

InTouch

with indirect tax news



Issue 04/17

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Welcome to issue 04/17 of InTouch* which covers the major developments in VAT/ GST in Asia Pacific during the period October 2017 to December 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.

China

Abolishment of Business Tax provisional regulations and amendment of VAT provisional regulations

The State Council issued Order [2017] no. 691 “Decision of the State Council Regarding the Abolishment of the Provisional Regulations on Business Tax of the People’s Republic of China (“BT Provisional Regulations”) and Amendment of the Provisional Regulations on Value-Added Tax of the People’s Republic of China (“VAT Provisional Regulations”) (“Decision”)” on 19 November 2017. The Decision took effect from the issuance date.

The VAT Provisional Regulations are amended for the purpose of consolidating the B2V Pilot Reform policies, including:

- Expanding the VAT taxable scope and VAT taxpayers to include sales of service, intangible assets, and immovable property and B2V Pilot Taxpayers respectively;
- Adjusting the tax rate for certain taxable activities: adding 6% and 11% VAT rate, deleting 13% VAT rate; and
- Amending and adding provisions based on policies under the B2V Pilot Reform, e.g. VAT treatment for cross-border taxable services, etc.

VAT and BT have been levied on sales of goods and services respectively in China since 1994. As BT is not creditable, it has led to double or even multiple taxation. In 2012, China launched the B2V Reform to mitigate this situation. After four years of industry-by-industry pilot implementation and regional pilot runs, it was comprehensively rolled-out from 1 May 2016.

With the official abolishment of the BT Provisional Regulations and consolidation of the B2V Pilot Reform policies into the VAT Provisional Regulations together with the amendment of relevant laws and regulations, this signifies a milestone for the VAT legislation and paves the way for the enactment of the VAT Law.

Improved administration on VAT filing and payment

On 30 October 2017, the State Administration of Taxation (“SAT”) issued the “Implementation Guidelines for the Administration on the Information Comparison in Relation to VAT Filing and Payment (Trial)” (“Guidelines”) to be effective from 1 March 2018, setting forth the principles and regulations for the comparison of VAT filing-related information (i.e. VAT invoice, VAT return and VAT amount) by local-level tax authorities.

The Guidelines provides the scope of information to be compared, comparison rules during VAT filing (e.g. comparison of output VAT/input VAT information on the invoice and filing return respectively), and relevant implementation procedure, etc.

In line with the “Internet + Taxation” initiative launched in late 2015, the tax authorities are seeking to deploy IT in daily tax administration. Big data-driven approaches are being adopted in many aspects such as support data analysis, locate tax audit targets and pinpoint common tax risks of certain industries.

VAT policy clarification from time to time

Along with the B2V reforms, the SAT released relevant circulars to clarify the implementation of the relevant provisions from time to time. For example, in Public Notice No.43, the SAT further clarified the record-filing application by general VAT taxpayers who adopt the simplified VAT calculation method for providing construction services. Caishui [2017] No.90 clarifies the input VAT treatment for leased assets with mixed uses, the determination of sales amount for certain taxable activities of assets management products etc.

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India

Notifications/Circulars for CGST and SGST

- Pursuant to Notification No. 48/2017, the following supplies are deemed exports under the GST Act:
 - Supply of goods by a registered person against Advance Authorisation;
 - Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation;
 - Supply of goods by a registered person to Export Oriented Unit; and
 - Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30 June 2017 (as amended) against Advance Authorisation.
- Pursuant to Notification No. 37/2017, the facility of Letter of Undertaking (“LUT”) is extended to all exporters who intend to supply goods or services for export without payment of GST.
- Pursuant to Notification No. 66/2017, taxpayers are exempted from the payment of tax on the receipt of advance in respect of a supply of goods.

- Notification No. 11/2017-CT(R) is amended under Notification No. 46/2017 Central Tax (Rate) to prescribe a tax rate of 2.5% for standalone restaurants and 9% for other restaurants and a reduced rate of 2.5% on job work on “handicraft goods”.

The Central Board of Excise and Customs (“CBEC”) has issued Circular No. 02/2017, 04/2017 and 05/2017 to provide clarification relating to export of goods under a Bond/LUT.

- Notification No. 37/2017 dated 13 October 2017 reduces the rate of central tax on Motor Vehicles to 65% of the rate applicable earlier.

Case law for CGST and SGST

- In the case of M/s Modern Pipes Industries, a registered partnership firm under the U.P. VAT Act, with enforcement of GST Act sought migration under section 139 of the Central Goods and Services Tax Act. The High Court of Allahabad permitted the migration, but instead of registering the firm as a partnership firm, registered it as a sole proprietor.
- In the case of CTO, SGST, Ernakulam v. Madhu M.B, Proprietor, Haritha Enterprise, the enterprise challenged the detention of goods under the CGST Act. The goods were detained by the Department and a notice under Section 129(3) of the CGST Act 2017 was issued stating that there was no nexus

between the goods being transported and the accompanying documents. The Respondent challenged the said notice vide writ petition before a single judge bench of the Kerala High Court. The writ petition was allowed and the appellants were directed to make fresh assessment for computation of the value of goods and the tax and penalty payable under the CGST Act and Kerala SGST Ordinance. The appellants were further directed to release the goods on payment of 50% of the demand computed along with the execution of a simple bond. However, the Division Bench set aside the judgment of the Single Bench by holding that the mechanism for release of the goods on provisional basis has been prescribed under Section 129 r/w Section 67(6) & Rule 140 and hence cannot be ordered.

- In the case of J.K Mittal & Company (Delhi High Court), the firm challenged the applicability of the reverse charge mechanism under the GST law only to representational services rendered by advocates and law firms. As a result, the scope of reverse charge was expanded to cover services provided in relation to advice, consultancy or assistance in any branch of law in any manner.
- In the case of Samaj Parivartana Samudaya & Ors. v. State of Karnataka & Ors., it appears that an interlocutory application (“IA”) was filed in a 2009 writ petition before the Supreme Court seeking clarity on payment of

GST and availing of credit in the e-auction of minerals. The Court directed that GST payable on the sale value of mineral purchased in the e-auction shall be paid by the buyer directly to the lessee and the lessee would be responsible for all compliances required under the CGST Act.

- In the case of Mohit Minerals Pvt. Ltd. v. Union of India & Anr., the petition was filed challenging the constitutional validity of the compensation cess on coal (transitional stock) levied under the GST (Compensation to States) Act 2017. The petitioner sought directions from the Delhi High Court to the respondents to amend Form Tran-I, GSTR-3B, GSTR- 1, GSTR-2 and GSTR-3, where utility of cess is to be shown and/or carried forward as cess and also be permitted to utilise the Clean Energy Cess already paid. The High Court permitted the petitioner to utilise the clean energy cess paid on coal held in stock as of 30 June 2017 against payment of compensation cess on the supply of such stock under the GST regime. The Court further directed that till the time an appropriate method/system is evolved to facilitate the utilisation of the credit and provide for it in the returns filed electronically, the respondents will not take coercive steps against the petitioner for its failure to file such electronic returns on time. The matter before the Delhi High Court has been adjourned sine die after the Supreme Court stayed its order.

Notifications/Circulars for IGST

- Pursuant to Notification No. 10/2017 Integrated Tax, persons making inter-state supplies of services and having an aggregate turnover, computed on an all-India basis, not exceeding Rs. 20 lakhs in a financial year are exempted from GST registration.
- Notification No. 42/2017 Integrated Tax (Rate) prescribes the exemption from IGST in respect of services supplied to Nepal or Bhutan against payment in Indian Rupees.
- Notification No. 07/2017-Integrated Tax grants exemption from registration for job-workers making inter-state supply of services to a registered person.
- Notification No. 9/2017- Integrated Tax (Rate) is amended to exempt IGST on inter-state supply of services to Nepal and Bhutan against payment in Indian Rupees (Notification 42/2017-Integrated Tax (Rate)).

Case law for IGST

- In the case of Chemico Synthetics Ltd Vs. Union Of India, the exporters sought permission to make duty-free imports against Advance Authorisation (“AA”) licenses issued to them prior to 1 July 2017 where the period of validity of licenses remained unexpired. The exporters submitted that in the case of

Narendra Plastic (P.) Ltd. v. Union of India [2017] 85 taxmann.com 153 (Delhi), as an interim measure, the court had permitted the exporter to import raw materials against AAs subject to certain conditions.

Interim relief was to be granted to the exporters to continue making imports under AAs issued prior to 1 July 2017 without payment of IGST, subject to verification by the customs department that clearance was in conformity with the quantity and value as mentioned in the AA and ensuring that credit was available vis-à-vis authorisations issued prior to 1 July 2017. The matter was held in favour of the exporters. It was made clear that the interim direction was to apply only to those imports which were made to fulfil export orders placed before 1 July 2017 and not to any export order thereafter.

The exporters were also to be directed to furnish to the Customs Department the list of its AAs that were valid as on 1 July 2017 and a list of export orders placed on it prior to 1 July 2017. The exporters were also required to furnish an undertaking to pay IGST along with interest in the event of not succeeding before the Court or failing to fulfil the export obligation.

Compensation to States Act

Notification No. 7/2017 dated 13 October 2017 reduces the rate of Compensation Cess on motor vehicles to 65% of the cess applicable earlier (i.e. 65% of 15%).

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Amendments to the Japanese Consumption Tax

Under the Consumption Tax Law, the “place of supply” rule for the transfer of securities without certificate will be revised to be the location of the book entry organisation (for those transferred through the book entry system) and the location of the issuer (for those not registered in a book entry system).

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Malaysia

Key changes to GST legislation

The legislation effecting the proposed changes announced in the 2018 Budget Speech have been gazetted. The changes are as follows:

With effect from 1 January 2018

1. Deregistration

The calculation of the total value of taxable supplies for the purpose of deregistration has been amended to exclude the sale of capital assets where it is in respect of the cessation of a business.

2. Power to assess

The power of the Director General of Customs and Excise to raise an assessment for unpaid taxes and late payment penalties is extended to include raising such assessments on non-taxable persons who are required to account for GST.

3. Contribution of levy

The contribution of the levy to the Human Resources Development Fund is treated as neither a supply of goods nor a supply of services.

4. Zero-rating of magazines, journals and periodicals

The zero-rating of reading materials has been expanded to include magazines, journals, periodicals and comics supplied in hard copy or through online services.

5. Management and maintenance of stratified residential building

The supply of management and maintenance services by a property developer to owners of stratified building lots is treated as an exempt supply.

6. Non-applicability of incidental exempt financial supplies

Any company whose principal activity is the holding of investments including properties, shares of other companies or loans can no longer enjoy the treatment of incidental exempt financial supplies for the purpose of claiming input tax credit.

7. GST relief for importation of goods from designated area

The importation of certain specified leased goods used in upstream petroleum operations from a designated area is given relief from payment of GST provided that the prescribed conditions are met.

With effect from 1 October 2018

All supplies of goods and services by local authorities are to be treated as outside the scope of GST. As such, local authorities will no longer be able to claim any input tax on its acquisition of goods and services. Relief from payment of GST will be given for acquisition of goods (not services) by local authorities.

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Government's Tax Working Group

The members of the Government's Tax Working Group ("TWG") were announced on 20 December 2017. The TWG will consider whether further improvements can be made to enhance the fairness and balance of the existing tax system. The TWG is due to have its first meeting in February 2018, issue its interim report to the Minister of Finance and Minister of Revenue no later than September 2018, and issue a final report to the Minister of Finance and Minister of Revenue no later than February 2019.

With GST making up almost one-third of New Zealand's total tax revenue, it is anticipated that GST will feature prominently in the TWG's report. However any changes to the GST rate (currently 15%) has been specifically excluded from the scope of the review.

Other matters

a) Cryptocurrencies

The Inland Revenue has formed a cryptocurrency working group to consider the relevant tax issues, including GST considerations. The guidance on the GST treatment is expected to be released in mid-2018.

Philippines

b) Vouchers and cash back payments

There is uncertainty as to how the remote services rules apply to e-vouchers, and how the voucher rules should apply more generally for GST purposes for arrangements involving loyalty points, discount schemes and cash back payments. The Inland Revenue has indicated that it will consider the scope of the specific issues in this area to provide clarity to taxpayers.

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Amendments on processing of claims for issuance of tax refund / tax credit certificate and revenue officials authorised to process claims

The Bureau of Internal Revenue (“BIR”) has issued Revenue Memorandum Circular No. 89-2017 to amend the provisions of RMC No. 51-2007 on the processing of claims for issuance of tax refund/tax credit certificate (“TCC”), except claims processed under the jurisdiction of the Large Taxpayer Service (“LTS”) and Legal Service. The main points of the circular are as follows:

1. Claims for VAT refund or TCC by direct exporters shall be filed and processed by the VAT Credit Audit Division (“VCAD”), except for taxpayers under the jurisdiction of the LTS, who have the option to file with the LTS Division where they are registered or with the VCAD. The following are the authorised approving revenue officials:

2. Claims for the issuance of tax refund/TCC on income and other taxes filed by taxpayers registered with the Revenue District Offices (“RDO”), including VAT refund/TCC claims of indirect exporters, shall be processed by the RDO. The Regional Director shall approve claims amounting to PHP 10m and below but claims above thereof shall be subject to final approval of the authorised revenue officials based on the thresholds set above.
3. Existing claims from Regional Offices exceeding PHP 1m in the possession of the National Office at the time of the approval of the above-mentioned circular shall be acted upon based on the thresholds set in the Circular.

Stage/Phase	(and/or) Amount granted	Approving revenue official
Not more than PHP 75m	Below PHP 50m	Assistant Commissioner – Assessment Service
More than PHP 75m up to PHP 150m	PHP 50m up to PHP 100m	Deputy Commissioner – Operations Group
More than PHP 150m	More than PHP 100m	Commissioner of Internal Revenue

4. The time frame to process claims for VAT refund/TCC under Section 112 (A) of the Tax Code shall be as follows:

- The 120-day period under Section 112(C) shall start from the actual date of filing of the application.
- Claims processed by the RDOs amounting to more than PHP 10m and all claims processed by the VCAD shall be forwarded to the Tax Audit Review Division (“TARD”) for review within 80 calendar days from the date of the filing of the application.
- No VAT refund/TCC docket will be accepted by the National Office beyond the 80-day period except for justifiable reasons.
- The TARD shall ensure that the docket of the claim shall be transmitted to the approving official not later than 100 days from the filing of the application.
- Approving officials shall act on the recommended claims not later than the 120th day from the receipt of the application by the processing offices.

Amendment of VAT provisions

On 19 December 2017, the President signed the law package 1 of the Tax Reform for Acceleration and Inclusion bill or Republic Act (“R.A.”) No. 10963. The law contains amendments to several provisions of the National Internal Revenue Code of 1997, including provisions on VAT. The specific changes on VAT are as follows:

Zero-rated sales of goods

- Sale of gold to Bangko Sentral ng Pilipinas (“BSP”) is reclassified from export sales to exempt transactions.
- Sales of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations will qualify as export sales provided that the goods, supplies, equipment and fuel are used for international shipping and air transport operations.
- The following transactions shall be subject to 12% VAT upon the successful establishment and implementation of an enhanced VAT refund system that grants refunds of creditable input tax within 90 days from filing of the VAT refund application with the BIR.
 - Sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise;

- Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production; and
- Export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and export sales under other special laws.

All pending VAT refund claims as of 31 December 2017 shall be fully paid in cash by 31 December 2019.

- Foreign currency denominated sales are removed from zero-rated sale of goods.

Scope of sale or exchange of services

The definition of sale or exchange of services has been expanded to include the sale of electricity by generation companies, transmission by any entity and distribution companies, including electric cooperatives.

Zero-rated sales of services

- Services rendered to persons engaged in international shipping or international air transport operations will qualify as zero-rated sale of services if these services are exclusively for international shipping and air transport operations.

- Zero-rating for transport of passenger and cargo from the Philippines to a foreign country shall apply for domestic air or sea vessels only.
- The following transactions shall be subject to 12% VAT upon successful establishment and implementation of an enhanced VAT refund system that grants refunds of creditable input tax within 90 days from filing of the VAT refund application with the BIR.
 - Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed 70% of total annual production; and
 - Processing, manufacturing or repacking goods for other persons doing business outside the Philippines where the goods are subsequently exported and the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of BSP.

All pending VAT refund claims as of 31 December 2017 shall be fully paid in cash by 31 December 2019.

VAT exemptions

- The VAT exemption has been expanded to include the importation of professional instruments to include those belonging to overseas Filipinos, their families and descendants who are now residents or citizens of other countries.
- With effect from 1 January 2021, the VAT exemption shall only apply to the following transactions:
 - Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business; and
 - Sale of real property utilised for socialised housing and sale of house and lot and other residential dwellings with threshold reduced to PHP 2m.
- The monthly lease threshold of residential units which qualify for VAT exemption will be increased from PHP 10,000 to PHP 15,000 and it will no longer be adjusted to its present value using the Consumer Price Index (“CPI”), as published by the Philippine Statistics Authority.
- Exemption of the importation of fuel, goods and supplies shall only apply if the items are used for international shipping or air transport operations.

- The VAT exemption threshold for other sale or lease of goods, properties or the performance of services, of which the amount does not exceed PHP 1,500,000 is increased to PHP 3m.
- The following transactions are included for VAT exemption:
 - Sale or lease of goods and services to senior citizens and persons with disabilities;
 - Transfers of property pursuant to Section 40 (C) (2) of the Tax Code;
 - Association dues, membership fees and other assessments and charges collected by homeowners associations and condominium corporations;
 - Sale of gold to BSP; and
 - Sale of drugs and medicines prescribed for diabetes, high cholesterol and hypertension with effect from 1 January 2019.

Creditable input tax

- The amortization of the input VAT shall only be allowed until 31 December 2021 after which taxpayers with unutilised input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilised.

Singapore

Updated e-tax guide on “directly in connection with” and “directly benefit”

The Inland Revenue Authority of Singapore (“IRAS”) has issued updated guidelines on the application of the concepts of “directly in connection with” and “directly benefit”. The terms “directly in connection with” and “directly benefit” are used in certain zero-rating provisions to determine if a supply of services qualifies for zero-rating.

The updated guidelines are set out in the 3rd edition of the e-tax guide: “GST: Clarification on “Directly in Connection With” and “Directly Benefit” which was published on 26 October 2017.

This edition of the e-tax guide contains more examples of when a person would be treated as a direct beneficiary of the services provided by the GST-registered business.

Customer accounting for prescribed goods

Following a public consultation exercise, the IRAS has announced that the effective start date of customer accounting rules would be pushed back by a year to 1 January 2019.

Period within which VAT refund of input taxes shall be made

- The Commissioner shall grant a refund for creditable input tax within 90 days from the date of submission of the official receipts or invoices and other documents in support of the application filed.
- Should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
- In the case of full or partial denial of claim for tax refund, the taxpayer may within 30 days from receipt of the decision denying the claim appeal against the decision with the Court of Tax Appeals (“CTA”).
- Penalty for failure on the part of any official, agent, or employee of the BIR to act on the application within the 90-day period shall be imposed.

VAT returns and payment

- With effect from 1 January 2023, the filing and payment of VAT shall be done within 25 days following the close of each taxable quarter.

Withholding of VAT

- With effect from 1 January 2021, the VAT withholding system shall shift from final to a creditable system. Payments for the purchase of goods and services arising from Official Development Assistance funded projects shall not be subject to the final withholding VAT.

Disposition of shares of stock listed and traded through local stock exchange or through IPO

- The tax rate imposed on the sale, barter, exchange or disposition of shares of stock listed and traded through local stock exchange other than the sale by a dealer in securities is increased to 6/10 of 1% of the gross selling price or gross value in money of the shares of stock.

Returns and payment of percentage taxes

- Section 128, which states that the Commissioner may prescribe the time for filing the return, the manner and time of payment, including a scheme of tax prepayment of other percentage taxes, has been repealed.

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South Korea

The following categories of goods would be covered under customer accounting rules whereby the responsibility to account for output tax on the sales of these goods will be shifted from the GST-registered supplier to the GST-registered customer.

1. Mobile phones;
2. Memory cards; and
3. Off-the-shelf software (which is distributed in the form of a compact disc or other similar storage medium).

Customer accounting rules would apply to local sales of the above goods made to a GST-registered customer where the value of the sale (excluding GST) exceeds S\$10,000. The IRAS has also issued an e-tax guide explaining the application of the rules.

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Easing Issuance of Revised Import VAT Invoice

Before July 2013, there was no restriction on issuing a revised import VAT invoice, and accordingly, the VAT payer can get a refund of import VAT based on the revised import VAT invoice even in cases where the customs duty was under-reported and under-paid. In 2013, the VAT Law was amended to the effect that the Customs Office can issue a revised import VAT invoice only in case that the VAT payer does not have any reason for under-payment of customs duty that is attributable to the VAT payer or the VAT payer's oversight. In principle, an additional import VAT cannot be refunded in cases where the VAT payer had paid additional customs duty and import VAT in accordance with the results of the customs duty audit since the customs office cannot issue a revised import VAT invoice.

Under the amended Presidential Decrees of VAT Law, the issuance of a revised import VAT invoice will be eased. The customs office can issue a revised import VAT invoice even in cases of the VAT payer's error or minor negligence. The importer can request an issuance of a revised import VAT invoice if the customs office has not issued it.

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