

InTouch

with indirect tax news



Issue 02/13

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Welcome to issue 02/13 of InTouch* which covers developments in VAT/ GST in Asia Pacific during the period April 2013 to June 2013.

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

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Australia

High Court decision on GST anti-avoidance provisions

In the first GST general anti-avoidance matter to be considered by the High Court of Australia, the Court has unanimously allowed an appeal by the Commissioner of Taxation in relation to the application of the GST general anti-avoidance rules.

In *Commissioner of Taxation v Unit Trend Services Pty Ltd*, the High Court held that despite the taxpayer's residential property development arrangement involving a series of choices or agreements each of which were expressly provided for under the GST law, the GST benefit obtained was "not attributable" to these choices, but to the wider arrangement. The GST benefit was therefore negated pursuant to the anti-avoidance provisions in Division 165 of the GST legislation.

Correcting GST errors

The legislative determination "Goods and Services Tax: Correcting GST Errors Determination 2013" was registered on 9 May 2013.

The determination specifies the circumstances in which a taxpayer may correct certain errors that were made in working out its net amount for an earlier tax period, rather than revising the GST return or requesting that the Commissioner amends the relevant assessment for the earlier tax period.

The Determination commences on 10 May 2013, and applies in working out net amounts for tax periods that start on or after 1 July 2012.

Draft GST Ruling on single "Responsible Entity" fees

On 8 May 2013, the Australian Taxation Office (ATO) released GSTD 2013/D1, dealing with the application of item 32 of the reduced input tax credit (RITC) provisions in the GST Regulations to a single fee charged to a managed investment scheme that is a 'recognised trust scheme' (RTS) from a Responsible Entity (RE).

GST and second-hand goods

On 15 May 2013, the ATO released Draft GST Determination GSTD 2013/D2 which sets out the Commissioner's preliminary views on the meaning of 'second-hand goods' for GST purposes.

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China

New circular to consolidate guidance on Business Tax to VAT programme

Following the State Council's announcement of the nationwide implementation of the Business Tax to Value Added Tax transformational pilot programme ("B2V pilot programme") and the expansion of the scope of "modern services" to include the broadcasting, cinematic and television industry, the Ministry of Finance ("MOF") and the State Administration of Taxation ("SAT") have jointly issued Circular [2013] 37 ("Circular 37") to provide further guidelines.

Circular 37 takes effect from 1 August 2013 and incorporates all or part of the contents of 7 other Circulars (which will be abrogated with effect from 1 August 2013).

Circular 37 generally follows the principles stated in Circular [2011] 111 with certain important changes, which include:

- Provision of a detailed list of services that constitute production, distribution and broadcasting services in the broadcasting, cinematic and television industry. The applicable VAT rate is 6%.
- Clarification that where an export service is eligible for both VAT exempt and zero-rated treatment, the zero-rated treatment should take precedence.

- The settlement receipts for transport expenses issued after 1 August 2013 will no longer be treated as supporting documents for input VAT credit. However, settlement receipts of rail transport expenses can still be used as supporting documents for input VAT credit.

New requirement for verification of import VAT

Circular [2013] 31, which took effect on July 1, 2013, states that in order to claim the input VAT credit on goods imported, a General VAT taxpayer is required to submit the customs import VAT payment certificate issued by the Customs to the in-charge tax authority for verification within 180 days after the issuance date of the customs import VAT payment certificate.

The verification is to be done on a monthly basis, and the in-charge tax authority will provide taxpayers with the amount of input VAT that may be credited in the following month. Taxpayers must claim the credit in that month.

No input VAT credit will be allowed for any late claims or any customs import VAT payment certificate not verified within the 180 days.

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India

Notifications/Circulars for VAT

- **Delhi** – The following changes are effective from 1 April 2013:
 - The return tax period has been defined as a 'quarter' and accordingly, the returns shall be filed quarterly.
 - Threshold limit for being audited has been increased from INR 6 million to INR 10 million.
 - Input tax credit on goods transferred on right to use basis shall be allowed to the lessor in equal proportions over a span of four years.
 - WCT-TDS (Work Contract Tax-Tax Deducted at Source) rate has been increased from 4% to 6% in case of unregistered contractors and sub-contractors.
- **West Bengal** – Effective from 1 April 2013, the concessional VAT rate and residual VAT rate has been increased from 4% to 5% and from 13.50% to 14.50% respectively.
- **Himachal Pradesh** - Concessional Central Sales Tax (CST) rates have been prescribed for industrial units situated in Himachal Pradesh which meet certain conditions.

The rates shall be effective from 1 April 2013 for a period of five years or till the date of implementation of Goods and Services Tax, whichever is earlier.

VAT case law

- In *Indus towers Limited v Union of India & Others (Writ petition (C) 4976/2011)*, it was held that provision of telecom towers and shelter ('passive infrastructure') to telecom operators on a sharing basis cannot be taxable under VAT as a transfer of right to use goods as the activity does not involve a transfer of control and possession of passive infrastructure from one telecom operator to another.

Notifications/Circulars for Service Tax

With the intent to bring into effect the Service Tax Voluntary Compliance Encouragement (STVCE) Scheme (2013), the Central Board of Excise and Customs (CBEC) has issued STVCE Rules, 2013 and Service tax Circular No 169/4/2013 to provide information on the scheme.

This includes the eligibility of taxpayers who can avail the benefits of the scheme, and the form and manner of declaration and payment of tax dues.

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Indonesia

VAT and Luxury-goods Sales Tax (LST) no longer collected on goods imported for oil and gas exploitation

In an effort to boost domestic oil and gas production, the Ministry of Finance issued Regulation No. 70 (PMK-70) stating that goods imported for use in oil and gas exploration and exploitation activities are now eligible for both import duty exemption and VAT and Luxury-goods Sales Tax (LST) exemption.

The exemption is effective from 2 April 2013.

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Japan

Updates on transitional measures for Japanese Consumption Tax (JCT) rate increase

A bill, also referred to as the "Shifting Measures Law", has passed the Diet on 4 June 2013 and is intended to address the transition in the JCT rate from 5% to 8% from 1 April 2014 and to 10% from 1 October 2015.

The following is applicable with the introduction of the bill:

- Requirement for business enterprises under the Gross Pricing Display Rule to display JCT-inclusive gross prices will be suspended from 1 October 2013 until 31 March 2017.
- Business enterprises will be allowed to apply ex-transitional measures under which it can calculate additional output JCT based on a retail price that is exclusive of JCT. This applies also to Business to Consumer (BtoC) transactions.

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New Zealand

Proposed changes to GST grouping rules for non-residents

In the previous InTouch issue 01/13, we discussed a proposed legislative change that would deny non-resident businesses the ability to be included in a GST group with New Zealand resident businesses.

The draft legislation has since been diluted such that non-resident businesses will only be prevented from joining a GST group with New Zealand resident businesses if either the non-resident or the GST group does not make taxable supplies in New Zealand.

Proposed changes to GST treatment of services provided to non-residents

Under the current law, services provided to non-residents may be zero-rated for GST purposes provided that at the time the service is performed:

- the recipient is a non-resident;
- the recipient is outside NZ;
- the service does not relate to property or land situated in NZ;
- the services are not an acceptance of an obligation to refrain from carrying on a taxable activity.

Inland Revenue recognises that there are practical difficulties in ascertaining if the first two requirements are satisfied. Hence, the following changes have been proposed:

- Given that the supplier may not know the whereabouts of the recipient, the services will still qualify for zero-rating even where the non-resident visits New Zealand during the period the services are supplied, provided the visit is not in connection to the services performed.
- Inland Revenue has proposed that the retrospective application of the tax residency rules should be switched off in relation to the application of this zero-rating rule (if not, a supply which was previously zero-rated could become subject to standard GST rate).

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Singapore

New e-tax guide on reimbursement and disbursement of expenses

The Inland Revenue Authority of Singapore (IRAS) has released a new e-tax guide on Reimbursement and Disbursement of Expenses on 31 May 2013 to clarify the GST treatment for recovery of expenses.

The GST treatment set out in the circular will apply to recovery of expenses that occur on or after 31 May 2013.

As a transitional measure, businesses may continue to apply the existing rules up to 30 June 2013.

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South Korea

VAT treatment of supplies involving local subsidiaries

A ruling has been issued concerning the VAT treatment of services supplied by a local subsidiary of a foreign company to a local subsidiary of another foreign company under a 'delegation agreement'.

The domestic supplier of services is required to issue a 10% tax invoice to the domestic recipient of services (the Korean subsidiary of the foreign company) in accordance with Article 16, Paragraph 1 of the VAT Law.

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Updates to counter sales treatment

Newly established department stores or shopping malls can now also apply for "counter sales treatment" to obtain purchase-related government uniform invoices, if certain conditions are met.

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Vietnam

Amendments to the current regulations guiding VAT

The Ministry of Finance (“MoF”) issued Circular 65/2013/TT-BTC on 17 May 2013 (“Circular 65”) providing amendments and additions to a number of articles of the current VAT Circular 06/2012/TT-BTC on 11 January 2012.

Some notable changes under Circular 65 include:

- Interest on loans made by non-credit institutions (e.g. loans provided by related parties) is not subject to VAT.
- Lease of factories to tenants in non-tariff zones and the provision of digitalisation services to overseas customers is now entitled to 0% VAT.
- For VAT invoices on which the input VAT credit was disallowed in a tax audit due to the lack of bank payment evidence, a company is still permitted to claim a credit if the evidence can be provided within six months from the date of the tax audit minutes.

While Circular 65 will be effective from 1 July 2013, the VAT treatment will take retrospective effect from 1 March 2012 for certain cases.

New changes in VAT law

A new VAT law was approved by the National Assembly on 19 June 2013. The amended VAT law will be effective from 1 January 2014.

Notable changes (based on the available draft version of the Law) include:

- *Reinstatement of old rules for VAT zero-rating of exported services*

The condition that the overseas customer should not have a permanent establishment (“PE”) in Vietnam before zero-rating can apply was introduced several years ago, replacing the condition that the services must be consumed outside of Vietnam. The previous condition is now being reinstated.

- *Removal of the 6-month time limit to claim creditable input VAT*

Additional VAT declarations can be made any time before the tax authorities do a tax audit.

- *New rules on claiming VAT refunds*

A VAT refund can be claimed if a taxpayer has accumulated input VAT credits for at least one year (subject to threshold in certain circumstances).

- *New rules for overseas service companies in the oil & gas sector*

Foreign contractors supplying goods and services used for prospecting, exploration or development of oil and gas applying the withholding method are not permitted to pay VAT under direct method.

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