

InTouch

with indirect tax news



Issue 01/12

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Welcome to the Issue 01/12 of InTouch*. The major developments in the current issue include updates and recent case laws in India, Japan, Malaysia, New Zealand, Singapore and Vietnam. Please feel free to reach out to any of the PwC contacts on the back of this issue.

India

Notifications/circulars on VAT

Delhi

- The transfer of live telecasting rights of events performed in Delhi shall be treated as a sale of intangibles and liable to VAT.

Madhya Pradesh

- A recharge voucher for pre-payment of cellular phone talk-time and service charges have been exempted from VAT retrospectively with effect from 1 April 2006.

Andhra Pradesh

- Rate of purchase tax has been increased from 4% to 5% with effect from 14 September 2011.
- VAT rate for the following dealers opting for composition scheme has been increased from 4% to 5%
 - Dealers executing works contracts (with effect from 14 September 2011)
 - Dealers liable to pay tax on transfer of right to use goods (with effect from 15 September 2011)
- Percentage of reversal of input tax credit on stock transfer of taxable goods outside the State has been increased from 4% to 5% with effect from 14 September 2011.

VAT case law

- The Andhra Pradesh High Court in Viceroy Hotels Limited Vs. Commercial Tax Officer held that the consideration charged by a hotel for arranging audio-visual equipment from an outsourcing agency for a function/event is liable to VAT.
- The Andhra Pradesh High Court in The State of Andhra Pradesh Vs. M/s Bharat Sanchar Nigam Limited held that the provision of SIM cards, recharge coupon vouchers, mobile telephone rentals on post paid connections, value added services such as ring tones, music down loads, wall papers etc to subscribers and proceeds received from the sharing of infrastructure cannot be considered as a sale of goods and subject to VAT. The Court also held that telephone instruments, mobile handsets, modems and Caller ID instruments are goods and would be subject to VAT where these are sold or supplied to the subscribers by the service providers.

Service Tax – Instructions/Orders

The Central Government has reversed its earlier position and clarified that service tax on taxable services received in India from a person located outside India would arise from 18 April 2006.

Service Tax case law

- The Delhi High Court, in Home Solutions Retail Ltd. (W.P. (C.) 33/98 pronounced on 23/09/2011), held the following –

- the service tax levied under the taxable category of Renting of Immovable Property Services', being a tax on the services of leasing and letting of the property and not the building itself, is intra vires the Constitution of India; and
- the legislature is empowered to pass a legislation retrospectively and remove the ground on which a judicial decision is based.
- In Caterpillar India Pvt. Ltd Vs. CST (2011) (24) S.T.R. 74), the Tribunal held that technical services such as engineering design, modeling, detailing and analyzing services in areas of mechanical and automobile engineering are classed under the taxable category of Consulting Engineers Services and not Information Technology Software Services.
- In P. Gautam & Co. Vs. CST (2011) (24) STR 447), the Tribunal held that discounts/incentives received by an advertising agency which are excluded from the value of services for Advertising Agency Services, cannot be taxed as Business Auxiliary Services provided to the print media.

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Japan

JCT rate increase plan

On 29 December 2011, the ruling DPJ (Democratic Party of Japan) announced a plan to increase Japanese Consumption Tax (JCT) from 5% to 8% from 1 April 2014 and 10% from 1 October 2015. According to the DPJ's website, this reform plan is subject to further discussion between the ruling and opposition parties before the tax bill is presented to the Diet (in March at the earliest).

In addition, an invoice system and multiple JCT rates will not be adopted (currently, the book-keeping method is applied) so that the burden of JCT compliance for small and medium sized businesses will not be increased. Flexible terms which can suspend the JCT hike at the time of a global economic crisis will be stipulated in the draft.

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Malaysia

Service Tax exemption

The Ministry of Finance has granted service tax exemption with effect from 1 January 2012 in respect of taxable services provided to persons in free zones, Labuan, Langkawi, Tioman and the Joint Development Area.

From 1 January 2012, the following are exempted from service tax:

- (i) all taxable services provided by any person in the free zone and supplied to any person in the free zone;
- (ii) all taxable services provided by any person in the free zone and supplied to any person in the Principal Customs Area;
- (iii) all taxable services provided by any person in the Principal Customs Area and supplied to any person in the free zone; and
- (iv) all taxable services provided by any person in the Principal Customs Area or in a free zone in connection to any matters in Langkawi, Tioman

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New Zealand

GST deductions

An income tax deduction can be taken for the GST paid on the provision of fringe benefits. For example, if an employer gives hampers to staff which are subject to Fringe Benefit Tax, the GST that is paid on the value of the fringe benefit is deductible for income tax purposes.

A drafting oversight inadvertently removed the entitlement to these deductions with effect from 1 April 2011. A new Bill proposes to correct the position with retrospective effect.

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Singapore

Updates on GST Assisted Compliance Assurance Programme

The Inland Revenue Authority of Singapore (IRAS) had initially set aside a funding of \$5 million for early participation of Assisted Compliance Assurance Programme (ACAP) during the 5-year period from 5 Apr 2011 to 4 Apr 2016. The ACAP is a self-review of the businesses' systems, processes and capabilities to identify, assess and mitigate GST risks. The fund had been fully taken up.

Come 1 April 2012, eligible applicants can look forward to an additional funding of \$5 million to co-fund 50% of their fees incurred in undertaking ACAP, subject to a cap of \$50,000 per applicant.

The additional \$5 million funding will be allocated over the next four years as follows:

Singapore Budget 2012

Highlights of the changes in GST:-

- GST exemption on investment-grade gold and precious metals

With effect from 1 October 2012, the import and supply of investment-grade gold (that has a purity of 99.5%) and precious metals will be treated as exempt supplies, similar to a supply of financial services.

- Extending the GST temporary import period from 3 to 6 months

The temporary import scheme allows goods, except for liquor and tobacco, to be imported without payment of duty and/or GST if the goods are to be re-exported within 3 months from the date of importation. The goods must be imported for approved purposes (e.g. exhibitions, repairs, testing and demonstration).

The temporary import relief period of 3 months will be extended to 6 months with effect from 1 April 2012.

Extension of GST Tourist Refund Scheme

Tourists departing Singapore via air from Changi International Airport and Seletar Airport may claim GST refunds on goods purchased in Singapore under the GST Tourist Refund Scheme (TRS).

The TRS will be extended from January 2013, to international cruise tourists departing from the Singapore Cruise Centre at Harbourfront and the new upcoming International Cruise Terminal at Marina South.

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Funding	Phases	Application Period
\$3 million	Phase 1 1 April 2012 to 31 March 2013	From 1 April 2012
\$1 million	Phase 2 1 April 2013 to 31 March 2014	From 1 April 2013
\$1 million	Phase 3 1 April 2014 to 4 April 2016	From 1 April 2014

Vietnam

Simplified requirement on output VAT declaration for banks

The current VAT regulations require companies to declare every VAT invoice issued/received during the month. Due to the specific nature of the banking industry and the large volume of small transactions, the Ministry of Finance recently issued Official Letter 13715/BTC-TCT allowing banks to declare the total value of services rendered on a daily basis rather than transaction by transaction.

However, banks must maintain proper invoices and supporting documents for each transaction and present them to the tax authority upon request.

Conditions for zero rating of export services

Exported services can be zero rated provided that certain conditions are met, including:

- the service is rendered directly to an overseas company or a Vietnamese company in a non-tariff area;
- the overseas company does not have a permanent establishment (PE) in Vietnam; and
- the overseas company is not registered for VAT in Vietnam and is not a VAT “payer” in Vietnam.

With respect to the PE condition, in the Official Letter 3349/TCT-CS (“OL 3349”) dated 19 September 2011, the General Department of Taxation referred to the applicable Double Tax Agreement (DTA) to assess whether the Vietnam representative office of the overseas customer constituted a PE in Vietnam.

In the case considered by OL 3349, the representative office was assessed not to be a PE, and so eligibility for zero rating was confirmed by the General Department of Taxation.

As the definition of PE in DTAs is generally significantly narrower than the definition of PE under the domestic tax regulations, this may therefore provide increased scope for zero rating of exported services.

Further guidance on in-country export-import transactions

On 16 November, the Ministry of Finance issued Official letter 15514/BTC-TCT (“OL 15514”) to provide further guidance on the application of 0% VAT in relation to in-country export-import transactions.

According to OL 15514, to apply 0% VAT for in-country export-import transactions, the following conditions must exist:

- (i) the export/processing contract signed with the foreign party (i.e. the buyer) must state that goods are delivered to a recipient (i.e. the in-country importer) in Vietnam;

- (ii) the in-country export/import customs declaration must be certified by customs authority that the goods have been delivered to the in-country importer in Vietnam;
- (iii) the payment is made via bank transfer in a convertible foreign currency; and
- (iv) export/VAT invoice specifies names of the foreign party, the in-country importer, and the place of delivery in Vietnam.

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