

# InTouch

with indirect tax news



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Welcome to issue 03/17 of InTouch\* which covers developments in VAT/GST in Asia Pacific during the period July 2017 to September 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

## ***Postponement of imposing VAT on primary financial services***

The General Department of Taxation (“GDT”) has issued Notification No. 11278 postponing VAT implementation on the newly defined “primary financial services” as stated in Article 4, paragraph 2 of Prakas No. 559 dated 25 May 2017 until further notice.

The GDT will work with the private sector to review and clarify the definition of the term “primary financial services” before implementing the VAT.

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# China

## ***Clarification of VAT treatment on various services and other VAT administration matter***

In July 2017, the Ministry of Finance (“MOF”) and the State Administration of Taxation (“SAT”) jointly issued Caishui [2017] No.58 (“Circular 58”) to further clarify certain pilot VAT treatments in the construction, leasing and financial services during the B2V Pilot Program. The VAT treatments stipulated in Circular 58 took effect from 1 July 2017, except for the rules for financial services which will be effective from 1 January 2018. The relevant provisions under Caishui [2016] No.36 will be abolished from 1 July 2017 and 1 January 2018 respectively.

In particular, Circular 58 clarified that a general contractor which provides services for the construction of foundation and main structure shall be subject to the simplified VAT method if the owner purchases all or part of the specific construction materials.

It also further clarified the timing of VAT obligation in relation to prepayment, the payment location and eligible provisional rates for taxpayers providing construction services in China.

Circular 58 specified that the transfer of contracted land to agricultural producers for agricultural production purposes can be exempted from VAT. It also clarified that for financial institutions, the discount and re-discount on notes should be treated as interest income for VAT purposes during the holding period of the notes.

Meanwhile, the SAT issued Public Notice 30 (“PN 30”) on 14 August 2017 to clarify some of the VAT implementation matters regarding the record filing treatment for cross-border taxable activities.

PN 30 also addressed several VAT implementation issues, including the following:

- 1) Input VAT credit treatment for qualified consigned transport services;
- 2) Issuance of VAT invoices for property leasing by individual via real estate agent; and
- 3) Issuance of VAT invoice for discounting and re-discounting business.

# India

## **Improvement of certain matters in export tax refund and exemption treatment**

The SAT issued Public Notice No.35 (“PN 35”) on 13 September 2017, clarifying that from 1 November 2017 (i.e. the effective date of the circular), enterprises providing comprehensive services related to foreign trade can apply for tax refund or exemption on behalf of domestic manufacturing enterprises. Relevant administrative measures including recording filing requirements, documentation requirements and other transitional treatment are also included in the Public Notice.

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## **Notifications/Circulars for IGST**

- Pursuant to Notification No. 02/2017-Integrated Tax, the Principal Commissioner of Central Tax, Bengaluru West is empowered to grant registration in the case of online information and database access or retrieval services provided or agreed to be provided by a person located in a non-taxable territory and received by a non-taxable online recipient.
- Pursuant to Notification No. 10/2017- Integrated Tax (Rate), the categories of services for which integrated tax will be payable under the reverse charge mechanism of the IGST Act was prescribed.
- Pursuant to Notification No. 18/2017-Integrated Tax (Rate), IGST is exempted on the import of services by a unit/developer in a special economic zone (“SEZ”).
- Pursuant to Notification No. 64/2017-Customs, IGST is exempted on the import of goods by a unit/developer in an SEZ.

## **Notifications/Circulars for CGST**

- Notification No. 13/2017 Central Tax (Rate) prescribes the categories of services for which tax will be payable under the reverse charge mechanism of the CGST Act.

- The Central Board of Excise and Customs (“CBEC”) has provided various clarifications relating to the export of goods under a Bond/ Letter of Undertaking for the purpose of uniformity in the implementation of the Act.

## **Notifications/ Circulars for SGST**

### **Maharashtra**

- The Maharashtra Government has announced the particulars to be displayed on the board by registered persons and the penalty for non-compliance under the Maharashtra GST Act read with Rules thereunder and Central laws.
- The Maharashtra Government will be granting a refund of security deposit at the time of Voluntary Registration under the Maharashtra VAT Act in cases of deemed cancelled registrations.

### **Odisha**

- The Odisha Government has amended the services exemption rate notification for a supply of services associated with transit cargo to Nepal & Bhutan (landlocked countries) to nil.

### **West Bengal**

- The Government of West Bengal has amended the definition of goods under

## Case laws

The place of supply shall be:

- The Delhi High Court in Narendra Plastic Private Limited v. Union of India & Ors. in W.P (C) No. 6534/2017 allowed the petitioner to import raw materials without payment of IGST under the valid Advance Authorisations (“AA”) issued to it prior to 1 July 2017, subject to certain conditions. However, the matter is listed for final hearing on 22 February 2018.
- The Delhi High Court in Mohit Minerals Pvt. Ltd. v. Union of India & Anr (W.P (C) No. 7459 of 2017) allowed the petitioner to take credit of the Clean Energy Cess paid on stocks on hand as on 30 June 2017, subject to certain conditions.
- The Karnataka High Court in M.J.S Enterprises and others v. the Controller of Stores & Purchase, KSRTC, Bengaluru and ors dismissed the writ petitions filed by the petitioners (i.e. M.J.S Enterprises and others) for quashing of the tender notifications issued by the respondents (i.e. the Controller of Stores & Purchase, KSRTC, Bengaluru and ors) for e-auction of old/junk buses of KSRTC and declaration of the applicable GST rate on such sale of scrap buses as 18%.

The High Court held that the GST rate indicated in the tender is not a fixed rate of 28%. The tender stipulates a rate “as applicable/28%”. The bar/stroke between “as applicable/28%” indicates the mutually exclusive parts of the said clause. The High Court was of the view that the question in the writ petition with regard to the applicable GST rate can be clarified either by the KSRTC or the Commercial Tax Department and does not require interference of the Court at this stage. The parties may approach KSRTC or the Commercial Tax Department for redressal of the questions raised in the writ petition.

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## Malaysia

### ***Claim of repair cost under warranty from overseas manufacturer***

The Minister of Finance has agreed that with effect from 1 July 2017, repair cost claimed under a warranty by a distributor from an overseas manufacturer is to be treated as a “cost recovery” and therefore not subject to GST provided that an application is made to the Director General (“DG”) of Customs for approval and if certain conditions are met.

### ***Tourism Tax***

The Malaysian Government has implemented the Tourism Tax (“TTx”) with effect from 1 September 2017.

TTx is levied on a tourist staying at any accommodation premises made available by an operator. The operator of the accommodation premises has the duty to collect the TTx from tourists and pay the amount collected to the Royal Malaysian Customs Department (“RMCD”). The operator must register with RMCD to be able to collect the TTx.

The rate of TTx is fixed at MYR10 per room per night. Citizens and permanent residents of Malaysia are exempted from payment of TTx.

# New Zealand

## Proposed tax on digital economy

The DG of Customs has announced that there will be a proposal to amend the current GST legislation in order to tax online services provided by foreign service providers to consumers in Malaysia. No details were provided on the proposed amendment.

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## Compulsory zero-rating rules apply even if statutory notice requirements not met

The Supreme Court has refused the vendor's application to appeal the Court of Appeal's decision in Y&P New Zealand Limited v Wang [2017] NZSC 126.

The court held that the compulsory zero-rating rules ("CZR rules") are paramount and the vendor is entitled to rely on a written statement from the purchaser as to whether the CZR criteria will be satisfied. However, the court also found that the statutory requirement for the purchaser to provide this written statement to the vendor exists for the convenience of the vendor, and hence, the vendor may be entitled to waive its statutory entitlement to written notice regarding the plaintiff's GST status.

## GST updates on mortgagee sales

In Operational Statement 17/01: GST and costs associated with mortgagee sales issued in September 2017, the Inland Revenue confirmed that it has changed its view on the ability for mortgagees to claim input tax deductions. Mortgagees who have elected into the B2B financial services rules are now able to claim an input tax deduction for costs

associated with mortgagee sales which are subject to those rules. Impacted taxpayers who have not been claiming input tax deductions may be able to claim back previous input tax credits.

This statement replaces Operational Statement 15/01: GST on the costs of sale associated with mortgagee sales issued in October 2015.

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# Singapore

## New e-Tax Guide on customer accounting for prescribed goods

The Inland Revenue Authority of Singapore (“IRAS”) has published a new e-tax guide “GST: Customer Accounting for Prescribed Goods” on 15 September 2017, following an amendment made to the GST legislation. Customer accounting will be implemented with effect from 1 January 2019.

The e-Tax Guide explains how customer accounting rules would apply for transactions involving mobile phones, memory cards and off-the-shelf software (“prescribed goods”).

Following the public consultation exercise prior to the legislative amendment, the threshold of the sale value of prescribed goods (excluding GST) subject to customer accounting has been increased from S\$5,000 to S\$10,000.

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# South Korea

## Amendment of tax reform proposals

The Ministry of Strategy and Finance announced the Korean government’s tax reform proposals on 2 August 2017. The proposed reforms may be subject to some modifications during discussions in the National Assembly. If approved by the National Assembly, most of the proposed changes will take effect from January 2018 unless otherwise specified. The major tax reform proposals for VAT law are set out below.

### VAT payment by proxy for certain goods or services purchased using credit cards

VAT payment by proxy will be adopted for the supply of certain goods or services purchased using credit cards (including debit card and prepaid card). The goods or services including public amusement services will be specified by the enforcement decree. Under the proposed change, the concerned credit card companies will be obliged to make VAT payment by proxy which should be as much as 4/110 of the amount paid by the buyer of certain goods or services in credit cards (equivalent to 4% of the supply value, excluding service charge).

The proposed change will apply to goods and services supplied on or after 1 January 2019 or one year following the date the rule is enforced. The proposed rule will temporarily operate until the end of December 2021.

### Increased penalty on fictitious tax invoices

When a tax invoice is wrongfully issued without any goods or services being provided (“fictitious tax invoice”), a penalty as much as 2% of the relevant transaction amount is imposed. This will increase up to 3% of the transaction amount. When the supply amount is exaggerated, the penalty is currently 1%. This will also increase to 2% of the transaction amount, if it is determined that the taxpayer had intentionally exaggerated the supply amount. When a tax invoice is issued to a wrong party of the supply or in the name of a wrong supplier, the penalty remains at 2%.

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# Thailand

## 7% VAT rate extension

The Royal Decree No. 646 was issued to extend the 7% VAT rate for one more year from 1 October 2017 to 30 September 2018. The 10% VAT rate will commence on 1 October 2018.

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# Vietnam

## Proposed new tax law

The Ministry of Finance is proposing a draft new tax law amending the current laws including VAT as follows:

- Increase of the current standard 10% VAT rate to:
  - 12% from 1 January 2019; or
  - 12% from 1 January 2019 and then 14% from 1 January 2021.
- Increase the 5% VAT rate to 6%.
- Remove a number of goods/services entitled to the 5% VAT rate (by moving them to the standard tax rate).
- Transfer of land use rights will be changed from VAT exempt to taxable at the standard VAT rate (i.e. there would no longer be any deduction of the land price for VAT purposes).
- VAT refunds to be brought back for enterprises manufacturing goods or providing services subject to the 6% VAT rate.
- The threshold for payment by banks for both VAT and CIT purposes will be reduced from VND 20 million to VND 10 million.

## Draft decree on invoicing

A draft decree replacing Decree 51/2010/ND-CP and Decree 04/2014/ND-CP on invoicing is being proposed. The main points are as follows:

- The key aim is to increase the use of e-invoices.
- Companies would generally no longer be able to use pre-printed invoices.
- Companies using self-printed invoices will need to convert to e-invoicing from 1 July 2018.

## Forms of invoices

Invoices can be in the following forms:

- Paper invoice: include self-printed and pre-printed paper invoices.
- Self-printed paper invoices can be printed by the tax authorities or by companies on electronic equipment, cash registers, etc.
- Pre-printed paper invoices can be ordered from the tax authorities.
- E-invoice: include e-invoices with code of tax authorities and e-invoices of companies.

Companies using e-invoices cannot use paper invoices unless there are unforeseen circumstances denying the use of the Internet.

## Using e-invoices of companies

Companies which can use e-invoices include:

- Companies which used e-invoices before 2018.
- Companies which are using electronic tax declaration with tax authorities or e-banking and have electronic signatures and sales software connected with the accounting software which ensures that information on the e-invoice can be transferred automatically to the accounting software.
- Companies having tax codes and using paper invoices printed from the IT system before 1 January 2018 which satisfy the conditions stated in the decree.
- Newly established companies which choose neither to purchase pre-printed invoices from tax authorities nor to use e-invoices with code of tax authorities, if they satisfy conditions stated in the decree.

## Using e-invoices

- Before using e-invoices, companies must register/notify tax authorities via the electronic gateway. Periodically, companies must transfer information from each e-invoice during a month to the tax authorities at the time of submission of VAT returns.

- There is no requirement to submit reports on using e-invoices but companies must ensure that the documentation and backup process meet the minimum requirements for electronic documents storage.

## Issuing e-invoices

- Sellers can either issue e-invoices from the sellers' system or use an intermediary company providing e-invoice solutions.
- There are two ways to send e-invoices.
  - (i) Direct transfer: sellers can send e-invoices from their system to the buyers' system as agreed by both parties;
  - (ii) Via an intermediary service company.
- If buyers are also companies (i.e. having accounting books), the buyers can sign digitally on the invoices and send back to the seller.

## Transforming e-invoices into paper invoices

Sellers can transform e-invoices into paper invoices for evidence of origin of goods transportation. This can only be done once.

## Using e-invoices with code of the tax authorities

The companies listed below can use e-invoices with code of the tax authorities:

- Companies using e-invoices with code of tax authorities before 1 January 2018.
- Companies purchasing invoices from the tax authorities before 1 January 2018 can use e-invoice of companies or e-invoice with code of the tax authorities from 1 July 2018.
- Companies which have tax codes and use self-printed invoices from 1 January 2018 which will not use e-invoices of companies, will use e-invoices with code of the tax authorities from 1 July 2018.

- Companies which violated invoicing regulations or are considered as high risk companies will use e-invoice with code of the tax authorities.
- Newly established companies, if they do not use e-invoices of companies or purchase invoices from tax authorities, can use e-invoices with code of the tax authorities for 6 months. They can then choose to use their own e-invoices or e-invoices with code of tax authorities via T-Van.
- Small and medium companies in regions with difficult conditions.

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