Asia Pacific VAT/GST Alert

InTouch

with indirect tax news

Issue 04/15

pwc

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Welcome to issue 04/15 of InTouch* which covers developments in VAT/GST in Asia Pacific during the period October 2015 to December 2015.

Please feel free to reach out to any of the PwC contacts on the back of this issue if you require detailed advice or further information.

Australia

GST Rulings Update

On 7 October 2015, the Commissioner released GSTD 2015/2: Goods and Services Tax Determination, "Goods and services tax: what is a 'destination outside the indirect tax zone' for the transport of a passenger by sea under item 1(a) and item 4 of subsection 38-355(1)?" The determination provides guidance on whether certain locations are outside Australia (now referred to for GST purposes as "the indirect tax zone") such that transportation services to them are GST free.

GST Cases Update

On 19 October 2015, the Australian Tax Office ("ATO") released a Decision Impact Statement ("DIS") in relation to the decision of the Full Federal Court (dismissing the taxpayer's appeal) in Rio Tinto Services Ltd v Commissioner of Taxation [2015] FCA 94.

The Federal Court found that the taxpayer was not entitled to input tax credits on acquisitions related to it making available remote area employee housing in the course of its mining enterprise. In the DIS, the Commissioner accepts that if an objective assessment of the facts and circumstances shows that the acquisition has a direct relationship with the making of both input taxed supplies and other taxable or GST-free supplies made in the course of carrying on an enterprise, the acquisition is a partly creditable acquisition.

For more information, please contact:

Peter Konidaris
peter.konidaris@au.pwc.com
+61 3 8603 1168

Cambodia

Taxation of finance lease

The Ministry of Economy and Finance ("MEF") has issued a Prakas outlining a VAT mechanism to tax finance lease transactions.

The key areas are highlighted below:

1. *Registration requirements*

   The lessor must be a real-regime registered taxpayer and have a finance lease license from the National Bank of Cambodia.

2. *Lease period*

   The lease period must be more than one year.

3. *Conditions*

   There are various conditions that finance lease transactions must comply with.

4. *VAT*

   10% VAT applies on the principal and other charges, except for interest. Input VAT is allowed as a credit to both the lessor and the lessee.

5. *Prepayment of Tax on Profit ("PToP") and Minimum Tax*

   The lessor is subject to PToP and Minimum Tax on all charges and interest, excluding the principal.

6. *Tax on Profit*

   The lessor must recognise income at the earlier of when the payment to be received is due or paid.

7. *Tax depreciation*

   The lessee is entitled to tax depreciation on the leased asset.

8. *Withholding tax ("WHT")*

   WHT does not apply to finance lease transactions.

Rules and procedures for implementing simplified accounting records for small taxpayers

The Financial Management Law for 2016 abolished estimated and simplified tax regimes. The real tax regime (i.e. self-assessment) is the only tax regime under the Cambodian taxation law starting from 2016.

As a result, taxpayers are reclassified into small, medium and large taxpayers under the real tax regime based on their level of turnover and size of business.

The MEF has issued a Prakas which sets out the VAT obligations for small taxpayers:

- Comply with the VAT rules and procedures for supply and invoicing;
- Allowed to claim 80% input VAT credit to offset against output VAT; and
- Input VAT credit cannot be claimed for the supply of gold, diamonds, precious gemstones and foreign exchange.

For more information, please contact:

Heng Thy
heng.thy@kh.pwc.com
+855 (23) 860 606 Ext: 1052

China

Expanded scope of zero-rated VAT preferential treatment to certain exported services

In October 2015, China's Ministry of Finance ("MOF") and the State Administration of Taxation ("SAT") jointly issued Circular Caishui [2015] No. 118 (Circular 118) to expand the zero-rated VAT preferential treatments to certain eligible exported services with effect from 1 December 2015.

According to Circular 118, domestic entities and individuals providing the following taxable services to overseas entities are eligible for the zero-rated VAT preferential treatments:

- Production and distribution of broadcasting, films and television programmes (works);
- Technology transfer services, software services, circuit design and testing services, information system services, business process management services, and contracted energy management services with subject matter located overseas; and
- Offshore service outsourcing business, including information technology outsourcing ("ITO"), technical business process outsourcing ("BPO"), and technical knowledge process outsourcing ("KPO").

The VAT refund rate of taxable exported services remains the same as the applicable VAT rate for corresponding domestic services i.e. 6% for modern services.

Circular 118 expands the scope of zero-rated VAT services, which should reduce the VAT effective tax burden and cost of the relevant enterprises. Enterprises who would like to apply for the zero-rated VAT preferential treatments should pay attention to the administrative measures (i.e. SAT Public Notice [2014] No.11 and SAT Public Notice [2014] No.88) for the services that are eligible for the zero-rated treatment, the timeframe for application of VAT refund (exempt) treatment, documentation requirements, and assessment criteria by the competent tax authority.

Special tax audit of the Business Tax to VAT Pilot Program (B2V Pilot Program)

In December 2015, the tax audit bureau of the SAT issued a letter to the local tax audit bureaus regarding the special tax audit of the implementation of the B2V Pilot Program. The letter sets forth the requirements for the local tax audit bureaus to conduct tax audits on VAT payers in the telecommunication services industry and tax inspections on VAT payers under the B2V Pilot Program.

The letter also includes SAT's reply on VAT issues related to telecommunication services under the B2V Pilot Program, including the claiming of input VAT credit, determination of VATable income, and output VAT and VAT issues in relation to cross-border telecommunication services.

For more information, please contact:

Alan Wu
alan.wu@cn.pwc.com
+86 10 6533 2889

India

Notifications/Circulars for VAT

Delhi

- With effect from 18 December 2015, 100% reversal of tax credit is prescribed on un-manufactured tobacco, tobacco and tobacco products in all forms and all kinds of lubricants exported from Delhi other than by way of sale.

Haryana

- Input tax credit has been restricted in cases where goods, other than goods falling in Schedule C and goods of special importance mentioned in Section 14 of the Central Sales Tax ("CST") Act, are sold as such in the course of inter-state trade or commerce, to the extent of the amount of tax actually paid on the purchase of such goods in the State, or tax payable on the sale of such goods under the CST Act, whichever is lower.

Maharashtra

- Exemption from VAT has been provided between 26 October 2015 and 31 March 2017 on the sale of e-bid Re-gasified Liquid Natural Gas by the Gas Authority of India Limited to the Ratnagiri Gas and Power Private Ltd.

Rajasthan

- With effect from 24 September 2015, works contracts executed in the Special Economic Zone are exempt from payment of tax up to 31 March 2016, where such Special Economic Zone is established in rural areas as specified by the State Government. The exemption will be available until 23 August 2017.

VAT Case Laws

- The Punjab High Court, in the case of Samsung India Electronics Pvt. Ltd. vs. State of Punjab and Another [2015-TIOL-2720-HC-P&H-VAT], relying upon the decision of the Supreme Court in the case of State of Punjab and others vs. Nokia India Private Ltd, held that the mobile battery charger was not a part of the mobile phone but an accessory. Accordingly, the charger would be taxed at the rate applicable to accessories of mobile phones.

- The Tamil Nadu High Court, in the case of ABL Traders vs. CTO (2015-TIOL-2554-HC-MAD-VAT), held that input tax credit could not be denied to a buyer for failure on the seller's part to disclose the transaction in its return and deposited the tax collected from the buyer.

- The Karnataka High Court, in the case of State of Karnataka vs. IBM India P. Ltd. (2015-TIOL-2298-HC-KAR-VAT), held that in the course of ERP implementation, if any software came into existence, no VAT was payable on such software as the title of the software rested with the client, and not the assessee. The High Court observed that such software could not be held to be "goods available in the market".

- The Delhi High Court, in the case of Jagriti Plastics Ltd. vs. Commissioner of Trade & Taxes (2015-TIOL-2332-HC-DEL-VAT), held that a taxpayer was eligible for credit of VAT paid on the purchase of Duty Entitlement Passbook ("DEPB") scrip against output Delhi VAT liability on the sale of imported goods in the State of Delhi.

Notifications/Circulars for Service Tax

- The Central Board of Excise and Customs ("CBEC") has clarified in the context of Goods Transport Agency ("GTA") services that if ancillary services are provided in the course of transportation of goods by road, and the charges for such services are included in the invoice issued by the GTA, such services would form part of the GTA services and the corresponding abatement shall be allowed. Further, even in cases where GTA undertakes to deliver goods within a stipulated time, it would be considered as GTA services till the time the entire transport is by road and the GTA issues a consignment note.

- The Swachh Bharat Cess levy came into effect on 15 November 2015.
- The effective rate of the Swachh Bharat Cess is 0.5% of the value of taxable services. The Swachh Bharat Cess is not applicable on services that are exempted from service tax.
- Reverse charge mechanism for the collection of service tax is applicable to the collection of Swachh Bharat Cess.
- Persons providing services of air travel agents, life insurers, purchasing or selling foreign exchange, or a distributor or selling agent of lottery, for which the service tax rules provide for an alternate mechanism to compute service tax liability, can compute and pay Swachh Bharat Cess using the amount payable as service tax × 0.5/14.
- The Central Government has issued instructions in order to reduce Government litigation by providing the revised monetary limits as mentioned in the table below, for filing appeals by the department before the Tribunal Court, High Court and Supreme Court.

S/N	Appellate forum	Monetary limit
1.	CESTAT	10,00,000/-
2.	High Court	15,00,000/-
3.	Supreme Court	25,00,000/-

Service Tax Case Laws

- In the case of Commissioner of Service Tax vs. Vijay Television P Ltd (TS-565-HC-2015(MAD)), the Madras High Court held that the findings of facts by the Tribunal, which is the final fact-finding authority, could not be overturned by the High Court merely based on a plea made in appeal, without any grounds being advanced by the Department to substantiate the same.
- In Kingfisher Airlines Limited, Jet Airways Limited vs. CST (2015-TIOL-2329-CESTAT-MUM), the tribunal held that excess baggage charges collected by the airlines were an integral part of the main service (i.e. service of transportation of passengers by air) and therefore could not be classified as services of transportation of goods by air.
- In Tata Consultancy Services Limited vs. CST, Mumbai (2015-TIOL-2370-CESTAT-MUM), the Tribunal held that intellectual property rights that were not covered by the Indian laws would not be covered under the taxable service category of "Intellectual Property Right services". Moreover, the phrase "law for the time being in force" in the definition of "intellectual property right" implied only such laws as were applicable in India. In the present case, the appellant was paying a royalty for technical know-how, which was not covered under any Indian law. Hence such royalty was not liable to service tax as an intellectual property right.
- In International Overseas Services vs. CST, Mumbai (2015-TIOL-2331-CESTAT-MUM), the Tribunal held that manpower recruitment services provided to foreign clients, involving identifying, shortlisting and confirming the employment of Indian personnel for working outside India, would qualify as an export of services and would not be taxable in India.

For more information, please contact:

Anita Rastogi
anita.rastogi@in.pwc.com
+91 124 330 6531

Japan

Amendment of the in or out-of-scope criteria for certain B2B electronically supplied services ("ESS")

B2B ESS necessary for the transfer of assets, etc. outside of Japan which are among the B2B ESS received by an offshore branch office, etc. of a domestic entrepreneur on or after 1 January 2017 are excluded from the scope of Japanese Consumption Tax ("JCT") as an offshore transaction. For example, the out-of-scope transaction includes a case where the offshore branch office of a Japanese corporation is the recipient of such service and such service does not contribute to any domestic sales in Japan.

Also, B2B ESS necessary for the transfer of assets, etc. in Japan which are among the B2B ESS received by a Permanent Establishment in Japan of an Offshore Business Person on or after 1 January 2017 are included in the taxable scope of JCT as a domestic transaction. For example, a taxable in-scope transaction includes a case where a Japan branch office of a foreign corporation is the recipient of such service.

Restriction on JCT holiday system and simplified taxation system after acquisition of high-priced asset

1. If a "high-priced asset" (e.g. inventory or a "fixed asset subject to adjustment" at a per unit price of 10 million yen or more exclusive of JCT) is acquired in Japan by a taxable enterprise on or after 1 April 2016 during a tax period when the simplified taxation system is not applied, the JCT holiday system and simplified taxation system cannot be applied until the tax period containing the date 3 years after the start date of the tax period when it was acquired.

   However, the above does not apply if a high-priced asset is acquired on or after 1 April 2016 based on the contract concluded on or before 31 December 2015.

2. If an asset with a construction cost of 10 million yen or more exclusive of JCT is constructed by oneself, the treatment stated above is applied until the tax period containing the date 3 years after the start date of the tax period when the construction was completed.

Reduced Rate System

A Reduced Rate System will be introduced from 1 April 2017 and a Qualified Invoice Archiving System ("Invoice System") as an input tax credit method will also be introduced from 1 April 2021.

The taxable transfer of assets, etc. to which the reduced rate of 8% is applied from 1 April 2017 ("Taxable Sales at Reduced Rate") is as follows:

1. Sale of food and beverage (except for the supply of meals rendered at a location having certain food and beverage facilities by a business person engaged in the restaurant business, coffee lounge business, and other meals supply business under the Food Sanitation Act).

   The reduced rate of 8% is applied to food and beverage which are withdrawn from a bonded area on or after 1 April 2017.

2. The sale of a newspaper under a periodical subscription contract (limited to a newspaper with a regular title that publishes general social facts about politics, the economy, society, culture, etc. which is published at least twice a week).

For more information, please contact:

Takashi Murakami
takashi.murakami@jp.pwc.com
+81 (0)80 3592 6121

Kotaku Kimu
kotaku.kimu@jp.pwc.com
+81 3 5251 2713

Malaysia

Changes to GST legislation

The legislation required to effect the proposed changes announced in the 2016 Budget Speech have been gazetted. The following changes take effect from 1 January 2016:

1. Imported services

The time of supply for imported services has been amended to the earlier of the following:

(a) Date payment is made; or
(b) Date invoice is issued by the overseas service supplier.

The claim of input tax for imported services is also amended to follow the time of supply of the imported services.

2. Late payment penalties

The penalty for late payment of tax has been amended to start from 5% of tax payable and increase 10% for each 30-day period that the tax is outstanding up to a maximum of 25% of tax payable.

Key GST decisions

The Royal Malaysian Customs Department ("RMCD") has issued practice notes on the application of GST rules on the following matters.

1. Claim of bad debt relief

The RMCD has imposed an additional condition that the supply must be made by a GST-registered person to another GST-registered person in order to claim bad debt relief.

2. Voluntary registration for pre-commencement of business

The RMCD will only allow voluntary registration prior to the commencement of business if the first taxable supply is made within 12 months from the date of application.

3. Tax invoice for claim of input tax

If the input tax is not claimed in the taxable period in which the registered person holds the tax invoice, the RMCD will allow the input tax to be claimed on the earlier of the following:

(a) Date or time of posting the tax invoice into the accounts payable of the business; or
(b) One year from the date he holds the tax invoice.

For more information, please contact:

Raja Kumaran
raja.kumaran@my.pwc.com
+60 3 2173 1701

New Zealand

GST law reform on offshore online purchases

The November Taxation Bill (released on 16 November 2015) introduced draft law that will impose GST on digital products (e.g. music, movie and game downloads) sold by offshore sellers, and other services (e.g. webinars, e-learning, publishing and consultancy) purchased online from offshore sellers by New Zealand private consumers. The new law will require the offshore seller to register and pay GST from 1 October 2016. The proposals preclude recovery of any New Zealand GST costs incurred by the supplier i.e. it will be a pay only system.

In some situations, an "electronic marketplace" or intermediary will be required to register instead of the principal offshore seller.

In relation to imported goods, the New Zealand Government has indicated that various issues exist in relation to devising an effective solution for import of low value goods (covered by the current so-called $400 threshold or the minimum duties/taxes $60 concession). A consultation document is expected by 1 April 2016.

For more information, please contact:

Eugen Trombitas
eugen.x.trombitas@nz.pwc.com
+64 9 355 8686

Gary O'Neill
gary.oneill@nz.pwc.com
+64 9 355 8432

Ian Rowe
ian.rowe@nz.pwc.com
+64 4 462 7274

Philippines

Circular to reiterate the required information on receipts, invoices and other commercial invoices

The Bureau of Internal Revenue issued a Circular to reiterate the required information that should be reflected on receipts, invoices and other commercial invoices generated from Cash Register Machines ("CRM"), Point-of-Sale ("POS") machines or software for VAT receipts/ invoices purposes.

The salient provisions according to the Circular are as follows:

1. For sales amounting to Php1,000 or more and made to a VAT-registered person, the VAT receipts/invoices must contain the client, purchaser or customer information such as name, address, Taxpayer Identification Number (TIN) and Business style, if any.

2. The above information must be reflected on receipts/invoices generated from CRM/POS machines. If the CRM/POS machine is incapable of showing such requirements, a manually pre-printed receipt/invoice with approved Authority to Print (ATP) must be issued to the client.

3. Any purchase of goods/services with receipts/ invoices generated from CRM/POS/software are mandated to show the said requisites for the valid claim of input tax credit by VAT-registered taxpayers.

4. Failure to comply with the said requirements shall be subject to corresponding penalties pursuant to existing revenue issuances.

Amending Revenue Regulations (RR) on the sale, importation or lease of passenger or cargo vessels and aircrafts

RR No. 16-2005 was issued to amend the Consolidated VAT Regulations.

The salient provisions of the regulations are as follows:

1. The transport of passengers by international carriers doing business in the Philippines shall be exempt from VAT, pursuant to Section 109(1)(S) of the Tax Code. The transport of cargo by international carriers doing business in the Philippines shall be exempt from VAT pursuant to Sections 109(1)(E) of the Tax Code as it is subject to Common Carrier's Tax under Section 118 of the same code. International carriers exempt under Sections 109(1)(S) and 109(1)(E) of the Tax Code shall not be allowed to register for VAT purposes.

2. The following are no longer VAT-exempt:

   (a) Importation of life-saving equipment, safety and rescue equipment and communication and navigational safety equipment, steel plates and other metal plates including marine-grade aluminium plates, used for shipping transport operations; and

   (b) Importation of capital equipment, machinery, spare parts, life-saving and navigational equipment, steel plates and other metal plates including marine-grade aluminium plates to be used in the construction, repair, renovation, or alteration of any merchant marine vessel operated or to be operated in the domestic trade.

3. The amended Section 4.109-1(B)(1)(t) of RR No. 16-2005 now refers to VAT-exempt sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations.

4. The exemption from VAT on the importation and local purchase of passenger and/or cargo vessels shall be subject to the requirements on restriction on vessel importation and mandatory vessel retirement program of the Maritime Industry Authority.

For more information, please contact:

Malou P. Lim
malou.p.lim@ph.pwc.com
+63 2 459 2016

Singapore

Input tax claims by local beneficiary

Under current GST rules, services rendered to an overseas person but directly benefits a local person has to be subject to the standard rate of 7% GST. As an administrative concession, the local beneficiary can seek prior approval from the Inland Revenue Authority of Singapore ("IRAS") to claim the GST charged by the local supplier to the overseas customer as its input tax credit, subject to conditions.

The requirement to seek prior approval from the IRAS has now been removed. Local beneficiaries has to ensure that it satisfies all the prescribed conditions before making the input tax claim in its GST returns.

Expenses incurred for the payment of dividends to shareholders

The IRAS has clarified that expenses incurred for the payment of dividends to the business shareholders are to be considered as incurred for the overall running of the business and are not directly attributable to any supply made. Hence, such GST incurred should be treated as residual in nature and is subject to apportionment.

GST treatment of transactions in the bunkering industry

The IRAS has provided clarification on some common transactions pertaining to the bunkering industry.

1. *Loan of fuel*

   The IRAS has clarified that the loan of fuel will not attract GST if no consideration is received. However, if the lender treats the fuel on loan as sold to the borrower (due to changes in the circumstances), GST is chargeable on the sale. The borrower who purchases fuel to be returned to the lender is allowed to claim the GST incurred as an input tax credit.

2. *Transportation of fuel*

   The IRAS has clarified that the transportation of fuel (carried in a qualifying ship) in the following scenarios would qualify for zero-rating:

   – From local oil terminal to ships anchored at local anchorage
   – From local oil terminal to another local oil terminal

For more information, please contact:

Koh Soo How
soo.how.koh@sg.pwc.com
+65 6236 3600

Weijie Lin
Weijie.lin@sg.pwc.com
+65 6236 7481

South Korea

Application of zero-rated VAT for professional service and business support services on a reciprocal basis

According to the VAT Law, zero-rated VAT is available on the supply of certain services by a taxpayer if they are provided to a Korean non-resident or foreign enterprise having no permanent establishment ("PE") in Korea and the taxpayer earns foreign currency consideration for such supplies.

However, it is proposed that in the case of professional services and business support services supplied to the Korean non-resident or foreign enterprise not having a PE in Korea, zero-rated VAT will apply only if the foreign country where the non-resident resides or foreign enterprise is established gives similar VAT treatment (including VAT exemption) on the supply of those services by a Korean resident (i.e. zero-rated VAT treatment on a reciprocal basis). Otherwise, a 10% VAT charge will apply.

The VAT Law change is proposed to give equal VAT treatment between the domestic resident or company receiving professional services and business support services and a non-resident or foreign company receiving those services in light of the fact that those services in nature are consumed in Korea.

Professional services include legal services (rendered by lawyers, patent attorney, and judicial scrivener), accounting & tax services, advertising, market survey and management consulting services. Business support services include human resources outsourcing and activities of employment placement agencies, office support services, etc. The proposed change will apply to professional services and business support services supplied on or after 1 July 2016.

Import VAT duty deferred until the filing of VAT with the tax office

When raw materials are imported into Korea, the VAT Law requires a taxpayer to pay the 10% import VAT and appropriate duties at the time of importation.

Under a proposed amendment, the VAT Law will offer a VAT deferment scheme that would permit importers to defer the import VAT payment until the filing of the VAT return with the tax office. According to the proposed rules, the scheme will be offered if the following conditions are met:

- The importer is a small and medium-sized company primarily engaged in the manufacturing business;
- The value of exports represents at least 30% of the total value of supplies during the immediate preceding year; and
- The importer has been in operation for at least three consecutive years and must ensure that there are no records of failing to pay taxes on time for at least two years out of their operation period.

The proposed scheme will only be available with respect to imported raw materials and goods which should be directly used for the importer's business. Importers will be required to file an application with customs offices to enjoy the scheme. If approved, the scheme will cover one year of the import VAT on imported raw materials. The proposed scheme will be available for raw materials imported on or after 1 July 2016.

For more information, please contact:

Dong-Keon (D.K.) Lee
dklee@samil.com
+82 2 709 0561

Taiwan

Adjustment of non-deductible input VAT ratio by business entities with dividend income

Business entities who receive dividend income (e.g. domestic or foreign paid cash dividends, share dividends, and cash distributed from capital reserve which does not involve capital contributed by shareholders) from their investment in domestic or foreign enterprises are required to report the dividend income as VAT exempt sales in the last VAT return of the year.

Where a dual-status business entity has complete bookkeeping records that clearly identify the actual use of the goods or services purchased or imported, it may apply the direct deduction method for computing input VAT that may be deductible from output VAT based on the actual use of goods or services purchased.

Where a dual-status business entity is also engaged in investment activities and it does not apply the direct deduction method, it should apply the proportionate deduction method, and adjust the VAT due based on the non-deductible input VAT ratio to file the VAT return and pay VAT due.

For more information, please contact:

Lily Hsu
Lily.hsu@tw.pwc.com
+886 2 27296666 Ext. 26207

Li-Li Chou
li-li.chou@tw.pwc.com
+886-2-27296666 Ext. 2368

Vietnam

VAT for staff welfare expenses

Expenses for staff welfare have been deductible for Corporate Income Tax ("CIT") purposes since 2014. However, the treatment of input VAT on such expenses has not been entirely clear and subject to different interpretations. Some provincial tax authorities have issued official letters stating that input VAT in relation to staff welfare expenses is creditable, while other tax authorities do not share the same view.

On 29 September 2015, the General Department of Taxation confirmed that input VAT corresponding to the portion of staff welfare expenses which is CIT deductible, is also creditable. This is provided that the other general conditions for claiming input VAT credits are met.

For more information, please contact:

Richard J Irwin
r.j.irwin@vn.pwc.com
+84 (8) 3 823 0796

David Fitzgerald
david.fitzgerald@vn.pwc.com
+84 8 3824 0116

Contact details

Australia
Peter Konidaris, Partner
peter.konidaris@au.pwc.com
Tel: +61 3 8603 1168

Cambodia, Laos
Heng Thy, Partner
heng.thy@kh.pwc.com
T: +855 (23) 860 606 ext: 1052

China
Alan Wu, Partner
alan.wu@cn.pwc.com
Tel: +86 10 6533 2889

India
Anita Rastogi, Partner
anita.rastogi@in.pwc.com
Tel: +91 124 330 6531

Indonesia
Ali Widodo, Partner
ali.widodo@id.pwc.com
Tel: +62 21 52890623

Abdullah Azis, Associate Director
abdullah.azis@id.pwc.com
Tel: +62 21 5289 0601

Japan
Takashi Murakami, Partner
takashi.murakami@jp.pwc.com
Tel: +81 (0)80 3592 6121

Kotaku Kimu, Director
kotaku.kimu@jp.pwc.com
Tel: +81 3 5251 2713

Malaysia
Raja Kumaran, Executive Director
raja.kumaran@my.pwc.com
Tel: +60 3 2173 1701

New Zealand
Eugen Trombitas, Partner
eugen.x.trombitas@nz.pwc.com
Tel: +64 9 355 8686

Gary O'Neill, Director
gary.oneill@nz.pwc.com
Tel: +64 9 355 8432

Ian Rowe, Director
ian.rowe@nz.pwc.com
Tel: +64 4 462 7274

Philippines
Malou P. Lim, Partner
malou.p.lim@ph.pwc.com
Tel: +63 2 459 2016

Singapore
Koh Soo How, Partner
soo.how.koh@sg.pwc.com
Tel: +65 6236 3600

Weijie Lin, Senior Manager
weijie.lin@sg.pwc.com
Tel: +65 6236 7481

South Korea
Dong-Keon (D.K.) Lee, Partner
dklee@samil.com
Tel: +82 2 709 0561

Sri Lanka
Hiranthi Ratnayake, Director
hiranthi.c.ratnayake@lk.pwc.com
Tel: +94 11 4719838

Taiwan
Lily Hsu, Partner
lily.hsu@tw.pwc.com
Tel: +886 2 2729 6666 Ext. 26207

Thailand
Somboon Weerawutiwong, Partner
somboon.weerawutiwong@th.pwc.com
Tel: +662 344 1000 Ext. 1247

Vietnam
Richard J. Irwin, Partner
r.j.irwin@vn.pwc.com
Tel: +84 8 3823 0796

David Fitzgerald, Partner
david.fitzgerald@vn.pwc.com
Tel: +84 8 3824 0116

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