

# InTouch

with indirect tax news



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Welcome to issue 01/13 of InTouch\* which covers developments in VAT/GST in Asia Pacific during the period January 2013 to March 2013.

Please feel free to reach out to any of the PwC contacts on the back of this issue.

# Australia

## *GST legislative updates*

- **GST instalment system**

Amendments were passed to enable entities that move into a net refund position to continue paying GST by instalments. These entities will receive a zero-instalment amount each quarter whilst in a net refund position. This applies to GST instalment quarters starting on or after the first 1 July, that is on or after Royal Assent.

- **Refunding excess GST**

Exposure Draft legislation has been released to clarify the circumstances in which the restriction on GST refunds applies to overpayments of GST and allows taxpayers to self-assess their entitlement to a GST refund by reference to ascertainable criteria.

The proposed changes to the GST refund rules, intended to take effect from 17 August 2012, also address the gap in the existing law relating to refunds associated with miscalculations of GST payable on a supply.

## *GST rulings and determinations*

The following GST rulings and determinations were issued:

- **Failed payment fees**

GSTD 2013/1 (issued on 27 February 2013): Payment of a failed payment fee by a recipient to a supplier is not consideration for a supply in certain specified circumstances where payment is made by cheque or direct debit, and the attempted payment is dishonoured or declined.

- **Tax invoice requirements**

GSTR 2013/1 (issued on 27 March 2013): Sets out the information requirements for a tax invoice and explains when a document is in the approved form for a tax invoice.

- **Adjustment notes**

GSTR 2013/D1 (issued on 27 February 2013): This draft ruling outlines the Commissioner's preliminary view on the requirements for adjustment notes and recipient created adjustment notes.

## *Update on GST cases*

- **Adjustments and supplies of going concerns**

It was held in MBI Properties Pty Ltd v the Commissioner that the adjustment provisions in Division 135 of the GST Act are satisfied in circumstances where there is a supply made in relation to the lease of serviced apartments which continues to be made through an enterprise after its supply as a going concern.

- **Negotiating the price for supplies**

The recent judgement in Duoedge Pty Ltd v Leong & Anor reinforces the importance of ensuring the contract clearly stipulates the intention of the parties in relation to GST.

Where the price is expressed in a contract on a GST inclusive basis, the courts are likely to consider the GST inclusive amount to represent the final agreed price, regardless of whether the sale is to be subject to GST. This could result in the supplier receiving 1/11 less for its supply, or the cost to the recipient being 1/11 more, than expected. This is regardless of whether the sale is to be subject to GST.

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# China

## **Expansion of Business Tax to VAT (B2V) Pilot Programme Nation-Wide**

Following the launch of the B2V Pilot Program in China more than a year ago, the State Council has announced the expansion of the B2V Pilot Programme nation-wide with effect from 1 August 2013.

The nation-wide expansion includes the existing industries and further extends the scope of “Modern Services” to encompass the production, broadcasting and distribution of media and cinematic productions. Industries such as railroad transportation, postal and telecommunications are expected to be included subsequently.

## **Circulars on VAT and Consumption Tax (CT)**

- Under a restructuring exercise where the General VAT Payer (the transferor) transfers all its assets, liabilities and employees to another General VAT Payer (the transferee) and proceeds with tax de-registration, the un-utilised input VAT credits belonging to the transferor can be transferred to the transferee.
- It is clarified that financial subsidies from the Central Government are not subject to VAT in the hands of the taxpayer.

# India

## **Notifications/Circulars for VAT**

- **Delhi** – Effective from 16 January 2013, the rate of tax deducted at source in respect of works contracts executed by dealers registered under the DVAT Act has been increased from 2% to 4%.

For dealers having gross turnover of INR 100 Mn. or more during the FY 2011-12 or subsequent year, a form (AR-1) has been prescribed for the audit report which should be filed within a period of seven and a half months from the end of the relevant year.

A new composition scheme has been prescribed under the works contract provisions for different types of contracts (subject to the fulfillment of prescribed conditions). The scheme is effective from 1 April 2013.

- **Bihar** – The Central Sales Tax (CST) rate on goods manufactured and sold by micro, small and medium industries has been reduced to 1% effective from 14 March 2013.
- **Rajasthan** – Effective from 1 May 2013, electronic payments (for VAT, CST and Entry Tax) using Electronic Government Receipt Accounting System (e-GRAS) have been made mandatory for a select class of dealers.

## VAT case law

- In *Malabar Gold Ltd. v. Commercial Tax Officer* and others, the Kerala High Court held that the grant of right to use a trade mark under a franchise arrangement against the payment of royalty is liable to sales tax as a deemed sale under the VAT laws. The position will remain the same irrespective of the fact that the assessee has paid service tax on the transaction.
- In *Tata Steel Ltd. v. State of Odisha*, the High Court has upheld the constitutional validity of the levy of entry tax on goods imported from outside India.
- In *Smt. Geetha D. Raju v. State of Karnataka*, the Karnataka High Court has held that in a works contract transaction, where part of contract is sub-contracted to a third party, the property in goods in respect of work executed by the sub-contractor, is transferred directly to the contractee through the principle of accretion.

Therefore, once the sub-contractor has paid VAT on its turnover, the same cannot be added to the contractor's turnover for computing his tax liability.

## Notifications/Circulars for Service Tax

- The last date for filing the Service tax return form ST-3 for the period 1 July 2012 to 30 September 2012 has been extended from 25 March 2013 to 30 April 2013.

## Service Tax case law

- In *M/s VPR Mining Infrastructure Pvt. Ltd. v. CCCE & ST*, the Tribunal has held that while there is no specific bar in the provisions of law, as a matter of practice, payment of pre-deposit by way of debit to the CENVAT credit balance has been allowed.
- In *SKP Securities Ltd. Infinity Infotech Parks Ltd. v. Deputy Director (RA-IDT) & Ors.*, the High Court held that the Comptroller and Auditor General of India has no powers to audit a non-Government company that is not in receipt of aid or assistance from Government. However, in view of the contradictory judgment rendered in another case by this court, the matter has been referred to the division bench of the court.
- In *CST v. Consulting Engineering Services (I) Pvt. Ltd. and Vistar Construction (P) Ltd. v. Union of India and ors.*, the High Court held that the taxable event as per the Finance Act, 1994 is the date of provision of services. Accordingly, in case of a change of rate of tax, the rate applicable on the date of provision of service would be the applicable rate, irrespective of the fact that payment was received after the effective date of change in rate.
- In *Larsen & Toubro Ltd. v. Union of India and ors. and Texonic Instruments v. CST and ors.*, the High Court has quashed the Board Circular No. 967/01/2013-CE issued on 1 January 2013, insofar as it causes initiation of recovery proceeding within 30 days of filing an appeal. This is with respect of cases where the stay application remains pending with the Tribunal for reasons beyond the control of assessee.
- In *Atlas Documentary Facilitators Co. Ltd. v. CST*, the Tribunal has directed the department to refund the amount collected by attaching the bank account of the assessee under the recovery proceeding initiated after the Tribunal has granted the interim stay in the matter.

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# Japan

## **Updates on transitional measures for Japanese Consumption Tax increase**

In view of Japanese Consumption Tax (JCT) rate increase from 5% to 8% from 1 April 2014 and 10% from 1 October 2015, transitional measures were announced on 13 March 2013 for the following types of transactions:

- **Fixed fee job contracts**

Where a job contract satisfies all the prescribed conditions, the JCT rate is still applicable at 5% on the supply even if the delivery is made on or after 1 April 2014. The conditions include:

- The contract is concluded on or before 30 September 2013;
- A long period is required for the completion of the job;
- Some parts of the job are based on the order (direction or request) of the purchaser; and
- The delivery of the completed job is made at one time.

- **Fixed fee lease contracts**

For rental of office space or equipment where the lease contract is concluded on or before 30 September 2013, and started on or before 31 March 2014 covering a fixed period ending on or 1 April 2014, the rent would be subject to JCT at 5% for the rental period.

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# Malaysia

## **List of taxable and non-taxable services published**

A list of services indicating whether the services are subject to service tax, has been made available by the Malaysian Customs on its website. The list is a compilation of private rulings issued to companies by the Malaysian Customs and serves as guidance to the general public on the application of service tax.

The list is not binding and businesses are advised to go through the Customs ruling process for certainty on the taxability of its services.

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# New Zealand

## **Proposal to limit GST refunds**

Under a proposed law, there would be a limitation on GST refunds for GST incorrectly accounted for by a GST-registered business (or owner) to the Inland Revenue. Refunds would only be paid out if the business has passed the overpaid GST back to the consumer.

Concerns raised on the proposal include difficulties for businesses to obtain genuine GST refunds for overpaid GST and the potential ramifications on contractual terms and rights between a business and its customers.

## **Proposed changes to GST grouping rules for non-residents**

It is proposed that non-resident businesses will no longer be able to form a GST group with resident businesses. If enacted, this change will apply from 13 September 2012. Existing GST groups that include non-residents will not be impacted by the proposal.

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# Singapore

## **Tax certificate for business asset put to personal or non-business use**

With effect from 1 March 2013, where business assets are put to personal or non-business use and qualifying conditions are met, businesses are able to account for output tax by issuing a tax certificate to the asset user. One of the conditions requires the asset user to be a GST-registered business.

## **Updates on Tourist Refund Scheme**

Following the expansion of the Tourist Refund Scheme (TRS) from air travellers to international cruise passengers departing Singapore via the international cruise terminals, the IRAS has expressed that there is no intention to extend the TRS to goods brought out of Singapore via the land checkpoints.

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## South Korea

### ***Determination of place of business for foreign Limited Liability Partnerships***

A recent private tax ruling made public on 29 January 2013, states that an office established by a US or UK-based Limited Liability Partnership (LLP) to deal with foreign legal services in Korea under the Foreign Legal Consultant Act shall be deemed as a domestic place of business for the foreign corporation under the Corporate Income Tax Law (“CITL”).

As the VAT law in Korea follows the CITL's definition of a place of business, a foreign LLP's office in Korea is regarded as a place of business for VAT purpose. VAT registration should be made for each office, rather than on individual partners.

The private tax ruling is not binding to all foreign LLPs but provides guidance on Korean VAT compliance requirements for a foreign LLP with offices in Korea.

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## Vietnam

### ***6-month payment deferral for VAT***

In accordance with Resolution No. 02/NQ-CP, the payment of VAT liabilities for January, February and March 2013 has been deferred by a 6-month period for qualifying enterprises.

Qualifying enterprises include small and medium enterprises and enterprises in select industries.

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