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Welcome to issue 04/18 of InTouch* which covers the key developments in VAT/ GST in Asia Pacific during the period October 2018 to December 2018.

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.



Further increase in export VAT refund rates to boost export industry

The export VAT refund rates of 397 items of electrical appliances and cultural products, etc. were previously increased on 5 September 2018. In order to further refine the export VAT refund policies and reduce the tax burden of exporters in China, the Ministry of Finance ("MOF") and the State Administration of Taxation ("SAT") jointly issued Caishui [2018] No.123 ("Circular 123") to expand the scope of the export VAT refund rate increase to over 1000 items on 22 October 2018.

The details of Circular 123 are as follows:

- The export VAT refund rate of photographic films, plastic articles, bamboo flooring, tempered glasses, light fitting etc., is increased to 16%;
- The export VAT refund rate of lubricant, aircraft tire, carbon fibre, certain types of metal products etc., is increased to 13%;
- The export VAT refund rate of certain agricultural products, bricks, glass fibre, etc., is increased to 10%;
- The export refund for soybean meal is removed; and
- The export VAT refund rates of export goods that are subject to the refund rate of 15%, 9% and 5% are increased to 16%, 10% and 6% respectively.

Circular 123 took effect from 1 November 2018 and the applicable export VAT refund rate will be determined based on the date on the customs declaration forms. As Circular 123 will impact a wide range of exported goods, exporters should review the pricing arrangements of export products and examine the detailed list of export goods in the appendix attached to Circular 123 to assess the potential impact due to the change of export VAT refund rate.

Three-year tax exemption on bond interest for foreign investors

Under domestic tax regulations, foreign institutional investors receiving non-government bond interest income from China should be subject to 10% Withholding Income Tax ("WIT") and 6% VAT. However, compliance with such WIT and VAT obligations varies in practice. To further promote China's bond market, the MOF and SAT issued Caishui[2018]No.108 ("Circular 108"), stipulating that foreign institutional investors can enjoy WIT and VAT exemption treatment on bond interest income derived from the investment in the China domestic bond market from 7 November 2018 to 6 November 2021.

This Circular is intended to reduce tax burdens of foreign institutional investors and clarifies the uncertain tax positions and tax compliance concerns.

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Notifications/Circulars for CGST

- Pursuant to Notification No. 54/2018 - Central Tax dated 9 October 2018, rule 96(10) has been amended to allow exporters who have received capital goods under the Export Promotion Capital Goods Scheme ("EPCG") scheme to claim refund of the IGST paid on exports.
- Under Notification No. 61/2018 - Central Tax dated 5 November 2018, the supply from a public sector undertaking ("PSU") to another PSU from applicability of provisions relating to tax deducted at source ("TDS") is exempted under the CGST Act.
- Under Notification No. 75/2018 - Central Tax dated 31 December 2018, the amount of late fees levied on the delay of furnishing FORM GSTR-1 for the period July 2017 to September 2018 is fully waived.
- Pursuant to Notification No. 76/2018 - Central Tax dated 31 December 2018, the late fee payable for a delayed filing of FORM GSTR-3B is specified and fully waived for the period July 2017 to September 2018. This is provided that such registered person furnishes the said return between the period 22 December 2018 to 31 March 2019.
- Pursuant to Notification No. 78/2018 - Central Tax dated 31 December 2018, the due date for furnishing FORM ITC-04 for the period July 2017 to December 2018 is extended until 31 March 2019.
- Pursuant to Notification No. 24/2018, 25/2018, 26/2018, 27/2018 and 28/2018 - Central Tax (Rate) dated 31 December 2018, the GST rates on certain goods are changed and certain goods are exempted from GST as per the recommendations of the GST Council in its 31st meeting.
- Notification No. 29/2018 - Central Tax (Rate) dated 31 December 2018 amends Notification No. 13/2017 - Central Tax (Rate) so as to specify that the following services will be taxable under the reverse charge:
 - Services provided by a business facilitator to a banking company;
 - Services provided by an agent of a business correspondent to a business correspondent; and
 - Services provided by way of supply of security personnel (for provider other than body corporate).
- Pursuant to the removal of Difficulty Order No. 2/2018 - Central Tax dated 31 December 2018, the due date for availing input tax credit ("ITC") on the invoices or debit notes relating to invoices issued during the FY 2017-18 is extended until the due date for furnishing the return for the month of March 2019.
- Pursuant to the removal of Difficulty Order No. 3/2018 - Central Tax dated 31 December 2018, the due date for furnishing of annual returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C for the FY 2017-2018 is extended until 30 June 2019.
- Pursuant to the removal of Difficulty Order No. 4/2018 - Central Tax dated 31 December 2018, the due date for furnishing the statement in FORM GSTR-8 by e-commerce companies for the months of October to December 2018 is extended to 31 January 2019.
- The Central Board of Indirect taxes and Customs ("CBIC") has issued clarification on certain issues related to the refund claim to ensure uniformity in the implementation of the provisions of law across the field formations.
- The CBIC has issued clarification on an export of services where a portion of the service is outsourced to another person located outside India. The total value of services as agreed to in the contract between the exporter of the services located in India and the recipient of the services located outside India will be considered as an export of services, if all other conditions of export are met.
- The CBIC has issued clarification on issues pertaining to the registration as a casual taxable person and the recovery of excess ITC distributed by an Input Service Distributor.

- The CBIC has issued clarification on the following issues:
 - Sale by government departments to unregistered person;
 - Levy of penalty when self-assessed tax or any amount collected as tax has not been paid within thirty days from the due date of payment;
 - Rate of tax in the case of debit notes/ credit notes;
 - Applicability of notification No. 50/2018 - Central Tax for the applicability of TDS;
 - Valuation methodology in the case of TCS under the Income Tax Act; and
 - Definition of the owner of goods.
- The CBIC has issued clarification regarding the GST rates and classification in the case of goods.
- The CBIC seeks to clarify GST rate for the Sprinkler and Drip irrigation System including laterals.
- The CBIC has clarified the procedure in respect of return of time-expired drugs or medicines.

Case law for CGST

- The Hon'ble Hyderabad High Court, in the case of M/s AS Steel Traders Vs. Union of India [Writ Tax No. 32259 and 33573 of 2018 dated 3 October 2018] held that it is open to the petitioners, in terms of the notification dated 10 September 2018 and the subsequent order dated 17 September 2018, to seek recommendation from the GST Council for submission of FORM GST TRAN-1 within the time frame stipulated in the order dated 17 September 2018 and to satisfy the authorities concerned that their attempts to file FORM GST TRAN-1 on 27 December 2017 failed because of a system error or server related issues. The issuance of Notification 48/2018 - Central Tax (Rate) amending Rule 117 of CGST Rules, 2017 is a recognition of the fact that certain dealers were unable to electronically submit their declarations in FORM GST TRAN-1 on 27 December 2017. The impugned order of Joint Commissioner dated 27 June 2018 does not deal with the petitioners' claim of the inability to file their return in FORM GST TRAN-1 on 27 December 2017 because of server error and instead, relies on general statistics to justify the rejection of the petitioners' claim to have made attempts to file FORM GST TRAN-1 on 27 December 2017. Hence, it is open to the petitioners, in terms
- The Hon'ble Delhi High Court, in the case of M/s NAPIN IMPEX PVT LTD Vs. COMMISSIONER OF DGST, DELH [Writ Tax No. 10287 of 2018 dated 28 September 2018] held that Section 69(4) of the CGST Act merely authorises the officials concerned to search or break open locks upon encountering resistance or to examine books & documents. The assessed is a dealer trading in PVC resins as well as food items. The dealer's premises were raided by the Director General Service Tax ("DGST") officials who directed the dealer to retrieve its books and accounts. The assessed sought 24 hours' time to procure the same. However, the Department temporarily sealed the premises. Hence the present appeal was filed claiming that the DGST lacks statutory power or authority to indefinitely seal the premises. The high court held that the authorisation to break-open seals and carry



out search of the premises under Rule 139(1) in Form GST INS-I, does not name the assessed. Instead it merely lists the premises. Section 69(4) of the CGST Act merely authorises the officials concerned to search or break open locks upon encountering resistance or to examine books & documents. In such case, the complete sealing of the premises is illegal. The petitioner could justifiably be restrained from using the premises only for as long as was enough to secure necessary evidence. Such restraint could not have been made indefinite. Hence, the Department was directed to lift the seal within 12 hours and return possession of the premises to the assessed.

- The National Anti-Profiteering Authority in the case of M/s Hindustan Unilever Ltd. Vs. Anonymous [Case No. 20/2018 dated 24 December 2018] wherein Hindustan Unilever Ltd. ("HUL") was accused of not reducing the maximum retail price ("MRP") of a number of products sold by it, even though the rate of GST had been reduced from 28% to 18% or from 18% to 12% on a number of items. HUL also allegedly increased the base price of its products, due to which the MRP remained the same even after the rate reduction. The informant also submitted various communications issued by HUL, stating its intention to recover ITC on stock of brands lying with it and that the recovery process had commenced. Subsequently, such findings were sustained by the Directorate General

of Anti-Profiteering ("DGAP"). It was held that considering the facts as well as various evidence put forth, the respondent wilfully resorted to profiteering despite knowledge of laws and rules which warranted that the respondent should pass on the benefit of GST rate reduction. The respondent unlawfully recovered excess realisation which was due to the respondent's Redistribution Stockists as ITC. This further led to denial of tax reductions to the customers. Besides, in disregard to its obligation to pass on the benefit of GST rate reduction, the respondent enhanced the base prices so as to keep them at par with the old MRPs. Hence, HUL is held guilty of offences u/s 122(1)(i) of the CGST Act for issuing incorrect invoices to the customers.

Notifications/Circulars for IGST

- Pursuant to Notification No. 04/2018 - Integrated Tax dated 31 December 2018, the IGST Rules, 2017 is amended so as to notify the rules for the determination of the place of supply in the case services are provided in more than one state.
- Pursuant to Notification No. 25/2018, 26/2018, 27/2018 28/2018 and 29/2018 - Integrated Tax (Rate) dated 31 December 2018, the GST rates on certain goods are changed and certain goods are exempted from GST as per recommendations of the GST Council in its 31st meeting.

- Pursuant to Notification No. 20/2018-Integrated Tax (Rate) dated 31 December 2018, Notification No. 13/2017 - Central Tax (Rate) is amended so as to specify that the following services will be taxable under reverse charge:
 - Services provided by a business facilitator to a banking company;
 - Services provided by an agent of a business correspondent to a business correspondent; and
 - Services provided by way of supply of security personnel (for provider other than body corporate).

Notifications/Circulars for SGST/UTGST

Union Territory

- Notification No. 14/2018 - Union Territory Tax dated 8 October 2018 prescribes the constitution of the Authority for Advance Ruling in the Union Territories (without legislature).
- Notification No. 14/2018 - Union Territory Tax dated 8 October 2018 prescribes the constitution of the Appellate Authority for Advance Ruling in the Union Territories (without legislature).

- Pursuant to Notification No. 24/2018, 25/2018, 26/2018, 27/2018 and 28/2018 - Union Territory Tax (Rate) dated 31 December 2018, the GST rates on certain goods are changed and certain goods are exempted from GST as per recommendations of the GST Council in its 31st meeting.

Haryana

- Pursuant to Notification No. 105/GST-2 dated 31 December 2018, the intra-state supply of gold falling under heading 7108 of the First Schedule to the Customs Tariff Act, 1975, supplied by the Nominated Agency to a registered person, from the whole of the State Tax leviable thereon, is exempted under section 9 of the Haryana Goods and Services Tax Act, 2017, subject to certain conditions.

Tamil Nadu

- Under Notification No. GO (Ms) No. 139 dated 23 October 2018, casual taxable persons making inter-state taxable supplies of handicraft goods are exempted from obtaining registration.

Maharashtra

- Pursuant to Notification No. 61/2018 - ST dated 05 November 2018, Notification No. 50/2018 dated 18 September 2018 - State Tax is amended to exempt the supply from a PSU to another PSU from the applicability of provisions relating to TDS.

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Key changes to service tax legislation

The following changes to the service tax legislation are effective from 1 January 2019.

1. Exemption for specific business-to-business ("B2B") transactions

Exemption from payment of service tax is given to persons registered for service tax under the following categories of services who provide the same service to another person who is also registered under that same category of service:

- All the services under Group G (Professionals) of the First Schedule to the Service Tax Regulations except for employment services and security guard services; and
- Advertising services under Group I (Other service providers).

2. Imported taxable services

Service tax is imposed on any persons (i.e. both registered and non-registered persons) who in carrying out their business in Malaysia, acquires imported taxable services from any person outside Malaysia.



The existing intra-group relief is not applicable to imported taxable services acquired by a Malaysian company from its overseas related companies within the group. However, the Royal Malaysian Customs Department ("RMCD") announced on 31 December 2018 that there may be exemption provided under the power of Minister of Finance for certain intra-group imported services.

3. New taxable services

The scope of taxable services has been expanded to include the following services and the registration threshold is MYR 500,000:

- Training and coaching services;
- Amusement park services;
- Brokerage and underwriting services; and
- Cleaning services in relation to goods, land or building for commercial or industrial purposes.

4. Information technology services

Information technology services in relation to goods and land situated outside Malaysia or matters outside Malaysia are not subject to service tax.

Key changes to sales tax legislation

Registered manufacturers who purchase their raw materials, components or packing materials used solely in the manufacturing of their taxable goods from suppliers who are not registered manufacturers can apply to the Minister of Finance for sales tax deduction on their purchases. The approval of the application is subject to a list of conditions being fulfilled by the registered manufacturer.

The rate of sales tax deduction is as follows:

- 2% of the total value of taxable goods purchased if the taxable goods were charged and levied with sales tax of 5%
- 4% of the total value of taxable goods purchased if the taxable goods were charged and levied with sales tax of 10%

Submission of final GST return

The due date for submission of the GST return for the final taxable period is 29 December 2018. However, the Director General of Customs may allow as a concession for GST-registered persons to apply for an extension of time to account for GST on certain transactions after the submission of their final GST return.

The approval for extension of time will depend on the merits and grounds which are acceptable and reasonable such as for retention sums where the defect liability is given for a period after 29 December 2018.

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New GST collection model on low value imported goods

The New Zealand Government has introduced a draft legislation that will require certain offshore suppliers to register, collect and return GST at 15% on goods valued at or below \$1,000 sold to private consumers in New Zealand. Once enacted, the new rules will apply from 1 October 2019.

The proposed rules are as follows:

- (a) The rules will apply when the item of goods (below the entry threshold of \$1,000) is outside New Zealand at the time of supply and is delivered to a New Zealand address;
- (b) The rules will require offshore suppliers to register when their total taxable supplies of goods and services to New Zealand exceed \$60,000 in a 12-month period;
- (c) The rules will require electronic marketplaces (including New Zealand resident marketplaces) and re-deliverers to register in certain circumstances;
- (d) The rules will remove tariffs and border cost recovery charges from imported consignments valued at or below \$1,000; and
- (e) The first GST return can be elected to be for the 6-month period from 1 October 2019 to 31 March 2020.

There will be different considerations depending on whether the seller is an underlying supplier, an electronic marketplace (“EMP”), a re-deliverer or a combination of these. Some of these parties may already be selling into New Zealand and have obligations under the remote services rules.

An EMP will not only have a liability if the goods are outside New Zealand as transactions where the goods are in New Zealand can be caught. There will also be special rules requiring domestic EMPs and platforms to comply.

All impacted sellers will need to assess their obligations, pricing and customer terms and conditions. They will also need to assess their system’s ability to track the location of customers, distinguish between B2C and B2B customers, the location of the goods and calculating the customs value (for the \$1,000 threshold) as well as the value on which GST is paid (which will include other costs such as transport and insurance).

Systems need to be able to handle issuing receipts, refunds, returned goods, vouchers and discounts etc. Some offshore sellers of remote services will need to incorporate the sale of low value imported goods into their current business and tax processes.

The draft legislation is open to public consultation and submissions are due by 28 February 2019. The law is expected to be passed by July 2019.

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Updated deadline for the processing of pending VAT refund/credit claims

Under item no. VI.A.1 of the Revenue Memorandum Circular (“RMC”) No. 17-2018, concerned offices were mandated to process pending VAT claims filed prior to the effectiveness of RMC No. 54-2014, in accordance with Revenue Regulations No. 1-2017, not later than 30 June 2018. Claims filed after RMC No. 54-2014 but before the Tax Reform for Acceleration and Inclusion Act (“TRAIN”) has taken effect (i.e. 1 January 2018) shall be processed within a 120-day period from the submission of complete documents or from the date of filing the application, if no additional documents were submitted. For claims from 1 January 2018, the processing time shall be reduced to 90 days.

The Circular was subsequently amended by RMC No. 53-2018, moving the deadline from 30 June 2018 to 14 December 2018.

Presently, RMC No. 102-2018 has further extended the deadline to 29 March 2019.

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New circular amending VAT regulations

In August 2018, the Ministry of Finance released Circular 82/2018/TT-BTC (“Circular 82”) amending Circular 219/2013/TT-BTC on VAT. Circular 82 has taken effect since 15 October 2018.

The key change under Circular 82 is highlighted as below:

- Under Example 37 of Point a.4, Clause 10, Article 7, Circular No. 219/2013/TT-BTC (“Circular 219”), any gain arising from the transfer of land use right (“LUR”), which was previously acquired from others, will be subject to VAT and invoicing issuance as regulated if the transferor does not carry out any activities on such LUR since the last acquisition.
- Circular 82 has removed this Example, which releases taxpayers from such an obligation upon transfer of LUR. This amendment also aligns with the VAT treatment applicable to the transfer of LUR under Article 4 of Circular 219 whereby the transfer of LUR will not be subject to VAT.

Guidance on implementation of e-invoicing

The General Department of Taxation issued Official letter no. 4311/TCT-CS to the Tien Giang tax department guiding the implementation of e-invoices for a specific taxpayer during the period 1 November 2018 to 31 October 2020 (“the transition period”). Some notable points in OL 4311 are highlighted below:

- During the transition period, Decree 51/2010/ND-CP dated 14 May 2010 and Decree 04/2014/ND-CP dated 17 Jan 2014 on invoicing will remain in force.
- During the transition period, in case a taxpayer uses up its stock of pre-printed invoices which have been notified for usage, and the taxpayer would like to continue using pre-printed invoices, the taxpayer is allowed to do so in accordance with the above decrees prior to converting to use of e-invoices pursuant to Decree 119/2018/ND-CP.
- The MoF will issue a circular to provide guidance on Decree 119/2018 on e-invoices soon.

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E-commerce developments



China

New tax policy for goods imported through cross border e-commerce retail channel

In 2016, the MOF, General Administration of Customs ("GAC") and SAT jointly issued Caiguanshui[2016]No.18 ("Circular 18") and set forth the import tax and customs duty policies in relation to cross border retail e-commerce for individual consumers.

In particular, Circular 18 sets out preferential import VAT tax and customs duty treatments for individuals who purchase goods via cross-border e-commerce channel. For individuals who purchase goods via the cross-border e-commerce retail channel, if the value of a single purchase is below RMB 2,000 and within the individual's import annual quota of RMB 20,000, import VAT and Consumption Tax (if applicable) will be levied with a 30% discount and customs duty will be waived. Otherwise, taxes and customs duty should be paid in full.

In 2018, the MOF, GAC and SAT released Caiguanshui[2018] No.49 ("Circular 49") to further relax the policy in Circular 18. From 1 January 2019, the effective date of Circular 49, the value of single purchase and individual's annual import quota are increased from RMB 2,000 and RMB 20,000 to RMB 5,000 and RMB 26,000 respectively.

Circular 49 also specifies that in order to enjoy the above preferential treatments, the goods purchased from the e-commerce retail channel must be end products for use by the individual and should not be for resale in the domestic market. Further, in principle, bonded import goods purchased online should not be picked up from areas outside of the customs supervision zones.

Indonesia

Tax treatment of certain e-commerce transactions

At the end of December 2018, the Minister of Finance issued Regulation No.210/PMK.010/2018 (PMK-210) regarding tax arrangements relevant to certain e-commerce activities. PMK-210 is to be effective starting 1 April 2019.

No new taxes are being introduced with PMK-210. Instead PMK-210 highlights how these "e-commerce transactions" are subject to the prevailing tax regulations in Indonesia. PMK-210 does however empower the Director

General of Tax (DGT) to obtain information from online marketplace providers on transactions made via these platforms. This is stated as being to provide a level playing field between the different online platforms.

The following provisions in PMK-210 will be further detailed in specific DGT or DGCE regulations:

1. the Tax ID registration system to be provided to sellers by online marketplace providers;
2. the mandatory marketplace report on total e-commerce transactions (i.e. to be attached to the monthly VAT Return); and
3. the procedures related to the import of goods sold via an online marketplace.

South Korea

Expanded scope of e-services of foreign corporations or non-residents subject to VAT

After the government's bill to amend tax laws was passed by the National Assembly on 8 December 2018, the amended tax laws were promulgated on 24 December 2018. Subsequent to the amendment of the tax laws, the Ministry of Economy and Finance ("MOEF") has announced the government's bill to amend the Presidential Decrees of the tax laws. The bill is expected to be proclaimed on 12 February 2019 after being finalised in the cabinet meeting on 7 February 2019.

Under the VAT Law (“VATL”), in the case where a foreign company or a non-resident provides certain electronic services to a person (excluding the person having Korean VAT registration) in Korea via the information and communication network, the foreign company or non-resident shall comply with the requirements of a simplified VAT registration and VAT return filing, together with VAT payment for the provision of the electronic services. Based on the recently-revised VATL, the electronic services of a foreign company or non-resident includes cloud computing, advertising placement services and intermediation services (to be prescribed in the Presidential Decree of the VATL) on top of the game, audio/video files and electronic documents, etc. that are supplied in an electronic format through the information and communication network. The government’s bill defines the scope of the intermediation services as follows:

- Intermediation services for a person to rent, use or consume goods, places, etc. in Korea; and
- Intermediation services for a person to trade goods or services in Korea.

However, if the consideration for the intermediation services is included in the supply price for the goods, services, etc. used, consumed or traded in Korea and an importer of record or a Korean business entity pays VAT on the supply price including such consideration, the intermediation services would not be subject to the VAT compliance under Article 53-2 of the VATL.

This change will apply to electronic services rendered on or after 1 July 2019.

Malaysia

Online services to be subject to service tax from 1 January 2020

With effect from 1 January 2020, foreign service providers who provide online services to Malaysian consumers will be required to register for service tax with RMCD and charge service tax.

During the 2019 Budget speech, the Minister of Finance gave examples of taxable online services which include but are not limited to downloaded software, music, video or digital advertising. Details on the scope of the taxable online services and the registration process have yet to be released by the authorities at this moment.

Taiwan

Requirement to issue triplicate Government Uniform Invoices (“GUI”) for business entities selling accommodation services via platforms operated by foreign electronic service providers Where domestic business entities (“vendors”) sell accommodation services to domestic individuals (“purchasers”) via websites or platforms operated by foreign electronic service providers, and the foreign electronic service providers collect payment from the purchasers first and then remit the balance to vendors after deducting commission therefrom, the vendors shall issue triplicate GUIs to foreign electronic service providers and file the VAT return accordingly.

Foreign electronic service providers who reach the stipulated threshold are required to perform tax registration with the tax authority starting from 1 May 2017. Vendors are able to search for the 8-digit VAT ID of foreign electronic service providers on the Ministry of Finance’s website, eTax Portal, for the purpose of issuing triplicate GUIs to foreign electronic service providers.

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