

InTouch

with indirect tax news



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Welcome to issue 04/16 of InTouch* which covers developments in VAT/GST in Asia Pacific during the period October 2016 to December 2016.

Please feel free to reach out to any of the PwC contacts on the back of this issue if you have any questions on the news items.

Australia

GST on import of low value goods

On 16 February 2017, the Australian Government introduced the Treasury Laws Amendment (GST Low Value Goods) Bill 2017 (Low Value Goods Bill) into Parliament. The Bill intends to apply GST on the sale of low value goods (AUD 1,000 and under) into Australia from 1 July 2017.

The Bill is expected to be passed by Parliament imminently and will require non-resident retailers and platforms to register and account for GST on sales of goods under a “vendor registration model”.

For more information, please contact:

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

China

Clarification of B2V related industry issues

Since the B2V Pilot Programme was expanded to cover the construction, real estate, financial services and consumer services on 1 May 2016, the Ministry of Finance (“MOF”) and the State Administration of Taxation (“SAT”) have released a series of follow-up circulars to clarify the relevant industry issues under the B2V Pilot Programme.

In the fourth quarter of 2016, the MOF and SAT released Circular 140 and Public Notice 69 to clarify a few industry issues, which include the following:

- Simplifying documentation requirements for record-filing of VAT exemption for construction services and international transport services;
- Clarifying the nature of non-principal-protected income of financial products to be interest income and not subject to VAT;
- Expanding the deduction scope of qualified real-estate development enterprises in computing the sales amount for VAT purpose; and

- Confirming the VAT category and tax rate of selling takeaway food.

Circular 140 also stipulated the custodian of asset management products to be the VAT taxpayer in relation to the underlying investment income of the products. However, the investment income is not income of the custodian but that of the asset management products. This is for the purpose of ensuring that VAT is collected on such investment income as there is no VAT registration for these asset management products.

For more information, please contact:

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

India

Notifications/Circulars for VAT

Rajasthan

- Rajasthan VAT authorities issued an order specifying the criteria for selection of audit.

Rajasthan

- The amnesty scheme for Entry Tax – 2017 has been introduced with effect from 1 January 2017 and is valid until 28 February 2017 for dealers or eligible prescribed persons to pay tax on waiving interest and penalty to certain extent subject to prescribed conditions.

Uttarkhand

- With effect from 4 October 2016, an additional tax of 1% has been introduced for goods covered under the residual rate of tax.

VAT case laws

- The majority view of the 9-Judges Supreme Court Bench decision in Jindal Stainless Ltd [TS-455-SC-2016-VAT] upheld the validity of Entry Tax imposed by the States. The Bench held that taxes simpliciter are not within contemplation of Part XIII of the Constitution dealing with Freedom of Trade, Commerce & Intercourse, ruling that the word “free” used in Article 301 does not mean “free from taxation”. The

Supreme Court observed that only taxes that are discriminatory in nature are hit by Article 304(a) and the levy of a non-discriminatory tax would not fall foul of Article 301. The Supreme Court also stated that Article 304(a) and Article 304(b) have to be read disjunctively. The majority view also rejected the “compensatory tax” theory propounded by a 5-Judges and 7-Judges bench in Atiabari Tea Co. Ltd and Automobile Transport respectively, holding that compensatory tax has no juristic basis.

- The Gujarat High Court case of Flipkart Internet Pvt Ltd [TS-540-HC-2016(GUJ)-VAT] upheld the constitutional validity of the levy of Entry Tax on goods purchased by individual consumers in the State through e-commerce for personal use and consumption, pursuant to the 9-Judges Apex Court decision in Jindal Stainless Ltd.
- The Madras High Court in the case of Ganesh Associates Private Limited v The Assistant Commissioner (CT) [2016-TIOL-2569-HC-MAD-CT], relying on the Supreme Court decision in the case of Vipro Foundry Engineers Limited [81 STC 169], has held that the authorities can accept the C Forms even after completion of an assessment on sufficient grounds. The High Court directed the dealer to procure the C Forms within one week for which the authorities shall revise the assessment order.

- The Supreme Court in the case of Challenger Computer Limited [TS-476-SC-2016-VAT], rejected the Revenue Special Leave Petition on grounds of delay in filing as well as on merit, thereby affirming the High Court decision on the reversibility/reduction of input tax credit (“ITC”) by the buyer upon receipt of post-sale discount/incentive from the seller, under Delhi VAT law. The High Court had quashed the Tribunal conclusion that the issuance of credit notes subsequent to a sale reduces the sale price, which has an impact of increasing the purchase price in the invoice and ITC claimed, thus violating DVAT scheme.

Notifications/Circulars for Service Tax

- The following are changes in service tax treatment (B2B and B2C) of online information and database retrieval services (“OIDR”)/cloud services:
 - The scope of OIDR has expanded to cover a wide array of content and services that are provided over the Internet or any electronic network and includes cloud services, supply of e-books, music and other entertainment over the Internet.
 - The place of provision of OIDR services has changed from “location of service provider” to “location of service recipient”.

- In the case of B2B OIDR services received from outside India, the recipient (who is already registered under the service tax law in India) has to pay service tax on a reverse charge basis.
- In the case of B2C OIDR services received from outside India, the service provider has to obtain registration, pay service tax and comply with other provisions (including issuance of invoice) of the law. However, no credit of input tax is available to such overseas service providers.
- For B2C OIDR services to be taxable in the hands of the service provider, the services need to be provided to a “non-assessee online recipient”, which covers not only individuals but also the government, local authority or a government authority located in India and receiving OIDR services.
- An intermediary or marketplace that provides the applications/electronic services through its website would be deemed to be providing these services to the final customer if either of the following happens: (i) the invoice is issued by the intermediary, (ii) payment is collected by the intermediary, (iii) the general terms and conditions of the service is set by the intermediary or (iv) the intermediary authorises the delivery of services.

- “Online information/data retrieval services” are excluded from “telecommunication services” under the Place of Provision rules of Services, 2012.
- No digital signature is required for invoicing online B2C information and database access or retrieval services by an overseas provider till end January.

Service Tax Case Laws

- The Supreme Court in the case of Gujarat State Fertilizers & Chemicals Ltd [TS-490-SC-2016-ST] held the sharing of expenses between Public Sector Undertakings (“PSUs”) of the State of Gujarat towards incineration and maintenance of storage/handling tank installed for receiving Hydro Cynic Acid (“HCN”), does not constitute a “service”. Further, it has been noted that HCN received from Reliance Industries Ltd. through a common pipeline is shared by the PSUs in 60:40 ratio, and expenditure towards handling facilities installed at one of the PSU’s premises is shared equally between them. In this regard, the Supreme Court held that the handling portion and maintenance, including incineration facilities, is in nature a joint venture and the parties have simply agreed to share the expenditure. Hence, it cannot be treated as a common “service” rendered by one PSU to another.

- The Kerala High Court in the case of Kerala Classified Hotels and Resorts Association & Others [TS-469-HC-2016(KER)-ST] allowed writ petition challenging the provisions of Section 66E(i) r/w Section 65B(22) Section 65B(44) of Finance Act, inasmuch as the service provided by a restaurant, eating joint or mess is taxed in relation to the serving of food & beverages, having air conditioning or central air heating in any part of the establishment at any time during the financial year, as a “Declared Service”.

For more information, please contact:

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

Japan

Diet passed postponement of rate hike and invoicing system by 2.5 years

On 18 November 2016, a proposal for the following amendment to the Japanese Consumption Tax (“JCT”) was approved at an extraordinary Diet session of the Upper House (having already been approved at the Lower House):

- 1) The JCT rate increase to 10% and introduction of the reduced rate will be postponed by 2.5 years to 1 October 2019.
- 2) The introduction of the invoicing system will also be postponed by 2.5 years to 1 October 2023. In this respect, the registration system for the Qualified Invoice Issuer will start from 1 October 2023 but an application for registration can be filed on or after 1 October 2021.
- 3) The following transitional measures will be given to small and medium-size taxpayers until 30 September 2023, but will no longer be given to large scale taxpayers whose taxable sales during the base period exceed 50 million yen.
 - Transitional measure for the simple calculation of the output JCT on sales for a business person having difficulty in tracking the sales that are subject to each different tax rate; and
- 4) Transitional measure for taxable purchases from tax-exempt enterprises etc. will also be postponed by 2.5 years as follows:
 - Transitional measure for the simple calculation of the input JCT on purchases for a business person having difficulty in tracking the purchases that are subject to each different tax rate.
 - If a business person includes a note “this transitional measure is applied” on its accounting books for taxable purchases in Japan from tax-exempt enterprises etc. during the period 1 October 2023 to 30 September 2029 and other conditions are satisfied, the amount calculated by multiplying the following ratio to the input JCT equivalent on the payment for such taxable purchase will be credited as the input tax
 - 80% for 3 years from 1 October 2023 to 30 September 2026; and
 - 50% for 3 years from 1 October 2026 to 30 September 2029.

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

Key changes to GST legislation

Prior to 1 November 2016, the supply or importation of the following goods to or into a Designated Area (“DA”) can be zero-rated:

- Wine, spirit, beer and malt liquor; and
- Tobacco and tobacco products.

With effect from 1 November 2016, the supply or importation of the above goods to or into a DA is subject to GST. However, relief from payment of GST for the supply or importation of the above goods can be granted to any person who is licensed to operate a duty free shop, a licensed warehouse, a public house or a beer house in a DA.

The following changes proposed in the 2017 Budget take effect from 1 January 2017.

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 received from the overseas service supplier.

2. Registration

The calculation of the total value of taxable supplies for the purpose of registration has been amended to include the sale of capital assets (unless it is in respect of cessation of business) but exclude the supply of goods between free zones.

3. Late payment penalties

The penalty for late payment of GST has been amended to start from 10% of GST unpaid and increase by 15% for each 30-day period that the GST is outstanding up to a maximum of 40% of the GST unpaid.

4. Free Zone (“FZ”)

The GST Act no longer distinguishes between a Free Industrial Zone (“FIZ”) and a Free Commercial Zone (“FCZ”). For GST purposes, the FIZ and FCZ are now known as FZ. The following are key changes to the GST treatment for FZ:

- (a) No GST shall be charged for any supply of goods within an FZ or between FZs; and
- (b) The GST on the supply of goods from an FZ to a DA is suspended.

However, the supply of wine, spirit, beer, malt liquor, tobacco and tobacco products within or between FZs is excluded from the above special treatment and is subject to GST at the standard rate of 6%.

5. Designated Area

The following are key changes to GST treatment for DA:

- (a) GST is payable on the removal of goods out from a DA except for exports.
- (b) GST on the supply of goods from a DA to an FZ or a warehouse under the Warehousing Scheme is suspended.

6. Warehousing Scheme

The following are key changes to the GST treatment for Warehousing Scheme:

- (a) The Minister of Finance can now prescribe a list of goods to be excluded from the Warehousing Scheme.
- (b) No GST is chargeable for a supply of goods from a warehouse under the Warehousing Scheme to an FZ or a DA.

7. *Surrender of land to authorities*

The supply of land by a developer or land owner to the government, local authority or any other person in compliance with the requirement by the government or local authority for the purpose of providing public amenities and public utilities for no consideration or for a nominal value is no longer relieved from payment of GST but instead is treated as neither a supply of goods nor supply of services.

However, a transitional provision is in place to allow the developer or land owner to claim any input tax incurred in relation to the supply of land provided certain conditions are met and certain approvals relating to the development are obtained before 1 January 2017.

8. *Relief for disabled person and private charitable entity*

A disabled person with a valid disability card can now enjoy relief from payment of GST for a direct purchase of goods solely used by himself provided that the goods are approved by the Director General of Customs instead of purchasing the goods via a private charitable entity.

A private charitable entity no longer enjoys relief from payment of GST for goods purchased and used for carrying out its charitable activities.

9. *Supply by joint management body (“JMB”) or management corporation (“MC”)*

The recovery of group insurance cost, assessment tax and quit rent by JMB or MC from the owners of a building for residential purpose held under a strata title is now treated as an exempt supply.

For more information, please contact:

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

New Zealand

Key GST changes

The following key changes will take effect from 1 April 2017.

1. Businesses undertaking a capital raising by way of share or bond issue will be able to deduct the GST on the transaction costs. The issue of the securities will be treated as zero-rated i.e. taxable and not exempt. If the funds raised are used to make exempt supplies then a portion of the deduction cannot be claimed.
2. Services performed for non-residents of New Zealand in connection with land will not be zero-rated and will be subject to GST at 15%. The services include legal services, engineering and property intermediation in relation to land.

For more information, please contact:

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

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

Singapore

Updated guidelines on fringe benefits

The Inland Revenue Authority of Singapore (“IRAS”) has issued updated guidelines on when a GST-registered person is able to claim the GST incurred on fringe benefits and whether a GST-registered person is required to account for GST when these benefits are given free to employees.

The updated guidelines are set out in the 2nd edition of the e-tax guide: “GST: Fringe Benefits” which was published on 6 January 2017. The revised GST treatment and new administrative concessions apply retrospectively with effect from 16 May 2016.

For more information, please contact:

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

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

South Korea

Approval of 2016 proposed amendments to VAT law

The National Assembly approved the bills to amend 12 Korean tax laws including the VAT law with a few changes from the tax reform proposals announced by the Ministry of Strategy and Finance last July. In a subsequent move, the government announced the bills to amend the Presidential Decrees of tax laws in order to set forth details delegated by the amended tax laws which were proclaimed on 20 December 2016. The bills to amend the Presidential Decrees are expected to be proclaimed the beginning of February 2017.

Application of zero-rated VAT to brokerage business

According to existing VAT law, zero-rated VAT applies to the provision of certain services by a taxpayer if they are provided to a Korean non-resident or foreign enterprise having no permanent establishment in Korea and the taxpayer earns foreign currency consideration for such supplies. They include professional, scientific and technical activities, business support services and a limited scope of brokerage business (i.e. brokerage of variety of goods). With respect to the brokerage business, the applicable scope will be expanded to include the brokerage business that deals with machinery equipment and other goods.

Change in the taxation method for mileage payment

Currently, if mileage and points obtained by a customer from the first supply transaction with a taxpayer is used for the customer’s purchase of other goods in the second transaction with the taxpayer, such mileage and points will be in the taxpayer’s VAT base. Under the amendment, it will be excluded from the VAT base. The amendment is in response to decisions of the Supreme Court and similar cases of foreign countries.

However, there is no change to the taxation method of payment by way of any other mileage and points which will continue to be included in the VAT base. In the case of payment by way of mileage and points earned with a credit card company in a transaction with a taxpayer, the amount of mileage payment to be reimbursed by the credit card company to the taxpayer will continue to be included in the taxpayer’s VAT base. Where no reimbursement is made by a credit card company or the reimbursement is deemed to be made in an unfair trade manner between related parties, it will be included in the VAT base based on the fair market price.

The change will apply to the supply or the receipt occurring on or after 1 April 2017.

Additional reasons for the issuance of revised VAT invoices on imports

The head of a customs office may issue revised VAT invoices on imports if there are justifiable reasons as prescribed in Article 72 of the Presidential Decree of the VAT law. Under the amendment, revised VAT invoices on imports may be issued for the following additional cases:

- A revised return is filed or a correction is made in respect of import duties before the clearance of import declaration is completed when the duty payment is made in advance of the clearance of import declaration.
- A revised return is filed or a correction is made in respect of already-paid import duties when the revision or correction is made in response to the results of an advance customs valuation arrangement.
- There is an amount to be added or subtracted from the original duty amount which is due to errors made in respect of exempt goods or exemption rates.

For more information, please contact:

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

Taiwan

Foreign corporate sellers of B2C services to Taiwan required to register for VAT purposes in Taiwan

Under current regulations, payment of VAT on the provision of services sold by foreign companies via the Internet to individual Taiwanese customers is the obligation of the individual Taiwanese customer for purchases of services exceeding TWD 3,000 per transaction. On 28 December 2016, an amendment to the Business Tax Act¹ concerning sales of cross-border B2C services was announced by the President, where the obligation to report and pay VAT is switched to foreign companies that provide services via the Internet to individual Taiwanese customers and the foreign companies would be required to register for VAT purposes in Taiwan and pay VAT.

Despite the promulgation of the aforesaid amendment, many of the key aspects (e.g. VAT registration threshold, definition of a foreign taxpayer etc.) of the new VAT mechanism have not been announced by the tax authority. It is currently anticipated that the specifics of this new VAT mechanism will be further announced by the tax authority sometime mid-2017.

Afternote

The Ministry of Finance has published an advance notice with regards to the threshold for the new VAT mechanism for cross-border sales of B2C services. According to the Notice, foreign enterprises selling electronic services to Taiwan individuals where annual sales exceeds NTD 480,000 would be required to register for VAT purposes in Taiwan and pay VAT.

For more information, please contact:

Li-Li Chou

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

Thailand

7% VAT rate extension

The standard rate of VAT is 10% but the law allows the government to reduce the rate as considered necessary. The reduced rate of 7%, which has been in effect for many years, is currently valid until 30 September 2017.

For more information, please contact:

Somboon Weerawutiwong

Lead Partner
somboon.weerawutiwong@th.pwc.com
Tel: +662 344 1000 Ext. 1247

¹ The Executive Yuan has officially announced that the amended Business Tax Act will come into effect from 1 May 2017.

Contact details

Australia

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

Michelle Tremain, Partner
michelle.tremain@au.pwc.com
Tel: +61 (8) 9238 3403

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

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

Soo How Koh, 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

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

Thailand

Somboon Weerawutiwong, Lead 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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