



# ITX InTouch

The latest in indirect tax news for the Asia Pacific region

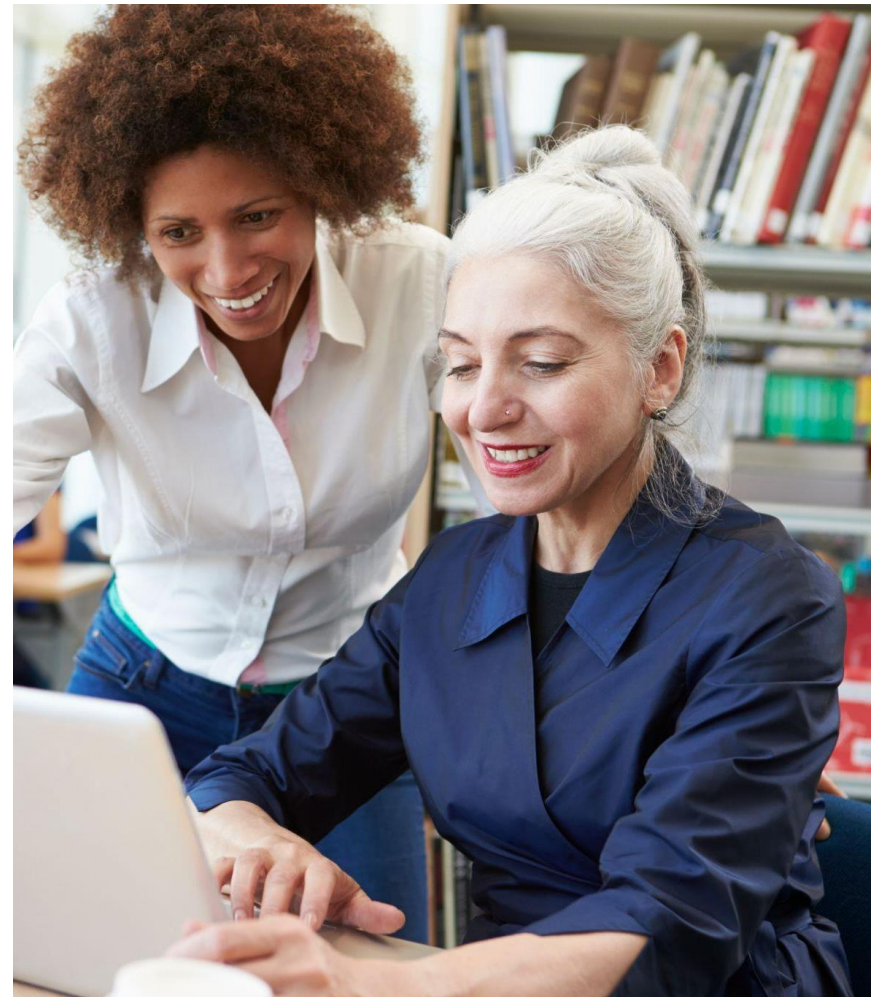
Issue 5 2022, October to December 2022



# Introduction

Welcome to the latest issue of InTouch which covers the key developments in value added tax (VAT) and goods and services tax (GST) in the Asia Pacific region during the period October 2022 to December 2022. As economies within our region become increasingly impacted by Global events, the role indirect taxes play in either supporting targeted stimulus measures or aiding revenue collections will become more and more critical.

Please reach out to any of the PwC contacts listed in this issue if you have any questions on the news items.



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# Australia

## Draft GST determination for margin scheme valuation of real property

- A draft legislative instrument proposes to specify the requirements for making valuations for the purposes of applying the margin scheme in Division 75 of the A New Tax System (Goods and Services Tax) Act 1999 to real property. A valuation made in accordance with the requirements specified in the determination is an approved valuation for GST purposes and may be relied on by suppliers calculating the margin scheme for taxable supplies of real property and in calculating an increasing adjustment.
- The instrument also provides transitional arrangements where, despite its repeal, the requirements contained in the A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination 2020 continue to apply to valuations a supplier already has at the commencement of this instrument for three months.

## No GST group

- The Administrative Appeals Tribunal (AAT) has found in *Adcon Resources Vic Pty Ltd v FC of T* [2022] AATA 2629 that a group's GST registration failed because the group did not meet the ownership requirements to be able to form a GST group. The taxpayer had submitted that a nominee type of relationship where someone is essentially holding shares on behalf of somebody else because they were not supposed to be in their name is sufficient to allow GST grouping to occur. The Tribunal found there was no evidence that established that a nominee or trust relationship existed in

relation to the shares in the taxpayer and that while there may have been an intention to have the shareholding reported differently, the onus was on the directors of a company to ensure that the details entered into the ASIC register were correct.

## No ATO's findings report on assurance programs

- Australian Taxation Office (ATO) has issued its findings report from the following income tax and digitization goods and services tax (GST) assurance program completed to 30 June 2022.
  - Top 100 - in 2022 there were 82 economic groups in the top 100 population; and
  - Top 1,000 - broadly members of large public and multinational corporate groups with a group turnover greater than \$250 million and not covered by the Top 100 Program.
- Under the top 100 GST assurance program, the ATO will complete a GST assurance review for each top 100 taxpayer by 30 June 2023. The review will generally focus on the last complete financial year. Most top 100 taxpayers who had a GST assurance review finalised have attained an overall medium level of assurance (68 per cent). The remaining 32 per cent of taxpayers attained an overall high level of assurance that the right amount of GST was reported for the period reviewed.
- The Top 1,000 population is the largest contributor to GST and makes up about 36 per cent of the total GST collections. The ATO reports that it has completed 444 reviews for GST through the following Top 1,000 programs.

- The GST assurance program; and
- The combined assurance reviews.
- The majority of taxpayers were reported as having achieved a medium or high assurance overall rating for GST. However, in the past 12 months no taxpayers achieved a stage 3 rating for governance (i.e. evidence that the documented tax control framework is both designed and operating effectively in practice).
- Areas are concerns or areas of focus identified during ATO GST assurance reviews include incorrect reporting, financial supplies, food classification, property and recipient created tax invoices (RCTI).

### Information requirements for adjustment notes

- A new legislative instrument sets out the additional information requirements for a document to be an adjustment note or recipient created adjustment note under subsection 29-75(1) of A New Tax System (Goods and Services Tax) Act 1999 (GST Act). Unless an exception applies, a supplier or a recipient must hold an adjustment note to attribute a decreasing adjustment from an adjustment event when completing their GST return for a tax period. The determination commences on 30 September 2022.

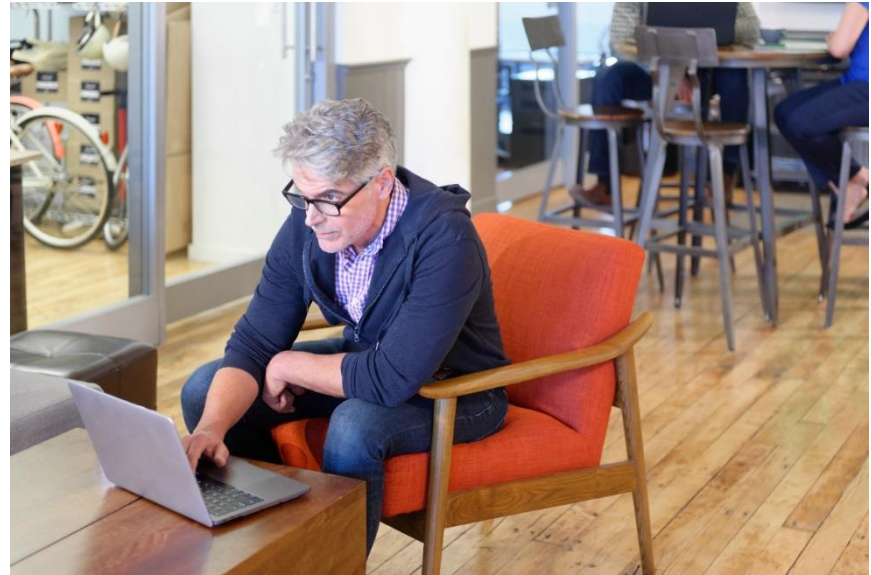
### Draft instrument for recipient created tax invoices

- A draft legislative instrument has been made to allow a recipient created tax invoice (RCTI) to be issued in certain specified circumstances for taxable supplies received by a government related entity, large business entity, or business entity recipient that is goods and services tax (GST) registered, rather than the supplier. This instrument, once finalised, replaces 51 existing instruments, and will enable taxpayers to self-assess their eligibility to issue RCTIs more easily and simply. Comments can be made by 16 December 2022.

### No entitlement to input tax credits

- In *H & B Auto Repair Centre Pty Ltd and Commissioner of Taxation* (Taxation) [2022] AATA 3561, the Administrative Appeals Tribunal (AAT) upheld a decision by the Commissioner of Taxation to disallow input tax credits.
- The primary question to be considered by the AAT was whether or not the taxpayer's entitlement to input tax credits claimed in the Business Activity Statement (BAS) lodged on 16 October 2020 for the quarterly tax periods between 1 January 2016 and 30 June 2016 has ceased due to the operation of the four-year time limit prescribed by section 93-5 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act).
- Since there was no evidence before the Tribunal that any further period to lodge the 31 March 2016 and 30 June 2016 BAS was granted, nor had the taxpayer suggested that this had occurred, the Tribunal found that the operation of section 93-5 of the GST means that if an extension of time to lodge a BAS has not been granted prior to the expiry of four years after the day on which it was required to be given, the entitlement to input tax credits immediately ceases. Consequently, the provision of further time within which to give a BAS cannot be provided retrospectively outside of the relevant four-year period. Accordingly, there is no entitlement to claim the associated input tax credits for those periods.

- In addition, the taxpayer's entitlement to input tax credits in relation to the quarterly tax periods between 1 July 2016 and 31 December 2017 was under consideration. The Tribunal finds that a substantial amount of the claims were unsubstantiated by a valid tax invoice as required under section 29-70 of the GST Act and the evidence provided did not provide adequate details to allow the discretion in section 29-70(1B) of the GST Act to be exercised to treat a particular document as a tax invoice.



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# China

## Development of draft VAT law in China

- During the 38th Session of the Standing Committee of the 13th National People's Congress ("NPC") held in Beijing from 27 December to 30 December 2022, the Standing Committee of the NPC reviewed and released the Draft VAT Law of the People's Republic of China (hereinafter referred to as the "Draft Law"), which is an important milestone in China VAT legislation process.
- The Draft VAT law submitted to the Standing Committee of the NPC for review basically follows the prevailing VAT regulations. It is a collection and summary of the achievements of the Business Tax to VAT ("B2V") reform and VAT deepening reform over the past decade. It is also a historic and important step in the VAT legislation process. It is expected that the Draft VAT law, after public consultation and further review and consideration by the NPC, may be approved and promulgated in the form of law in 2023 at the earliest. Subsequently, the State Council will publish implementation rules of VAT Law which would be implemented together with the VAT Law. Regarding the in-depth analysis on the Consultation Draft, please refer to the News Flash Issue 38 in 2019: VAT Legislation in Full Swing - Highlights of the Consultation Draft.
- [PwC has compared the Draft Law](#) with the Consultation Draft of VAT Law circulated in 2019 (hereinafter referred to as the "Consultation Draft") and highlighted the changes and our insights on key items, including taxpayer, taxable transaction, input VAT credit and VAT collection and administration, etc. PwC suggests taxpayers to closely monitor the progress of the VAT legislation and its implementation regulations, especially

- for the differences between the Draft VAT law and the prevailing VAT regulations. Taxpayers should assess the potential impacts and take proper actions in advance. PwC will keep a close eye on the progress of VAT legislation and assist relevant industries and enterprises to conduct in-depth studies on the business impacts.
- For a detailed overview and analysis of the Draft Law, please see [issue 2 of the China Tax/Business News Flash 2023 'A milestone in the VAT legislation process'](#).

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# India

## Circular/Instruction

- CBIC vide Circular 183/15/2022-GST dated 27 December 2022 clarified in relation to differential Input Tax Credit ('ITC') availed as per Form GSTR-3B vis-a-vis Form GSTR-2A for FY 2017-18 and FY 2018-19.
- The circular provides procedure to be followed in respect of ITC availed in Form GSTR-3B during FY 2017-18 and FY 2018-19 which is not reflected in Form GSTR-2A due to various reasons viz. non-filing of Form GSTR-1 by the supplier; failure to report a particular supply in Form GSTR-1 by the supplier; incorrect reporting of supply by the supplier as B2C instead of B2B; incorrect recipient GSTIN reported by the supplier in Form GSTR-1;
- CBIC vide Circular No. 186/18/2022-GST dated 27 December 2022 clarified GST applicability on No Claim Bonus offered by Insurance companies and applicability of e-invoicing w.r.t. an entity.
- In this regard it has been clarified, that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.
- Exemption from generation of e-invoices to specific entities viz. insurance, banking, financial institutions, etc. in terms of Notification No. 13/2020-Central Tax, as amended, is applicable for the entity as a whole and is not restricted by the nature of supply being made by the said entity.
- Circular 188/20/2022-GST dated 27 December 2022: Prescribing manner of filing an application for refund by unregistered persons.

- A new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category 'Refund for Unregistered person'. Clarification has been issued prescribing the manner of filing of refund application by the unregistered persons for amount of tax borne by them in the event of cancellation of the contract/agreement for supply of services of construction of flat/ building or on termination of long-term insurance policy where the time limit to issue GST credit note in terms of Section 34 of the CGST Act, 2017 has already expired.

## Case laws

- The Hon'ble High Court, Punjab and Haryana in the matter of **M/S Genpact India Private Limited v. Union of India** [CWP-6048-2021 (O&M) 11 November 2022] has quashed a demand by the GST Department against Genpact India on the issue of intermediary versus BPO (Business Process Outsourcing). The Hon'ble high court noted that the petitioner provides the main service directly to the overseas clients of Genpact International Incorporated (GI) but does not get any remuneration from such clients. It is GI which gets paid by its customers to whom the services are being provided directly by the petitioner. There is also nothing to show that the petitioner either has a direct contract with the customers of GI, or it is liaising or acting as an "intermediary" between GI and its customers. "All that is evident from the record is that the petitioner is providing the services which have been sub-contracted to it by GI. As a Sub-contractor it is receiving fee/charges from the main contractor," the bench said, clarifying that sub-contracting for a service is not an "intermediary" service.



- The Hon'ble High Court, Kerala in the matter of **M/s Mannapuram Finance Ltd. vs Assistant Commissioner, Central Tax and Excise** (2022 (12) TMI 411) has quashed orders rejecting refunds sought for GST paid on notice-pay received by it from erstwhile employees. High Court mentions that the Circular only clarifies the existing law and thus applies retrospectively and the mere "fact that the Circular was issued only after the issuance of an order of the first appellate authority is no reason to hold that the petitioner is not entitled to the benefits of the Circular";
- The Hon'ble Gujarat High Court ("the High Court") in the case of **M/s. Shree Govind Alloys Pvt. Ltd. v. State of Gujarat** (R/Special Civil Application No. 23835 of 2022) dated December 01, 2022, held that mere expiry of the e-way bill during transit of vehicle cannot be a valid ground for detention and seizure.
- The Hon'ble Calcutta High Court in **M/s. R.P. Buildcon Private Limited & Anr v. The Superintendent, CGST & CX** [WPA 20025 OF 2022 dated September 30, 2022] held that that the audit proceedings under Section 65 of the Central Goods and Services Act, 2017 ("the CGST Act") has already commenced by Audit Commissionerate thus, it is appropriate that the proceedings should be taken to the logical end by Audit Commissionerate itself. Thus, Parallel proceedings cannot be conducted by the 3 wings of same department for the same tax period.



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# Indonesia

## Implementing rules of VAT under HPP law

- In December 2022, the government issued several VAT regulations as implementing rules of Law No.7 Year 2021 on Harmonisation of Tax Regulations (Harmonisasi Peraturan Perpajakan/HPP). Key changes were covered under Government Regulation (GR) No.44 Year 2022 (GR-44) regarding Implementation of general provision of VAT/Luxury Goods Sales Tax (LST) and GR No.49 Year 2022 (GR-49) regarding VAT facilities for certain taxable goods/services. Below are the highlights of the changes under these regulations.

## Implementation of general VAT provisions

- In December 2022, the government issued several VAT regulations as implementing rules of Law No.7 Year 2021 on Harmonisation of Tax Regulations (Harmonisasi Peraturan Perpajakan/HPP). Key changes were covered under Government Regulation (GR) No.44 Year 2022 (GR-44) regarding Implementation of general provision of VAT/Luxury Goods Sales Tax (LST) and GR No.49 Year 2022 (GR-49) regarding VAT facilities for certain taxable goods/services. Below are the highlights of the changes under these regulations.
- GR-44 revokes the previous GRs, however all implementing regulations of the previous GRs remain valid to the extent that they do not conflict with the provisions in this GR. Several notable additional clauses under GR-44 are as follows:
  - Confirmation that the delivery of foreclosed assets by creditors is VATable;
  - Confirmation that the delivery of collateral in relation to Sharia transactions is non-VATable;

- Confirmations relating to the “Final” VAT regime, including the rules for crediting Input VAT by the seller and buyer;
  - The determination that in the event that there is a change in the headline VAT rate, the old rate is used only when both the timing of VAT due and the timing of VAT Invoice preparation is made prior to the rate change. If any of the two timings occurred since the rate change, the new rate prevails.
- Please refer to [TaxFlash No.22/2022](#) for more details on GR-44.

## VAT facilities

- In December 2022, the government issued several VAT regulations as implementing rules of Law No.7 Year 2021 on Harmonisation of Tax Regulations (Harmonisasi Peraturan Perpajakan/HPP). Key changes were covered under Government Regulation (GR) No.44 Year 2022 (GR-44) regarding Implementation of general provision of VAT/Luxury Goods Sales Tax (LST) and GR No.49 Year 2022 (GR-49) regarding VAT facilities for certain taxable goods/services. Below are the highlights of the changes under these regulations.
- GR-49 was issued to implement the VAT facilities that consist of VAT exemption and VAT non-collected. The HPP Law made changes to the status of several “non-VATable” objects. This included shifting some goods and services from the negative list (not subject to VAT) to those now granted VAT facilities.
- GR-49 operates to consolidate all the VAT facilities previously governed under several regulations. Most of the goods and services governed under GR-49 originate from these previous regulations and continue with the same VAT facilities. There are however some additions shifted from the negative list and some new items. However, all the relevant implementing regulations remain valid to

- the extent that they do not contradict GR-49.
- GR-49 classifies VAT facilities into five categories:
  - The import and/or delivery of VATable goods and services that are exempted from VAT;
  - The import and/or delivery of strategic goods that are exempted from VAT;
  - The delivery of strategic services within the customs area and/or the use of strategic services from outside the customs area to within custom area that are exempted from VAT;
  - The import and/or delivery of strategic goods, delivery of strategic services within custom area, and/or the use of strategic services from outside the custom area to within custom area, on which VAT is not collected; and
  - The import of VATable goods that are exempted from Import Duty upon which VAT and LST is not collected.
- Input VAT in relation to the domestic delivery of VATable goods/services with a VAT exemption facility (i.e. under point a), b), and c) above) cannot be credited by the seller. The Input VAT in relation to the domestic delivery of VATable goods/services with a VAT not-collected facility (i.e. under point d)) can be credited by the seller.
- GR-49 stipulates that the facility under the GR is applicable retroactively from 1 April 2022.
- Please refer to [TaxFlash No.24/2022](#) for more details on GR-49.



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# Japan

## Implementing potential changes in platformer taxation

- According to a recent news article published on 16 January 2023, the Japanese government has begun to explore a new taxation regime that would strengthen the collection of consumption tax (Japan's version of VAT) on foreign digital gaming businesses provided via platformers (e.g., online stores to purchase mobile games).
- Under the current rules, platformers are not deemed suppliers of the digital games, but rather each game developer is liable to remit consumption tax if their taxable turnover exceeds a certain threshold. Based on the article, it appears that the government is considering implementing rules that would allow the tax authorities to collect such consumption tax via the platformers operating the stores. While details remain scarce at this time, such reform could potentially include some changes in the existing, taxpayer-friendly threshold rules applicable to non-resident businesses.
- The overall tax reform proposals for FY2023 have already been released (without including changes in this law), therefore the earliest such tax reform would be implemented would be 2024.



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# New Zealand

## Taxation PUB00428 – GST – Supplies of Properties used for Transitional Housing

- GST on accommodation is a tricky part of the New Zealand GST rules. Inland Revenue has issued three draft public rulings (PUB00428) on the GST treatment of supplies of properties by landlords to organisations for use in the Ministry of Housing and Urban Development's Transitional Programme. The coverage includes:
  - GST - Exempt supplies of properties used for transitional housing. Applies to a supply of a property that will be used for the principal purpose of accommodation in a dwelling.
  - GST - Taxable supplies of properties used for transitional housing (no quiet enjoyment).
  - GST - Taxable supplies of properties used for transitional housing (commercial dwelling).

## Technical Decision Summary (TDS) 22/20 – Taxpayer not carrying on taxable activity

- There has been more recent scrutiny of activities and whether they constitute a taxable activity. In TDS 22/20, the Tax Counsel Office (TCO) decided that a taxpayer was taking steps towards establishing a taxable activity, but was not yet carrying on a taxable activity as the taxpayer had not moved beyond the preparatory work. In terms of the definition of "taxable activity" in the Goods and Services Tax Act 1985, the taxpayer's preparatory work in itself was not an activity that involved, or intended to involve, the supply of goods and services to another person for a consideration.

## QB 22/20 – GST – Payments made by parents to private schools

- QB 22/08 clarifies the GST treatment of payments parents make to private schools and notes that private schools are normally GST-registered and charged GST at the standard 15% rate on supplies made. Exceptions arise where a parent:
  - Makes an "unconditional gift" to the school; or
  - Pays boarding fees to the school (and these are subject to the reduced GST rate of 9%).

## TDS 22/19 – Weathertightness payments by the Crown subject to GST

- In TDS 22/19, the TCO decided that Crown weathertightness payments received by the taxpayer, a GST registered body corporate, were payments in the nature of a grant or subsidy under s 5(6D) of the Goods and Services Tax Act 1985 and therefore, deemed consideration for a supply that was subject to GST under s 8.



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# ITX Policy Developments

## Let's talk

**For a deeper discussion of how these issues might affect your business, please contact**

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## GST and the sharing economy

- In New Zealand, the Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Bill (No 2) proposes to expand the current GST rules for electronic marketplaces to apply to listed services - including taxable accommodation, transportation services and food and beverage delivery services - that are facilitated via digital platforms. New Zealand's GST sharing economy model will operate as a full liability regime and will be the widest model globally.
- The new law will (from 1 April 2024) require the operator of an electronic marketplace to collect and return GST on behalf of the underlying supplier (e.g. the driver) regardless of whether the underlying supplier is registered for GST.
- There are a number of practical features that underpin New Zealand's proposed GST rules. They include a proposed flat rate tax credit scheme (that would require marketplaces to pay an amount to underlying suppliers who are not GST registered), GST on the facilitation fee as well as the underlying supply, and collection of additional information about the GST status of the underlying seller.

## GST regular collection of bulk data

- The Tax Administration (Regular Collection of Bulk Data) Regulations 2022 (New Zealand) allow the Commissioner to collect merchant identifying information and merchant sales/income information from Payment Service Providers (PSPs) on a regular basis. The purpose of this is to form a database that will support improved compliance and detect those operating in the hidden economy. Previously, data requests were made by the Commissioner on an ad hoc basis.
- These regulations came into force on 15 December 2022, and the first reporting period will commence 1 April 2023 and conclude 30 September 2023, with the datasets due to Inland Revenue by 7 November 2023.

## E-invoicing

- Japan has officially implemented PEPPOL as its e-invoicing system. As this was a fairly recent development, adoption by Japanese businesses is not yet widespread. Further, there is currently no mandatory e-invoicing regime, and thus the use of PEPPOL is optional for companies doing business in Japan.

- In Vietnam, the General Department of Taxation ("GDT") has recently shared a plan according to which retailers would need to generate e-invoices from the point of sales ("POS"). Although the issuance of e-invoices from POS is not compulsory under the current regulations, the GDT aims to launch the first part of the plan by the end of March 2023 for retailers who operate in F&B, supermarket, pharmacy, entertainment, travel sectors, etc. to install the software of the tax authorities in their POS or buy new POS devices in which the software of the tax authorities is installed.

### Information collection

- Generally, Inland Revenue has relied on information provided by employers and payers of investment income (e.g. banks) to determine the income and administer the tax system for a large portion of taxpayers. However, the Bill proposes to widen the collection of information to include digital platform operators. The proposed amendments would require platform operators based in New Zealand to collect and provide Inland Revenue with information about the income sellers receive (from 1 January 2024) from the following activities, provided through digital platforms:

- Taxable property rentals (including commercial, short-stay, and visitor accommodation);
  - Personal services (including any time or task-based work, such as ride-sharing, food and beverage delivery, and graphic and web design services); and
  - The sale of goods, and vehicle rentals (if there are non-resident sellers on the platform).
- Sellers on digital platforms would need to provide additional information to platform operators including their tax file number, country of tax residence, and other identifying information. New Zealand-based platform operators would then be required to report information to Inland Revenue about the income earned by sellers on their platform.

Our full commentary on the proposed changes to the Marketplace rules (including information collection) can be found in our [Tax Tips](#) publication.



# Thank you



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