

InTouch

with indirect tax news



Issue 02/17

Cambodia

- Guidelines on implementing VAT for non-taxable supplies

China

- Simplifying the current VAT rate categories
- VAT treatment of special activities in the construction sector
- VAT treatment of asset management products
- Developments on the administration of VAT invoices

India

- Implementation of GST

Malaysia

- GST (Provision of Information) Regulation 2017
- Relief by Minister of Finance 1/2017

New Zealand

- Launch of “myGST” – Online GST compliance portal

Singapore

- Proposed reverse charge on B2B imported services
- Proposed overseas vendor registration regime

South Korea

- New VAT regime for cross-border B2C electronic service

Welcome to issue 02/17 of InTouch* which covers developments in VAT/GST in Asia Pacific during the period April 2017 to June 2017, including a summary of the India GST rules which are effective from 1 July 2017.

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.

Cambodia

Guidelines on implementing VAT for non-taxable supplies

The Ministry of Economy and Finance has issued Prakas No. 559 to provide guidelines on the implementation of VAT for non-taxable supplies in accordance with Article 57 of the Law on Taxation amended by the Law on Financial Management for 2017.

The Prakas is applicable to self-declaration taxpayers making non-taxable supplies including the following:

- Public postal service;
- Hospitals, clinics, medical and dental services, sale of medical and dental goods incidental to the performance of such services;
- Services of transportation of passengers by a wholly state owned public transportation system;
- Insurance services;
- Primary financial services;
- Importation of materials for personal use that are exempt from customs duties in accordance with the customs provisions;
- Non-profit activities for serving the public interest;
- Educational service;
- Electric power and clean water;
- Unprocessed agricultural products; and
- Solid and liquid waste removal or collection services.

The Prakas defines the term “primary financial services” as the provision of financial services for making profits from the following:

- a) Receiving deposits and providing loans or credit, but does not include fees relating to the provision of the loan or credit;
- b) Issuing an Initial Public Offering, trading of securities or other financial instruments, and clearance and settlement (payment) services in the Cambodian securities market;
- c) Money exchange services;
- d) Financial security services; and
- e) Trade of gold that has not been processed into jewellery.

Based on the above definition, the scope of VAT-exempt supplies for banking and financial institutions is more limited than the current practice.

Other non-taxable supplies defined in the Prakas include the following:

- 1) *Electric power* – refers to the electric power supplied for use in daily living or business activities. Supplies of transmission networks and other survey or measurement instruments are not the supply of electric power.

- 2) *Clean water* – refers to clean water supplied for use in daily living or business activities. The installment of pipes and survey or measurement instruments are not clean water supply.
- 3) *Unprocessed agricultural products* – refers to trees, shells, leaves, flowers, fruits, seeds, roots, rhizomes, or resins of plants derived from locally planted agriculture that are yet to be sliced or broken and have not been processed into final products.
- 4) *Solid and liquid waste* – refers to solid and liquid substances or materials that are no longer useful, not used, or required to be abandoned.

Input tax credit on the import or local purchase of equipment and raw materials for the production and supply of goods or services as mentioned above must comply with Articles 29-41 of the Sub-Decree on VAT.

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China

Simplifying the current VAT rate categories

In April 2017, the Ministry of Finance (“MOF”) and the State Administration of Taxation (“SAT”) jointly issued Caishui [2017] No.37 (Circular 37) to abolish the 13% VAT rate with effect from 1 July 2017 and clarified the VAT policies after the abolishment, including the following:

- Adjusting the scope of goods that are subject to 11% VAT rate to include goods that were subject to 13% VAT rate;
- Clarifying the issues on the input VAT credit for taxpayers purchasing agricultural products; and
- Adjusting the export refund rate for some special goods and providing relevant transitional treatment.

VAT treatment of special activities in the construction sector

In April 2017, the SAT issued Public Notice [2017] No.11 (“PN 11”) to further clarify the VAT treatment of certain special activities in the construction sector during the B2V Pilot Program.

With effect from 1 May 2017, for taxpayers which sell self-produced goods (e.g. prefabricated houses, machines, steel structures etc.) and provide construction or installation services at the same time, the income from the sale of self-produced goods and provision of construction services shall be calculated separately and subject to the respective tax rates or collection rates accordingly.

Particularly, PN11 also clarified the VAT treatment for elevator trading companies:

- Companies which provide installation services together with the sale of elevators can adopt different tax rates for the sale of elevators and installation services.
- The subsequent maintenance services for elevators shall be treated as other modern services and subject to VAT at the rate of 6%.

There are still some unclear issues, for example, whether other self-produced goods that are similar in nature to the above mentioned goods would be also be subject to the PN11 treatment.

VAT treatment of asset management products

In June 2017, the MOF and SAT jointly issued Supplementary Notice (Caishui [2017] No.56, Circular 56) to further clarify the VAT treatment of asset management products in China as follows:

- Taxable activities which occur during the operation period of “asset management products” (as defined in the circular) managed by “asset managers” (as defined in the circular) shall be subject to VAT at the rate of 3% under the simplified VAT calculation method;
- Other asset management activities shall be subject to VAT under the prevailing regulations; and
- The sales amount and VAT taxable amount for the above-mentioned activities have to be separately accounted for in order to use the simplified VAT calculation method.

Circular 56 shall take effect from 1 January 2018. It also clarifies that taxable activities which occurred before the effective date and during the operation period of the asset management products under management by the assets managers are not subject to VAT. If VAT has not been settled, the settlement shall no longer be required. If the taxpayer has already paid the VAT, such amount will be credited against the VAT payable of the following months.

Developments on the administration of VAT invoices

PN11 further clarifies the VAT invoice administrative regulations and simplifies the collection and administration procedure, including:

- Extending the verification period of VAT special invoice and customs import VAT certificate from 180 days to 360 days;
- Extending the deadline of issuing invoices for BT-able activities to 31 December 2017; and
- Simplifying invoice purchase procedures.

In May 2017, the SAT issued the Public Notice [2017] No.16 (“PN 16”) to clarify two matters on the issuance of VAT invoices:

- From 1 July 2017, where an enterprise requests for the issuance of a general VAT invoice, it has to provide its Taxpayer Identification Number or National Social Credit Code to the seller who will use it to fill in the “purchaser identification number” field on the general VAT invoice. Otherwise, the general VAT invoice shall not be considered as a qualified tax voucher.
- The seller has to issue VAT invoices according to the particulars of the transaction and shall not issue VAT invoices with contents not accurately reflecting the particulars of the transaction at the request of the purchaser.

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India

Implementation of GST

The Goods and Services Tax (“GST”) was introduced in India with effect from 1 July 2017. A summary of the salient features of the GST regime is set out below.

1) General information (including tax authority)

Indirect taxes in India now comprise the following:

- Customs Duty
- Central Goods and Services Act (“CGST”)
- State Goods and Services Act (“SGST”)
- Integrated Goods and Services Act (“IGST”)
- Union Territory Goods and Services Act (“UTGST”) introduced in 2017

The tax is administered by Central Board of Excise and Customs (“CBEC”).

2) Scope (including territorial application)

The following indirect taxes are either levied by the Central Government or by the States:

- a) *Customs Duty* – Customs duties or import duties are levied by the Central Government of India under the Customs Act, 1962 and the Customs Tariff Act, 1975 (“CTA”). These duties are imposed on goods imported into India.

- b) *CGST* – A tax on intra-State supply of goods or services or both by the Central Government.
- c) *SGST* – A tax on intra-State supply of goods or services or both by the State Government and Union Territories having State Legislature.
- d) *UTGST* – A tax on intra-State supply of goods or services or both by the Union Territories having no State Legislature.
- e) *IGST* – A tax on inter-State supply of goods or services or both by the Central Government.

3) Rates

The rate structure for goods and services includes 0%, 5%, 12%, 18% and 28%. The residual rate for services is 18% and the standard rate for goods covering the maximum items are 12% and 18%.

From 1 July 2017, a higher rate of 28% is levied on luxury supplies of goods and services under the GST regime. The compensation cess is also levied on certain items including tobacco, aerated drinks, and motor vehicles.

4) Exemptions

From 1 July 2017, supplies liable to the zero rate of GST include milk, food grain, bread, fresh fruits, vegetables, printed books, and picture books.

Exempt supplies include services such as healthcare, education, metro & non air-conditioned train travel.

5) Goods – General (including reverse charge)

“Goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before a supply or under a contract of supply.

The time of supply of goods shall be the earliest of the following dates:

- a) Date of issuance of invoice by the supplier or the last date on which he is required to issue the invoice with respect to the supply; or
- b) Date on which the supplier receives the payment with respect to the supply.

The place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

In certain cases, the place of supply may change. Some of the examples are:

- Goods assembled or installed at site – place of installation or assembly

- Goods supplied on board a conveyance – location at which goods are taken on board
- Imports into India – location of the importer
- Exports from India – location outside India. Hence, no tax is chargeable.

6) Service – General

“Service” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

The time of supply of services shall be the earliest of the following dates:

- a) Date of issuance of invoice by the supplier, if the invoice is issued within 30 days of the provision of service;
- b) Date of receipt of payment; or
- c) Date of provision of service, if the invoice is not issued within 30 days of the provision of service.

In the case of imports, services provided from outside India to a recipient in India would be deemed to be taxable services provided in India, and hence, subject to service tax in the hands of the recipient under the reverse charge mechanism (subject to prescribed conditions).

In the case of exports, tax is not chargeable on the export of services provided the services are exported in accordance with underlying rules.

Alternatively, the service provider could discharge the service tax on exports and claim a rebate of the tax paid. Service providers exporting services outside India are also allowed a refund of GST paid on capital goods and inputs and GST paid on input services used for providing output services.

7) Services – B2B

The place of supply made to a registered dealer shall be the location of such person. The place of supply of services in exception cases is determined based on the type of service provided.

Services provided from outside India to a recipient in India would be subject to the reverse charge mechanism. Additionally for a few specified domestic services, the liability to pay tax has been shifted to the service recipient.

8) Services – B2C

The place of supply shall be:

- The location of the recipient where the address on record exists; or
- The location of the supplier of services in other cases.

The place of supply of services in exception cases is determined based on the type of service provided.

9) Immovable property

The renting of immovable property shall be treated as a supply of services and the place of supply shall be the location of the immovable property.

10) VAT/GST registration – Resident businesses

Every supplier shall be liable to be registered under the GST Act in the state or union territory from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds the following:

- Twenty lakh rupees; or
- Ten lakh rupees if the supply is made from special category States.

11) Procedure of GST Registration

The GST registration application is done online.

Dealers whose turnover is in the range of INR 20 lakhs to INR 75 lakhs have the option to pay GST under the composition scheme where GST is paid at a fixed percentage of their turnover. The percentage ranges from 0.50% to 2.50%, subject to the prescribed terms and conditions.

12) VAT/GST registration - Non-resident businesses

As per the CGST Act, a non-resident taxable person making taxable supplies in India is liable to register under a compulsory basis at least 5 days prior to the commencement of business. There is no threshold limit.

The certificate of registration issued to a casual taxable person or a non-resident taxable person shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier.

13) Fiscal representatives/tax agents

The non-resident business having an office in India is required to appoint a local representative. The local representative may be a local office or an appointed agent. The representative would discharge all tax liabilities on behalf of the principal.

14) Recovery of input tax – Residents

Every registered person shall, subject to conditions, be entitled to take credit of input tax charged on any supply of goods or services or both, which are used or intended to be used in the course or furtherance of business.

Input tax credit shall not be credited in respect of the following:

- Motor vehicles and other conveyances used for making taxable supplies;
- Works contract services when supplied for construction of an immovable property;
- Goods or services or both used for personal consumption; and
- Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under the CGST Act or under the IGST Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Input tax credit cannot be availed after the due date of furnishing of the return for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Input tax credit should be availed within one year from the date of issuance of the tax invoice relating to such supply.

Pre-registration input tax may be credited under certain scenarios.

- A person who has applied for registration within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the Act;

- A person who takes voluntary registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;
- Where any registered person ceases to pay tax under the composition scheme, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax; or
- Where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

15) Recovery of input tax – Non-resident businesses

There is no separate system of claiming or availing of refund for a foreign business or company.

16) Invoices

The supplier's details, customer's details and transaction details are required to be reflected on the invoice.

For an export of goods or services, the invoice shall reflect the statement “supply meant for export on payment of integrated tax” or “supply meant for export under Bond or Letter of Undertaking without payment of Integrated Tax” and shall contain the following details:

- Name and address of recipient;
- Address of delivery; and
- Name of country of destination.

The exchange rate for the determination of the value of taxable goods or services or both shall be the applicable reference rate determined by the Reserve Bank of India on the date of the time of supply.

17) Invoices – General

A person is not required to issue a tax invoice if the value of the goods or services supplied is less than two hundred rupees.

Simplified invoices may be issued in the following circumstances:

- For a bank providing services; or
- Provision of transportation services for passengers

Credit notes may be issued when:

- Taxable value or tax charged is found to exceed the value or tax payable;
- Goods are returned; or
- Supply is found to be deficient.

Debit notes may be issued when the taxable value or tax charged is found to be less than the value or tax payable.

Credit or debit notes issued are required to be linked with the original invoice and issued by 30 September of next financial year.

18) Invoices – Electronic

Electronic invoices which are digitally signed may be issued and electronic records authenticated by digital signatures can be maintained.

19) Invoicing – By parties other than the supplier (including self-billing)

For procurements made from unregistered dealers, a consolidated self-invoice is to be issued by registered recipient if the per day intra-state procurements from unregistered dealers exceeds Rs. 5,000/-.

20) Returns and payment of VAT/GST

- The timelines for filing the return are as follows:
 - *GSTR-1*: Outward supplies made by taxpayer by 10th of the following month.
 - *GSTR-2*: Inward supplies received by a taxpayer by 15th of the following month.
 - *GSTR-3*: Monthly return with details of tax paid by 20th of the following month.
 - *GSTR-9*: Annual Return by 31 December of following financial year.
- The deadline for paying the VAT/GST due is on or before submission of the outward return.

21) Record-keeping and storage

A registered person is required to maintain the following records:

- Invoices
- Bills of supply
- Delivery challans
- Credit notes
- Debit notes
- Receipt vouchers
- Payment vouchers
- Refund vouchers
- Records of production or manufacture of goods
- Records of inward and outward supply of goods or services or both
- Input tax credit availed
- Output tax paid or payable

Records should be kept at the registered office or at a place where the records can be easily retrieved. Copies can be kept outside the country. However, the originals should be kept in India.

22) Penalties

Penalties may be imposed on the following:

- Failure to issue invoice or issuing an incorrect invoice
- Issuing an invoice without a supply
- Collecting an amount as tax but failing to pay to the government

- Fraudulently obtaining refund of tax
- Substituting financial records or producing fake documents
- Failing to obtain registration
- Failing to maintain books of accounts
- Suppressing the turnover to evade tax

Penalty may be reduced or waived only in situations as may be specified on the recommendations of the GST Council.

Every person who is liable to pay tax in accordance with the provisions of the Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed shall be liable to pay interest as per the following rates:

- Interest on delayed payment of taxes – 18%
- Excess claim of credit or excess reduction in output liability – 24%

In specified situations, personal penalties are levied on the representatives of the business if the cause of penalty is due to his neglect or breach of duty.

23) Rulings and administrative decisions

The question on which the advance ruling is sought, shall be in respect of the following:

- Classification of any goods or services;
- Applicability of a notification issued under the provisions of the Act;

- Determination of time and value of supply;
- Admissibility of input tax credit of tax paid or deemed to have been paid;
- Determination of liability to pay tax on any goods or services;
- Whether applicant is required to be registered;
- Whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services.

24) Appeals

Any person aggrieved by any decision or order passed under CGST Act, SGST Act or UTGST Act by an adjudicating authority may appeal to such Appellate Authority. An appeal can be filed within three months from the date of receipt of the order against which an appeal is made.

25) Statute of limitation periods

Refund claim can be filed within a period of two years.

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Malaysia

GST (Provision of Information) Regulation 2017

The GST (Provision of Information) Regulation 2017 came into operation on 1 July 2017. The regulations prescribe that GST registered persons who are in the following businesses are required to provide information on all their supplies made and payments received to the Director General of Customs ("DG"):

Business sector/Industry	Category
Food and beverages	Restaurants
Retail	Hardware, grocery, bookstore and pharmacy
Entertainment	Any business providing services of entertainment

The information will be provided through a device installed on the business electronic machine of the GST registered persons.

To install the device, GST registered persons who are in the above business sectors/industries are required to provide their business particulars to the DG within the stipulated time.

The general penalty for an offence under the above regulations is a fine of not more than MYR30,000 or imprisonment of not more 2 years or both.

Relief by Minister of Finance 1/2017

The Minister of Finance has, with effect from 1 July 2017 and subject to certain conditions, relieved taxable persons from charging GST on the following groups of supplies to an overseas customer who belongs in a country other than Malaysia and who is outside Malaysia at the time the services are performed:

- *Group 1:* Handling and storage services directly in connection with goods for export to the overseas customer.
- *Group 2:* The following services directly in connection with goods for export by a company licensed under section 65A of the Customs Act, 1967 or operating in a free zone to the overseas customer:
 - a) Manufacturing activities;
 - b) Activities in the construction, building and modifications of the ship (including any floating structure) and aircraft;
 - c) Maintenance, repair and overhaul ("MRO") activities of floating structure;

- d) Activities in installation, repair, cleaning, restoration and modification of the goods; and
- e) Blending, homogenizing, heating and other related activities in the oil and gas industry

- *Group 3:* Services which involve research, design and development of a new product or enhancement of an existing product.
- *Group 4:* The following tools or machines and services:
 - a) Highly customised or specialised tools or machines which are used for manufacturing of goods in Malaysia; and
 - b) Services in connection with the highly specialised tools or machines which are used for manufacturing of goods in Malaysia.

For relief under Group 2 and Group 3, approval must first be obtained from the DG by submitting a written application for the relief.

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New Zealand

Launch of “myGST” – Online GST compliance portal

As part of the Business Transformation programme, the Inland Revenue launched “myGST” – a new online portal designed to offer a range of GST compliance services on 7 February 2017. Taxpayers now have the ability to attach documents to their GST returns, correct minor errors after the return has been filed, as well as other improvements to administrative functions.

The Business Transformation is intended to create a tax system that is simpler for taxpayers to use.

The next stage of Business Transformation will involve the streamlining of business income taxes, and is expected to be rolled out from 2017–2019.

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Singapore

In the Singapore Budget 2017 speech, the Minister of Finance announced that the government is studying how GST can apply to digital transactions.

As a follow up, the Inland Revenue Authority of Singapore (“IRAS”) has issued consultation documents in a restricted circulation that considers the following:

- Reverse charge on B2B imported services (including inter-branch and branch-head office charges) received by partial exempt businesses; and
- Overseas vendor registration regime for the taxation of cross-border B2C services and low-value goods.

Proposed reverse charge on B2B imported services

Under the proposed reverse charge mechanism, the recipient of imported services will account for output GST on the imported services as if he were the supplier. The recipient may claim GST as input tax subject to the normal input tax recovery rules.

The proposed rules will be applicable to the following persons:

- Partial exempt GST-registered person and business who receives non-business receipts; and
- Non GST-registered person who will be required to register for GST if the value of imported services exceeds S\$1 million in a year and the person is not entitled to full input tax credit even if he is registered for GST.

Under the proposed rules, all imported services will be subject to the reverse charge, with the following exceptions:

- Services that fall within the description of exempt supplies under the Fourth Schedule to the GST Act; and
- Services that qualify for zero-rating under section 21(3) of the GST Act had the services been made by a taxable person belonging in Singapore.

South Korea

Proposed overseas vendor registration regime

Under the proposed simplified vendor registration regime, an overseas vendor will be required to register for GST to account for GST on cross border B2C supplies of digital services and low-value goods to customers in Singapore. The registration threshold will be set at S\$1 million.

At the moment, there is no timeline stipulated for the proposed rules but an announcement on the implementation date is expected to be made in the next Budget Speech due in February or March 2018.

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Party liable for VAT on the supply of trust assets

The Korean Supreme Court recently changed its opinion regarding the VAT payer of a supply of trust assets. Previously, the settlor or the beneficiary of the sale of trust assets should have been liable for VAT on the supply of trust assets, depending on the circumstances. However, after a recent decision by the Supreme Court, in the case where a trustee supplies goods in the course of managing or disposing of trust assets, the trustee (rather than the settlor or the beneficiary of benefit derived from the sale of trust assets) should be liable for paying the VAT since the trustee transferred the right to use or consume the goods to a transferee via the supply of the goods.

The Supreme Court stated that this conclusion cannot be altered by the facts and circumstances that gains or expenses from the management or sale of the trust assets are ultimately attributable to the settlor or the beneficiary who have no direct legal relationship with a party to the transaction.

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