

InTouch

with indirect tax news



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Welcome to issue 05/12 of InTouch* which covers developments in VAT/ GST in Asia Pacific during the period October 2012 to December 2012.

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

Australia

GST cases update

- SDI Group Pty Ltd and Commissioner of Taxation (“the Commissioner”) has held that a combination of documents was sufficient to satisfy the requirement in the GST going concern provisions for an agreement in writing.
- The Australian Tax Office (ATO) has issued its Decision Impact Statement following the High Court’s decision in Commissioner of Taxation v Qantas Airways Ltd. It was held that GST was payable when a customer booked and paid for domestic air travel, but subsequently cancelled the booking or failed to turn up for the flight, in circumstances where the customer does not receive a refund.

GST legislative and tax policy update

- Amendments have been proposed to the GST margin scheme provisions to confirm the determination of the margin for a taxable supply of an interest, unit or lease where the real property supplied has been subdivided from land or premises previously acquired by the supplier.
- Exposure Draft legislation has been released which proposes to allow small businesses in a net refund position to continue to use the GST instalment system.

Results of Low Value Imports review

The final report of the Low Value Parcel Processing Taskforce ('the Taskforce') highlighted that the proportion of collection costs to GST revenue increases as the threshold falls below AUD500. This indicates that revenue collection would not be cost effective at a threshold level less than AUD500.

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India

Notifications/Circulars for VAT

- **Delhi** – The dealers with a “quarter” as tax period and having net tax liability (including VAT and Central Sales Tax or CST) exceeding INR 0.1 Mn. during the previous financial year or the current financial year are required to deposit tax on monthly basis within 21 days of the end of each month effective from 4 December 2012.

The time limit for filing the statutory forms for all the quarters of FY 2011-12 has been extended to 28 February 2013.

- **Punjab** – Electronic filing of annual VAT return has been made mandatory for returns for FY 2011-12 and onwards for dealers filing return after 20 November 2012.
- **Tamil Nadu** – The VAT rate on electricity generating sets has been reduced from 14.50% to 5% effective from 7 December 2012.

VAT case law

- The Delhi High Court in ABB Ltd v. The Commissioner has held that that for a transaction to qualify as a sale in the course of import under the first limb of section 5(2) of the CST Act, there must be an inextricable link or a back-to-back transaction for the sale or purchase occasioning the import of goods into India.

Notifications/Circulars for Service Tax

- The CBEC has amended the form ST-1 to include a list of taxable services with respective accounting codes. This means that a service provider seeking service tax registration would be required to specify the category of services which it provides.

Service Tax case law

- The Delhi High Court in Intercontinental Consultants and Technocrats Pvt. Ltd. v. Union of India & Anr. has held that the rule 5(i) of service tax valuation rules is ultra vires the charging provisions laid under section 66 and section 67 of chapter V of the Finance Act, 1994.

Per the court, this seeks to include reimbursement of expenses such as lodging, boarding, air travel expenses, etc incurred by the service provider in the course of providing services which goes beyond the consideration for taxable services brought to charge by the relevant provisions of the Act.

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Indonesia

Change in VAT invoices numbering

The Indonesian Director General of Tax (DGT) issued a new tax Regulation (PER-24) and Circular Letter No.SE-52/PJ/2012 (SE-52) regarding new administrative procedures for VAT invoices (Faktur Pajak/FP). Both PER-24 and SE-52 will be effective from 1 April 2013.

Non-taxable broadcasting services

On 17 October 2012, MoF Regulation No.155/PMK.03/2012 (PMK-155) was issued regarding the criteria for non-taxable broadcasting services. Broadcasting services provided for non-commercial purposes are not subject to VAT.

VAT for own construction

The VAT rate due on building construction activities performed outside the course of business or work by an individual or a company, has been reduced to 2% of the costs incurred.

Clarification of VAT on labour related services

The Director General of Tax (DGT) issued Circular Letter No.SE-47/PJ/2012 (SE-47) on 1 November 2012 to clarify the criteria of non-VATable labour/manpower services by providing some examples of labour services which either qualify or do not qualify as non-VATable services.

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Japan

Ruling on Japanese Consumption Tax for Japan Verified Emission Reduction (J-VER) under Kyoto Protocol

On 12 October 2012, a ruling was given by National Tax Agency (NTA) to the Ministry of Environment of Japan regarding Japanese Consumption Tax on a carbon offset credit "Japan Verified Emission Reduction" (J-VER) under the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol).

The Consumption Tax treatment for transactions of J-VER can be summarised as follows:

- 1) For purchase of J-VER by Offset-Provider (who sets up a carbon offset credit trading scheme) from others in Japan - Taxable Purchase for Taxable Sales Only (100% Fully Creditable under the Itemized Method)
- 2) For purchase of J-VER by Offset-Enterprise (who aims to offset its volume of greenhouse gas emission) from Offset-Provider in Japan - Taxable Purchase in Common for donation to Ministry of Environment of Japan (Partially Creditable prorated by the Taxable Sales Ratio)

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New Zealand

Claim for overpaid GST

A recent landmark decision of the Supreme Court in *Stiassny* (28 November 2012) confirms that a business may not be able to recover overpaid GST from Inland Revenue. This is even where the business is not personally liable for the GST payable. The *Stiassny* case is the first significant case involving a claim for restitution of overpaid taxes heard by the Supreme Court.

Late payment fees

Fees charged for the late payment of an account (late payment fees) are now subject to GST.

Businesses that do not ordinarily charge GST have until 1 January 2013 to make any necessary adjustments to their systems to account for this change. Default or penalty interest continues to be GST-exempt.

In view of the change, businesses charging late payment fees should review its terms and conditions to ascertain the contractual nature of the fees and consider if there are any GST implications.

Ability to 'opt-out' of the agency rules

Changes have been proposed to allow principals and agents to "opt-out" of the agency rules.

Where a principal and an agent issue invoices for the same supply, it is technically a breach of the GST legislation. The proposed amendment attempts to remedy this situation by effectively allowing parties to treat such transactions as consisting of 2 separate supplies (i.e. one supply from the principal to the agent and another from the agent to the end customer).

The principal and the agent are therefore both responsible for the resulting GST obligations and each party should be able to issue its own tax invoice in relation to the separate supplies.

Increase in penalties for computation error for import GST

A number of changes have been made to the penalty regime for New Zealand customs purposes. The minimum and maximum administrative penalties for errors in calculating import GST have been increased from NZ\$50 to NZ\$200 to the range of NZ\$10,000 to NZ\$50,000 respectively.

A graduated penalty scale has also been introduced ranging from 20% to 100% of the shortfall, depending on the severity of the offence.

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Singapore

New e-tax guide for pre-registration claims

A new e-tax guide has been issued by the Inland Revenue Authority of Singapore (IRAS) on 30 November 2012 (updated on 8 January 2013) to provide guidance on the conditions and apportionment methods for pre-registration input tax claims incurred by businesses.

Updates to IRAS Voluntary Disclosure Programme

The IRAS Voluntary Disclosure Programme has been updated with a revised penalty treatment. The changes include:

- Reduced penalty for what would be considered as an action involving wilful intent to evade taxes
- For businesses that have undertaken the GST Assisted Self-help Kit (ASK) Annual Review, the grace period is one year from the statutory filing deadline for the last GST return for the financial year

The IRAS Voluntary Disclosure Programme is applicable to Singapore GST, Income Tax, Withholding Tax and Stamp Duty.

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South Korea

Deductibility of input VAT for tax invoice in relation to VAT exempt transaction

Prior to the amendment of the Korean VAT Law, in the case where a tax invoice is received for a VAT exempt transaction and VAT is paid on the transaction, such input VAT may not be deductible for the supplied party. Amended VAT returns were necessary for both the supplier and the supplied party to cancel the VAT invoice(s) and VAT penalties may apply.

After amendment of the said Law, such input VAT will be deductible for the supplied party if it can be substantiated that the supplier has fully paid the collected output VAT to the Korean tax authorities. No amended tax invoice or VAT return will be required.

The change is applicable for goods or services provided after 1 January 2013.

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Thailand

Updated VAT legislation for exemption

Exemption from VAT shall apply to the following:

- Transactions arising from the execution of instruments in connection with, the transfer of property or any right in the property between the owner or the right holder of the property and the Infrastructure Fund (Royal Decree No. 544).
- Sale of goods and provision of services performed by The Support Arts and Crafts International Centre of Thailand (Public Organization) as conducted from 1 November 2003 onwards (Royal Decree No. 546).
- A financial institution's debtor, a financial institution, an other debtor or creditor involved in debt restructuring under the Bank of Thailand framework, where the debt restructuring transactions occurred from 1 January 2012 to 31 December 2012 (Royal Decree No. 547).
- A flood-affected debtor or other creditor involved in debt restructuring under the regulations of the Bank of Thailand, whereby the debt restructuring contract is executed between 25 July 2011 to 31 December 2012, and the debt restructuring transactions occurred between 25 July 2011 to 31 December 2015 (Royal Decree No. 548).

- An investor and a trustee for the income, value of tax base, revenue, and execution of instrument arisen from or owing to transfer of property between the investor and trustee, or amongst trustee in case of changing the trustee according to the trust agreement under the Islamic laws (Royal Decree No. 554).

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Vietnam

Update on VAT on interest paid to non-banks

Under VAT Circular 06/2012 dated 11 January 2012, interest on loans from "credit institutions" (e.g. banks) is VAT exempt and interest on loans from entities that are not banks is subject to VAT.

The Ministry of Finance issued Official Letter No. 17164/BTC-TCT on 11 December 2012 to clarify that interest on loans from non banks (which are not prohibited by the law) is also not subject to VAT.

A further 3-month payment deferral for June 2012 VAT

In accordance with Resolution 13/NQ-CP dated 10 May 2012 and Circular 83/2012/TT-BTC dated 23 May 2012, the payment of June 2012 VAT liabilities for qualifying enterprises was deferred to January 2013.

On 22 October 2012, the Ministry of Finance issued Circular 175/2012/TT-BTC providing a further 3-month payment deferral for June 2012 VAT liabilities to 20 April 2013.

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