draft law passes through the final stages.

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Singapore

Digital services rules in Singapore (general overview)

Imported digital services rules

Type of tax	Goods and Services Tax ("GST")
Tax rate	7%
Commencement date	B2C: 1 January 2020
Type of services covered	Any service supplied over the internet or other electronic network and the nature of which renders its supply essentially automated with minimal or no human intervention, and impossible without the use of information technology
Registration threshold	A two tier registration threshold is applicable. Global turnover and the value of digital services made to non-GST registered customers in Singapore exceeding SGD1million and SGD100,000 respectively in a calendar year or are expected to exceed these thresholds in the next 12 months.

Digital services GST rules in brief

Digital services provided by overseas digital service providers and overseas electronic marketplace operators to non-GST registered persons in Singapore may be subject to GST at the rate of 7% with effect from 1 January 2020 under an Overseas Vendor Registration ("OVR") regime.

Specifically, the term "digital services" is defined as:

"any services supplied over the Internet or other electronic network and the nature of which renders its supply essentially automated with minimal or no human intervention, and impossible without the use of information technology."

Examples of services that will be taxed include downloadable digital content such as mobile applications, e-books, music, games and movies, subscription-based media, software programmes, and cloud services.

Overseas digital service providers and overseas electronic marketplace operators (such as app stores) will be liable for GST registration in Singapore if their global turnover and the value of digital services made to non-GST registered customers in Singapore exceeds SGD1million and SGD100,000, respectively, in a calendar year or are expected to exceed these thresholds in the next 12 months.

Service providers registered under the OVR regime file simplified GST returns on a quarterly basis with payment due within 1 month from the end of each accounting period. OVR service providers are also not allowed to claim GST incurred on their expenses (this is a pay-only regime).

Practical insights

The Inland Revenue Authority of Singapore ("IRAS") has been proactive in engaging service providers potentially affected by the new OVR regime as far back as 2018 – when the measure was first announced in Budget 2018. The draft rules were also circulated for public consultation in early 2018 (i.e. close to 2 years from the implementation date of 1 January 2020) which allowed sufficient time for affected businesses to start their preparations and for the IRAS to refine the operational rules based on feedback received.

More than 100 overseas digital service providers have since registered for GST under the OVR regime ahead of the implementation date according to a media release from the IRAS in December 2019. This is a rather good result – and can be attributed to the IRAS's outreach/education efforts and exchange of information arrangements between tax authorities which enabled the IRAS to identify overseas vendors which need to be registered under the OVR regime.

There are no official estimates of the additional revenue which the GST on such imported digital services would bring. However, the Government had estimated back in 2018 – when the measure was first unveiled in Budget 2018 – that introduction of GST on imported services (including digital services under the OVR regime) will bring in revenue of about SGD90 million a year. This represents less than 1% of total the total GST revenue collected by the Government in the financial year 2018/2019 (SGD11.1 billion). Nevertheless, it is important to put in place the infrastructure early to tax digital services as the size of the digital economy is expected to grow exponentially over the years.

The inclusion of the human intervention factor in the definition of "digital services" did present some uncertainties in scenarios where the services are provided by real persons but supplied electronically via the internet. For example, it is unclear if the following scenarios would fall within the scope of digital services:

- provision of distance learning services where a portion of the lectures is conducted in real time by the trainers; and
- subscription fees from live video streaming involving performances by real persons where real-time interaction between the audience and the performer is possible in the form of "likes" and "comments" (in social media parlance).

We expect these uncertainties to be clarified as time goes by as more and more cases are brought to the IRAS's attention.

The OVR rules require service providers to treat the services as supplied to a non-GST registered customer and charge GST accordingly, unless the customer provides his GST registration number. Operationally, this means that service providers primarily selling to business customers would need to have processes in place to capture customer's GST registration details and status so that it can determine if GST needs to be charged at the outset. Service providers who are unable to determine the GST registration status of their customers may seek approval from the IRAS for alternative methods of determination.

The GST compliance of overseas electronic marketplace operators that are registered under the OVR regime will be even more complex. This is in part due to rules which deems the electronic marketplace operators as the "supplier" of the digital services (on behalf of the underlying service provider) if certain conditions are satisfied and hereby placing the obligation to account for the GST on the marketplace operators. These overseas electronic marketplace operators will need to track the following transactions separately and apply different GST treatments:

- Supplies of digital services made by local suppliers through the electronic marketplace (GST, if applicable, to be accounted by the local suppliers);
- Supplies of digital services made by overseas suppliers through the electronic marketplace to non-GST registered consumers in Singapore (GST to be charged);
- Supplies of digital services made by overseas suppliers through the electronic marketplace to GST registered consumers in Singapore or to non-Singapore consumers (no GST to be charged);
- Its own supplies of digital services made to GST-registered consumers in Singapore and non-Singapore consumers (no GST to be charged); and
- Its own supplies of digital services made to non-GST registered consumers in Singapore (GST to be charged).

In addition to the above, the GST treatment also differs between digital services and non-digital supplies (i.e. supply of goods and supply of non-digital services). Hence, the systems of the electronic marketplace operators must be robust to address these complexities.

A related operational issue arises when GST-registered customers fail to provide their GST registration details to the OVR service providers and hence are being incorrectly charged GST. Under the rules, such customers cannot recover the GST so charged as an input tax credit. Instead they have to seek a refund from the OVR service providers who in turn have to process the refund and make adjustments to their output tax liability, which increases compliance costs. This underscores the importance of collecting the GST registration details of the customers, especially if one customer base is primarily made up of businesses (instead of individuals).

An interesting point to note is that OVR service providers must charge and account for GST on all taxable supplies, digital or otherwise. In other words, such providers must also account for GST on a local supply of goods in Singapore and on services rendered through their business or fixed establishment in Singapore (if any). This is in addition to the GST collected on supplies of digital services to non-GST registered customers in Singapore. What is more interesting is that this rule has indirectly extended the reach of the GST net as such service providers would not have been liable for GST registration under the normal GST rules if not for their supply of digital services to non-GST registered customers. This is because businesses (offshore or otherwise) are only liable for GST registration if they make taxable supplies in Singapore in excess of SGD1 million and have to charge GST on all taxable supplies under the normal GST rules – OVR service providers are subject to same liability at a much lower registration threshold of SGD100,000.

GST rules on low value imported goods in brief

There is import relief on postal imports of non-dutiable goods with a value of not more than SGD400, where no import GST is payable to Singapore Customs. Categories of goods which are dutiable in Singapore are intoxicating liquors, tobacco products, motor vehicles and petroleum products and biodiesel blends.

The Government had publicly indicated that it is still in the midst of reviewing the best way to tax such low value goods.

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South Korea

Goods

There is import relief for goods of non-dutiable goods valued at no more than USD150 (also referred to as low value imports), where no import VAT is payable to the Korean Customs.

Services

Since 1 July 2015, imported B2C digital services are subject to VAT in Korea.

Scope

According to the Simplified Business Registration regime under Korean VAT law, digital services mean selling digital content such as games, electronic documents, music, videos, software, apps, advertisement, cloud computing and intermediary services which are supplied via mobile telecommunication terminal devices and computers. For this purpose, this does not apply to digital services that are used for business registered customers (for its VAT-taxable or VAT-exempt businesses).

Affected businesses

The Simplified Business Registration regime affects an overseas supplier making sales of digital services to individual customers in Korea. A local or overseas operator of electronic open market may be regarded as the supplier of the services made by the suppliers through these open markets.

Registration

Under the Simplified Business Registration regime, any overseas vendors who are making B2C sales of digital services to Korea are liable to be registered.

Returns

There are two return periods each (1 January to 30 June and 1 July to 31 December). However, preliminary VAT returns are required for the periods 1 January to 31 March and 1 July to 30 September.

Periods

Every registered person must file a VAT return on a quarterly basis. The return must be electronically submitted to the National Tax Service by the 25th day after the end of each quarter.

Payment

The payment due with the return must be made no later than the 25th day after the end of each of the quarters.

Refunds

Input VAT can be claimed to offset output VAT (any excess can be refunded).

Contents of forms

The quarterly VAT return under the Simplified Business Registration regime shall include the value of supplies and the output VAT, and the value of purchases and the input VAT, if any.

Penalties

No penalties apply under a Simplified Business Registration regime. However, a tax payment notice will be issued when the payment is not made by the due date. Where a taxpayer fails to make the payment by the due date, a penalty of 3% of the unpaid tax will be imposed. Where the taxpayer still fails to make the payment, 1.2% of the penalty will be imposed for every month that the tax is not paid.

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Taiwan

Scope

Taiwan has formally implemented a VAT mechanism for cross-border sales of B2C services (from 1 May 2017). Under said mechanism, sales of cross-border electronic services to individual consumers that annually exceed NTD 480,000 by corporate sellers without fixed places of business in Taiwan require the foreign companies to register and pay VAT in Taiwan.

Returns

VAT returns will need to be submitted every two months via the tax authority's web portal. The filing deadline for each return is the 15th day following the last day of each return period (e.g. by 15 March for the January – February period).

Payment

Tax payment needs to be made prior to filing the tax return.

Refunds

Input VAT incurred by a foreign taxpayer in order to generate its VAT sales in Taiwan can be credited as input VAT.

Contents of forms

The VAT return to be filed is a simplified form where only the value of supplies made, the applicable VAT, and applicable input VAT is to be reported.

Penalties

The current penalty regime also applies to overseas suppliers with cross-border sales of B2C services.

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Vietnam

Digital economy

Vietnam is aiming to raise the contribution of the digital economy to 20% of GDP by 2025 and 30% of the GDP by 2030. However, at this stage, Vietnam still does not have a separate taxation regime for the digital economy.

The Vietnam Government has indicated its intention to review the OECD BEPS Action 1 on the digital economy and in fact has developed a set of rules to deal with income derived from/in Vietnam by digital companies.

Notably, Vietnam has recently introduced a new tax administration law which includes a taxing mechanism for foreign organisations and individuals doing business or deriving income in Vietnam from e-commerce activities or digital platforms ("e-commerce vendors"). This new law comes into effect on 1 July 2020 and requires e-commerce vendors, even without having a permanent establishment in Vietnam, to file tax in Vietnam, either directly or via an authorized entity. To enforce the tax collection, the new law also requires commercial banks to withhold and pay taxes on behalf of e-commerce vendors, and the State Bank of Vietnam, as the management body of national banking operations, to establish a nationwide payment system to facilitate the tax collection.

The new rules are another effort by the Government to close the gaps in the tax legislation which did not capture a number of e-commerce transactions (notably B2C and B2B transactions).

The new law is silent on the following:

- Who is the target?

The new law refers to "e-commerce activities" and "digital platform" but fails to provide a definition of these. As such, it remains uncertain as to who the targets of the new rules are. More details are expected in the implementing guidelines.

- How will commercial banks fulfill their withholding obligation?

Commercial banks will need to be able to distinguish between e-commerce payments and non-ecommerce payments for tax withholding purposes. How this will be achieved in practice is uncertain. Further guidance and details are expected in the implementing guidelines.

Low value imported goods

Vietnam does not have a separate taxation regime for low value imported goods. At this stage, there are certain tax exemptions for certain low value imported goods (in the form of gifts, carry-on luggage) under the law on customs duty and its implementing regulations.

Taking into consideration the increased quantum of imported goods from e-commerce activities or digital platforms, the General Department of Customs ("GDC") following the instruction of the Ministry of Finance ("MoF") has drafted a new decree on customs management of cross-border e-commerce activities. The MoF initially aimed to complete and submit this draft decree for further ratification in 2019, but this plan is behind schedule.

The latest draft version of the new decree does not contain a provision in relation to low value imported goods or a threshold for e-commerce vendors.

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The global policy picture and concluding remarks

OECD influence

When discussing the impact of digitisation on the VAT/GST world, it is impossible to ignore the OECD's contribution. In fact, the EU's TBE rules and E-commerce Package proposals correspond with much of the work undertaken by the OECD over the last decade, including the framework set out in the OECD's highly influential International VAT/GST Guidelines. Recognising the global spread of VAT (from France in the 1950s, VAT systems have now been implemented in over 165 countries) and that jurisdictions would benefit from principles that contribute towards ensuring that VAT systems interact consistently so that they facilitate rather than distort international trade, the OECD launched and continues to lead (with government, academic and business representation) an ongoing project to develop International VAT/GST guidelines as the basis for a common international VAT/GST framework.

Following the 2015 BEPS Action 1 report, many countries have changed or are changing their rules to apply VAT/GST at the place of consumption in much the same way as the EU has already done. Therefore, the OECD work is instrumental in tackling the complex task of modernising VAT/GST systems, and the materials produced by the OECD form an ever-expanding sounding board built on global consensus, including those set out below.

Indirect tax policy trends

Indirect taxes are both prominent as a source of tax revenue, and agile in terms of ability to adapt to the modern environment and changes in the global trade landscape and consumer behaviour. The relative success of indirect taxes reform has resulted from sound VAT/GST policy making globally, and the actions of individual countries will be instructive in the context of future international direct tax reform.

The overall success of any indirect tax reform also relies on effective tax policy, i.e. policy that is sound from a principles point of view (e.g. taxing consumption in the place where it takes place), simple, stable and certain for business. Importantly, effective tax policy also needs to be future-proof so the rules are not frequently tinkered with or easily avoided.

It should be highlighted that regulators have consistently made it clear in recent years that future indirect tax reform needs to focus on new rules that are simple and limit compliance burdens for businesses.

Closer to home, there is no doubt that the AsiaPac region has embraced the modern trend of relying on VAT/GST to collect taxes in a digital world.

Technological solutions

As has been extensively canvassed in the joint PwC World bank Group report (Paying Taxes 2020), technology will play a crucial role in delivering a bright new future in the administration of, and compliance with, the ever-expanding international indirect tax rules and obligations. There is an evolution unfolding with technology and tax – in this regard some would say "Rome was not built in a day".

The more cautious of us would suggest that some of the issues with technology are that the best technologies are still developing, require business commitment to change (both structural and operational), could require changes to tax laws to accommodate a more digital world, and change management within the tax administration may be required – to mention only a few.

On the positive side, there is a massive opportunity being presented in terms of embracing technological change and this can deliver significant benefits to various stakeholders.

These benefits include greater control over information, better data quality, greater transparency across stakeholders, end-to-end transaction monitoring, real-time VAT/GST reporting, ability to automate indirect taxes obligations and refunds, greater efficiency (allowing businesses to focus on strategy, better products and better consumer interactions) and, finally, a reduction in the gap between tax paid and tax that should be paid.

2020 and beyond

One thing is clear about the future. Innovation and embracing change will define the success of global indirect taxes reform in the future. Technology will play a key role for both businesses and regulators in terms of managing the indirect tax tsunami of change in the AsiaPac region as well as the rest of the globe.

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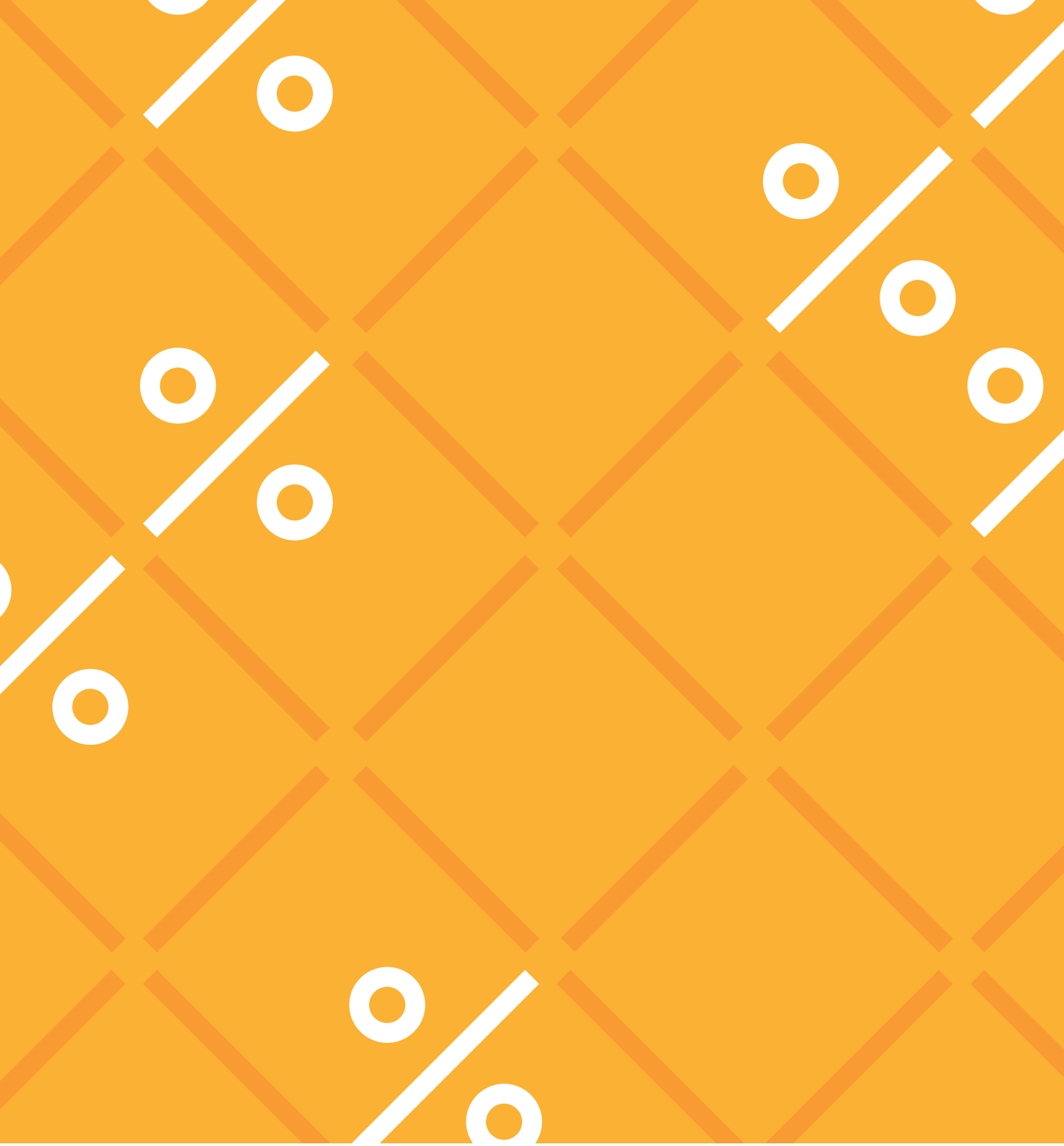

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