

InTouch

with indirect tax news

pwc

October 2011 • Issue 04/11

Australia

- Draft legislation on reform of GST financial services provisions
- New draft GST ruling on multi-party transactions
- New draft GST ruling on loyalty programs
- Case laws
- GST and new residential premises

China

- Pilot program for indirect tax reforms

India

- Notifications/circulars on VAT
- VAT case laws
- Notifications/circulars on Service Tax
- Service Tax case laws

Japan

- Taxability on tuition of education curriculum for authorised nurse

Malaysia

- GST Guides by the Malaysian Customs authorities

New Zealand

- Late payment fees
- Achieving GST-neutrality for cross border supplies

Singapore

- New GST schemes and enhancements with effect from 1 October 2011

South Korea

- Tax reform proposal for 2012

Taiwan

- De Minimis VAT exemption

Vietnam

- Proposed tax reforms
- Supporting documents for input VAT claims by foreign contractors

Welcome to the October 2011 issue of InTouch*. The major developments in the current issue include updates and recent case laws in Australia, China, India, Japan, Malaysia, New Zealand, Singapore, South Korea, Taiwan and Vietnam. Please feel free to reach out to any of the PwC contacts on the back of this issue.

Australia

Draft legislation on reform of GST financial services provisions

An exposure draft legislation released on 18 August 2011 contains the following changes to the financial supply provisions of the GST law:

- Increasing the financial acquisitions threshold input tax credit test from \$50,000 to \$150,000;
- Allowing small businesses that account on a cash basis to access full input tax credits upfront when they enter into hire purchase arrangements; and
- Excluding bank deposit accounts from the current special rules for borrowings.

New draft GST ruling on multi-party transactions

Draft addendums were issued by the Australian Taxation Office (“ATO”) in relation to supplies and insurance settlements and entitlements to input tax credits. The proposed amendments result in a broader approach to determine if a supplier makes a supply to a third party payer under a tripartite arrangement.

New draft GST ruling on loyalty programs

The ATO released a draft GST ruling concerning the GST implications of certain loyalty

programs which include the treatment of points allocation and redemption, and arrangements between loyalty program operators and third parties.

Case laws

- In *Central Equity Limited v Commissioner of Taxation*, the Federal Court considered that a property transaction amount to a taxable supply of real property on or after 1 July 2000 if the enforceable contract for sale was entered into before 1 July 2000 but settlement of the contract occurred after that date.
- In *Qantas Airways Limited v Commissioner of Taxation*, the Full Federal Court held that GST was not payable by Qantas when a person booked and paid for domestic air travel but subsequently cancelled the booking, or did not turn up for the flight, and did not receive a refund. The Commissioner has lodged an application for special leave to appeal to the High Court on 29 September 2011.

GST and new residential premises

On 23 September 2011, the Australian Treasury released exposure draft legislation and explanatory material on proposed changes to GST rules concerning new residential premises.

For more information, please contact:

Patrick Walker

patrick.d.walker@au.pwc.com

+61 2 8266 1596

China

Pilot program for indirect tax reforms

The VAT Reform Program was officially announced on 26 October 2011. The pilot program will be introduced on 1 January 2012 to gradually expand the scope of VAT to include industries that are currently subject to Business Tax. The transportation industry and some modern service industries in Shanghai will participate in the pilot program. Two additional VAT rates will be introduced, i.e. 11% and 6%.

During the pilot program, the Business Tax revenue of the pilot revenue will still belong to the pilot location after changing to VAT. The Business Tax incentive for the pilot industries may continue but adjust accordingly to VAT. The VAT incurred by taxpayers in the pilot industries can be taken as input credit according to the regulation.

For more information, please contact:

Alan Wu

alan.wu@cn.pwc.com

+86 10 6533 2889

India

Notifications/circulars on VAT

- Tamil Nadu – The VAT rate on right to use construction equipment has been reduced from 14.50% to 5% with effect from 12 July 2011, subject to the condition that the dealer would not be eligible to claim input tax credit.
- Uttarakhand – An exemption has been provided from levy of Central Sales Tax on inter-state sales of specified information technology products against submission of Form C and subject to fulfillment of prescribed conditions.
- West Bengal – A new facility “e-refund of taxes” has been introduced for smooth processing of refund claims through electronic mode.

VAT case law

- The Bombay High Court in Additional Commissioner of Sales Tax VAT-III Vs. Sehgal Autoriders Pvt. Ltd. has held that no VAT is payable on handling charges recovered from a buyer for facilitating the registration of a vehicle.
- The Uttarakhand High Court in Scholers Home Senior Secondary School Vs. State of Uttarakhand has held that supply of food by an educational institution to the students residing in the hostel is not liable to VAT as

the educational institution is not involved in the business of sale and purchase of food stuff.

Notifications/circulars on Service Tax

- The Central Government has clarified the meaning of the term ‘completion of service’ under the Point of Taxation Rules, 2011 and the Service Tax Rules, 1994 to include not only the actual provision of the underlying service but also the completion of all other auxiliary activities.
- The Central Government has made electronic filing of service tax returns as a mandatory requirement for all assessees regardless of turnover.

Service tax case laws

- In *Idea Mobile Communication Ltd. Vs. CCE*, the Supreme Court has held that since SIM cards are not sold or transacted as goods independent from the telecommunication services attached thereto, the value of the SIM card is to be included in the taxable value for the purpose of levy of service tax and not subject to sales tax.
- In *Small Industries & Development Bank of India Vs. CCE*, the Tribunal has held that the charges levied by banks towards foreclosure, pre-payment or re-scheduling of loans, which are in the nature of compensatory charges and not service charges, are not subject to service tax under the category of Banking and Financial Services.

For more information, please contact:

Vivek Mishra
vivek.mishra@in.pwc.com
+91 124 330 6518

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

Japan

Taxability on tuition of education curriculum for authorised nurse

A public university requested an advance ruling to confirm that consumption tax is not assessed on tuition of education curriculum for authorised nurse.

The Nagoya Regional Taxation Bureau responded publicly on the web site on 11 June 23 that the tuition is subject to 5% consumption tax for education curriculum that does not correspond to the education curriculum prepared based on the School Education Law or other regulations (which is exempt from consumption tax).

For more information, please contact:

Masanori Kato
masanori.kato@jp.pwc.com
+81 3 5251 2536

Kotaku Kimu
kotaku.kimu@jp.pwc.com
+81 3 5251 2713

Malaysia

GST Guides by the Malaysian Customs authorities

The Malaysian Customs authorities have made available the following GST Guides for comments. The guides can be downloaded from their website www.gst.customs.gov.my.

- General Guide
- The Manufacturing Sector
- Warehousing scheme
- Duty Free Shop
- Approved Jeweller Scheme
- Approved Toll Manufacturer Scheme
- Auctioneer
- Approved Trader Scheme
- Relief on Second-Hand Goods
- Export
- TOGC (Transfer of Going Concern)
- Partial Exemption
- Import
- Designated Areas
- Agent

For more information, please contact:

Wan Heng Choon

heng.choon.wan@my.pwc.com

+60 3 2173 1488

New Zealand

Late payment fees

A new Bill has been introduced proposing to make late payment fees subject to GST. If implemented, this change will apply retrospectively from 1 April 2003. Businesses, who currently do not charge GST on such fees, have until 1 April 2012 to implement the necessary systems changes.

Achieving GST-neutrality for cross border supplies

The Government released a discussion document containing proposals to introduce an enhanced GST registration option for non-resident businesses. The aim of the proposed changes is to make it easier for a non-resident business to claim input tax deductions in respect of costs incurred in New Zealand and to promote GST-neutrality between resident and non-resident businesses.

Alternative proposals are also being considered such as introducing a direct refund scheme (similar to that available under the VAT regime in the EU) or expanding the zero-rating rules or introducing a special zero-rating rule for “tooling” costs charged by New Zealand manufacturers to non-resident businesses.

For more information, please contact:

Eugen Trombitas

eugen.x.trombitas@nz.pwc.com

+64 9 355 8686

Gary O’Neill

gary.oneill@nz.pwc.com

+64 9 355 8432

Jared Otto

jared.a.otto@nz.pwc.com

+64 9 355 8073

Singapore

New GST schemes and enhancements with effect from 1 October 2011

• Specialised Warehouse Scheme (SWS)

The scheme is introduced for warehouses that provide specialised storage facilities to overseas person, with most of the goods stored eventually exported. The purpose of the SWS is to facilitate the zero-rating relief on following supplies to overseas persons:

- (i) Qualifying services performed on qualifying goods stored in an Approved Specialised Warehouse

(ii) Lease/tenancy/license to occupy a storage space in an Approved Specialised Warehouse where the supply is made by the operator of the Approved Specialised Warehouse

- **Approved Marine Customer (AMC) Scheme**

The scheme is designed to ease compliance for businesses procuring goods for use or installation on internationally bound commercial ships. Subject to certain conditions, the AMC will enjoy zero-rating on the following:

- (i) Purchases or rental of goods procured by the AMC in the course of its business
 - (ii) Procurement of repair or maintenance services of ship parts or components without having to prove that the parts or components are reinstalled or returned onto the ship as a spare
- **New GST measures for the biomedical industry**
- (i) No import GST is payable on the importation of clinical trial materials into Singapore if they are for local clinical trials, re-export or disposal/destruction.

(ii) Extension of the Enhanced Approved Contract Manufacturer and Trader Scheme to contract manufacturers of Active Pharmaceutical Ingredients in the biomedical industry. Contract manufacturers in other business segments in the biomedical industry will also be considered.

- **Updates to Approved Contract Manufacturer and Trader Scheme (ACMT)**

An ACMT contract manufacturer can disregard the supply of value-added service relating to failed or excess productions to a non-GST registered overseas customer if the goods that the ACMT contract manufacturer has treated/processed are exported or delivered locally to a waste management vendor for disposal or destruction at no consideration.

The GST incurred on goods locally purchased by the non-GST registered overseas customer and delivered to an ACMT contract manufacturer to perform value added service is claimable by the approved contract manufacturer if it has paid the GST on the goods or refunded the GST paid on the goods by the overseas customer.

For more information, please contact:

Koh Soo How

soo.how.koh@sg.pwc.com

+65 6236 3600

May SY Ng

may.sy.ng@sg.pwc.com

+65 6236 3739

South Korea

Tax reform proposal for 2012

On 7 September 7 2011, the Ministry of Strategy and Finance announced a package of proposed changes to tax law including the VAT Law. The main proposals are as follow:

- With effect from 1 January 2012, a foreign corporation will have the same VAT filing due date as the domestic corporation. The proposed change would enforce the foreign corporation to file the VAT return by 25 days instead of 50 days from each quarter end.
- With effect from 1 July 2012, the provision of intangibles by a non-resident or foreign corporation will be subject to proxy payment and a person or company who receives services that are not qualified for input VAT deduction are subject to proxy payment.

For more information, please contact:

Dong-Keon (D.K.) Lee

dklee@samil.com

+82 2 709 0561

Taiwan

De Minimis VAT Exemption

With effective from 1 April 2011, services purchased from foreign enterprises where the individual transaction amount is less than or equal to NTD 3,000 are eligible for de minimis VAT exemption. The ruling will not apply where the individual transaction amount is more than NTD 3,000 even though it is an installment sale of services and the amount of each installment is less than NTD 3,000.

For more information, please contact:

Lily Hsu

lily.hsu@tw.pwc.com

+886 2 27296666 Ext. 26207

Vietnam

Proposed tax reforms

In August 2011, the Government released a draft Decree amending and supplementing some articles of the existing VAT Decree. It is anticipated that the final version will become effective from 1 January 2012. Below is a summary of the major proposed changes:

1. Output VAT will not be charged on the following:
 - Services delivered outside Vietnam.
 - Financial income being compensation for contract cancellation, bonus for early contract completion, subsidies and other financial income not resulting from goods/services exchanges, income from transfer of Certified Emission Reductions; and
 - Certain services purchased from foreign suppliers who do not have a permanent establishment in Vietnam or are not a Vietnamese resident.
2. The definition of VAT exempt supplies will be expanded to include sale of assets held as collateral except the case where the ownership of the assets has been transferred to the lender; debt factoring; management of securities investment companies; capital assignment by way of transfer of rights for a project and transfer of a project; and foreign currency swaps.
3. For VAT declaration under the “direct method”, the negative value added can be offset against the positive value added for other goods with the same VAT rate. The negative balance can be carried forward to a subsequent period.
4. Input VAT related to the purchase of goods that are subsequently damaged will be creditable.

Supporting documents for input VAT claims by foreign contractors

The General Department of Tax issued a Official Letter 2524/TCT (“OL2524”) providing guidance on the supporting documents required for input VAT claims by a foreign contractor who is registered for VAT in Vietnam and makes payments to its suppliers/subcontractors in Vietnam from its head office’s overseas bank account.

For more information, please contact:

David Fitzgerald

david.fitzgerald@vn.pwc.com

+84 8 3824 0116

Richard J Irwin

r.j.irwin@vn.pwc.com

+84 8 3823 0796

Contacts

Australia

Patrick Walker, Partner
Email: patrick.d.walker@au.pwc.com
Tel: +61 2 8266 1596

Cambodia

Sira Intarakumthornchai, Partner
Email: sira.intarakumthornchai@th.pwc.com
Tel: +662 344 1244

Heng Thy, Director

Email: heng.thy@kh.pwc.com
Tel: +855 23 218 086

China

Alan Wu, Partner
Email: alan.wu@cn.pwc.com
Tel: +86 10 6533 2889

India

Vivek Mishra
vivek.mishra@in.pwc.com
+91 124 330 6518

Anita Rastogi

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

Indonesia

Jim McMillan, Partner
Email: jim.f.mcmillan@id.pwc.com
Tel: +62 81 1180 1657

Abdullah Azis, Senior Manager

Email: abdullah.azis@id.pwc.com
Tel: +62 21 5289 0601

Japan

Masanori Kato, Partner
Email: masanori.kato@jp.pwc.com
Tel: +81 3 5251 2536

Kotaku Kimu, Senior Manager

Email: kotaku.kimu@jp.pwc.com
Tel: +81 3 5251 2713

Laos

Thavorn Rujivanarom, Partner
Email: thavorn.rujivanarom@th.pwc.com
Tel: +662 344 1444

Malaysia

Wan Heng Choon, Senior Executive Director
Email: heng.choon.wan@my.pwc.com
Tel: +60 3 2173 1488

New Zealand

Eugen Trombitas, Partner
Email: eugen.x.trombitas@nz.pwc.com
Tel: +64 9 355 8686

Gary O'Neill, Director

Email: gary.oneill@nz.pwc.com
Tel: +64 9 355 8432

Philippines

Mary Assumption Bautista-Villareal, Principal
Email: mary.s.bautista-villareal@ph.pwc.com
Tel: +63 2 459 2004

Singapore

Soo How Koh, Partner
Email: soo.how.koh@sg.pwc.com
Tel: +65 6236 3600

May SY Ng, Manager

Email: may.sy.ng@sg.pwc.com
Tel: +65 6236 3739

South Korea

Dong-Keon (D.K.) Lee, Partner
Email: dklee@samil.com
Tel: +82 2 709 0561

Sri Lanka

Hiranthi Ratnayake, Director
Email: hiranthi.c.ratnayake@lk.pwc.com
Tel: +94 11 4719838

Taiwan

Lily Hsu, Partner
Email: lily.hsu@tw.pwc.com
Tel: +886 2 2729 6666 Ext. 26207

Thailand

Somboon Weerawutiwong, Partner
Email: somboon.weerawutiwong@th.pwc.com
Tel: +662 344 1000 ext 1247

Darika Soponawat, Director

Email: darika.soponawat@th.pwc.com
Tel : +662 344 1015

Vietnam

David Fitzgerald, Partner
Email: david.fitzgerald@vn.pwc.com
Tel : +84 8 3824 0116

Richard J. Irwin, Partner

Email: r.j.irwin@vn.pwc.com
Tel: +84 8 3823 0796

For a comprehensive guide to global VAT/GST information from over 70 countries worldwide, please visit GlobalVATOnline at www.globalvatonline.com. GlobalVATOnline can keep you up to date on all VAT issues and developments as they unfold.

Disclaimer. Clients receiving this Alert should take no action without first contacting their usual PwC Indirect Tax Advisor.

© 2011 PricewaterhouseCoopers. All rights reserved. Not for further distribution without the permission of PwC. "PwC" refers to the network of member firms of PricewaterhouseCoopers International Limited (PwCIL), or, as the context requires, individual member firms of the PwC network. Each member firm is a separate legal entity and does not act as agent of PwCIL or any other member firm. PwCIL does not provide any services to clients. PwCIL is not responsible or liable for the acts or omissions of any of its member firms nor can it control the exercise of their professional judgment or bind them in any way. No member firm is responsible or liable for the acts or omissions of any other member firm nor can it control the exercise of another member firm's professional judgment or bind another member firm or PwCIL in any way.