



# InTouch

The latest in indirect tax news for the Asia Pacific region

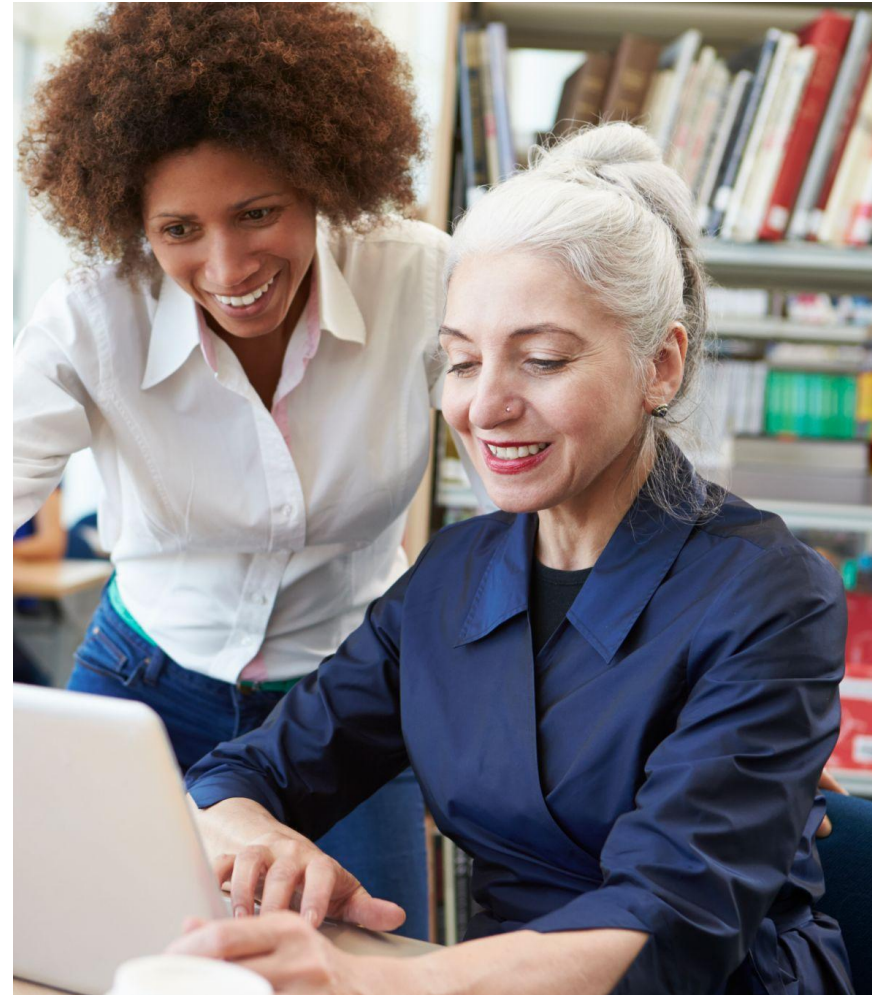
Issue 1, 2022 – October to December 2021



# 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 to December 2021. As economies start to reopen, the role indirect taxes play in recovery strategies will become increasingly important.

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



# Table of contents

1. Australia	04
2. Cambodia	05
3. China	07
4. India	08
5. Malaysia	10
6. New Zealand	12
7. Philippines	14
8. Vietnam	16

# Australia

## Alert on structured arrangements that avoid Luxury Car Tax (LCT)

- The ATO is reviewing arrangements involving sales of both new and second-hand luxury cars between participating entities
  - There are concerns that entities are using these types of arrangements to improperly obtain refunds of LCT and evade LCT on the retail sale of the cars
  - Here, entities in the supply chains liquidate to circumvent ATO compliance or recovery action
    - Therefore, not meeting their income tax or GST obligations
- The arrangements may also involve artificially embedding LCT in the price of the car that is not otherwise subject to LCT
  - One of the participating entities will then seek to recoup this LCT as a refund
  - The corresponding and artificially created LCT liability is never reported and paid
- Taxpayers who adopt these types of arrangements, and their advisers, will be subject to increased scrutiny from the ATO

## Update on residential colleges GST tool

- The ATO announced the residential colleges GST tool and instructions for 2017-2021 will be retired on 31 December 2021
  - Decision was based on the expiration of the tool and the findings of an independent review that the tool would not meet the GST legislative requirements into the future

- The ATO is providing residential colleges and universities with an interim residential colleges GST tool and instructions for the 2022 calendar year
  - This will provide support with GST compliance while the ATO develops a longer-term solution
  - Use of this 2022 interim tool will be made available until 31 December 2022 and can only be used by residential colleges and universities for student accommodation contracts for the 2022 calendar year



**For more information please contact**

**Michelle Tremain**

National Indirect Tax Leader, PwC Australia

Phone: +61 8 9238 3403

Email: [michelle.tremain@pwc.com](mailto:michelle.tremain@pwc.com)

# Cambodia

## **Implementation of value added tax (VAT) on e-commerce**

*(Instruction No. 20522 GDT dated 8 December 2021)*

To comply with sub-decree 65 and Prakas 542, the General Department of Taxation (GDT) has provided its instructions for implementation of VAT on e-commerce as follows.

### **Taxable supplies**

Sub-decree 65 and Prakas 542 applies to digital goods/services or e-commerce activities electronically traded and supplied by taxable persons (non-resident taxpayers) and electronic platform operators that do not have a permanent establishment (PE) in Cambodia from outside Cambodia to self-declaration regime enterprise residents or/and physical persons in Cambodia. Electronic platform operators refer to non-resident taxpayers who provide services, receive settlement payments and deliver digital goods/services to buyers via electronic platforms in the name of non-resident e-commerce suppliers.

As for e-commerce transactions or activities supplied in Cambodia by resident taxpayers, they are not in the scope of this Instruction but must comply with the tax law and regulations in force.

### **Non-taxable supplies**

Supplies of digital goods/services or e-commerce activities as stated in Article 57 of the tax law shall be considered as non-taxable supplies.

Under a Prakas 542, non-resident taxpayers who (i) provide supplies of digital goods/services or e-commerce activities from outside Cambodia to Cambodia with annual turnover from KHR250m

(approx. USD62,500) or total expected turnover for three consecutive months ending in the current calendar year from KHR60m (approx. USD15,000), shall be obliged to register for simplified VAT within 30 days and (ii) have been providing supplies of digital goods/services with annual turnover from KHR250m (approx. USD62,500) starting from 1 January 2021 to 31 December 2021 are obliged to register for simplified VAT no later than 31 December 2021.

### **Monthly submission of returns and payments of the VAT**

- a. Non-resident taxpayers who provide supplies of digital goods/services or e-commerce activities from outside Cambodia to customers in Cambodia shall be obliged to collect 10% VAT from resident persons not registered under the self-declaration regime, submit VAT returns and pay VAT to GDT monthly.  
In case enterprise taxpayers are registered under the self-declaration regime but do not make direct payments to the non-resident suppliers through the bank account under the enterprise's name, they shall be considered as taxpayers not registered under the self-declaration regime, and non-resident suppliers shall have an obligation to collect VAT and declare it to the GDT.
- b. Self-declaration regime taxpayers who receive supplies of digital goods/services or e-commerce activities from non-resident taxpayers shall collect the VAT reverse charge at the rate of 10%, submit the returns and pay it to the GDT monthly.
- c. Small taxpayers under the self-declaration regime shall be exempt from the VAT reverse charge for five years from 8 September 2021.

## Penalties

Taxable persons who fail to register or update information or submit returns and pay VAT to the GDT are subject to penalties as stated in the tax law and regulations in force.

The registration process, issuance of the invoice, exchange rates for VAT calculation, means of VAT payment, and procedures for management and control are detailed in this Instruction. The GDT has designed new VAT returns for VAT on e-commerce. The GDT will implement the VAT on e-commerce from 1 April 2022.

**For more information, please contact Tax Partner Heng Thy**

### Heng Thy

PwC | Partner - Tax and Consulting Services

Office: +855 23 860 606

Email: [thy.heng@pwc.com](mailto:thy.heng@pwc.com)



# China

## Implementing the Pilot Program of All Digital E-invoices in cities/regions in China

Starting from 1 December 2021, the pilot program of all digital e-invoices ("e-invoices") is carried out in three specific cities/regions: Shanghai, parts of Guangdong Province (excluding Shenzhen), and parts of Inner Mongolia Autonomous Region. The details of the pilot program are summarized as follows:

- The scope of pilot taxpayers shall be determined by tax authorities in the above specific cities/regions. The scope of invoice recipients will gradually cover the cities/regions.
- There is no need for taxpayers to collect special tax control equipment, or to go through the verification of the invoice type, or purchase paper invoices in batches, and they may issue invoices through the e-invoice service platform.
- The tax authority shall implement the management of the total quota for invoices issued by pilot taxpayers. Where a pilot taxpayer issues e-invoices, special and general VAT paper invoices and other invoices through the VAT invoice management system, all these invoices are subject to the same total quota.
- Where pilot taxpayers obtain VAT deduction vouchers to declare their input VAT deduction or apply for export tax rebates or tax refund on behalf of others, they shall confirm the purpose of vouchers through the e-invoice service platform. If there is any mistake in the purpose confirmed, the pilot taxpayer may request correction from the relevant tax authority.

## Extending VAT Policies for Overseas Institutions Investing in Domestic Bond Market

According to Caishui [2018] No. 108 issued on 7 November 2018 (hereinafter referred to as "Circular 108", that is, the "Circular on Policies on Corporate Income Tax and VAT for Overseas Institutions Investing in Domestic Bond Market"), during the period from 7 November 2018 till 6 November 2021, the interest income earned by an overseas institution from its bond investment in the Chinese bond market will be temporarily exempt from Corporate Income Tax and VAT.

On 22 November, the Ministry of Finance and the State Taxation Administration jointly issued the "Announcement on Extending the Corporate Income Tax and VAT Policies for Overseas Institutions Investing in Domestic Bond Market" (Ministry of Finance and State Taxation Administration Announcement [2021] No. 34) to extend the implementation period of Circular 108, in order to further promote the liberalization of the domestic bond market, the related policies are hereby announced as follows:

Starting from 7 November 2021 to 31 December 2025, income from bond interest derived by an overseas institution from investment in the domestic bond market shall be temporarily exempted from CIT and VAT.

### For more information please contact:

#### Robert Li

Senior Manager - Indirect Tax, PwC China

Phone: +86 (21) 2323 2596

Email: [robert.li@cn.pwc.com](mailto:robert.li@cn.pwc.com)

# India

## Notifications/Circulars for CGST

### CGST Notifications

- **Notification No. 38/2021- Central Tax dated 21-12-2021** Seeks to appoint January 1, 2022 as the appointed date for insertion of **Rule 10B issued vide Notification No. 35/2021- Central Tax dated 24-09-2021** in the CGST Rules, 2017 wherein a registered person who has been issued a registration certificate under Rule 10 of the CGST Rules, shall undergo authentication of Aadhaar Number for the purpose of filing an application for revocation of cancellation of registration, refund application in the form RFD-01 and refund of IGST paid on export of goods outside India.
- **Notification No. 39/2021 - Central Tax dated 21-12-2021** Seeks to notify January 1, 2022 as the appointed date on which the changes as mentioned in the Sections below shall come into force. Changes were with respect to Section 108, Section 109, Section 113, Section 114, Section 115, Section 116, Section 117, Section 118, Section 119, Section 120, Section 121 and Section 122 of the Finance Act 2021 and Clause (aa) in section 16(2), section 74, section 75, section 83(1), section 107(6), section 129(1), section 130, section 151, section 152, section 168 and Schedule II of the CGST Act.

### CGST Circulars

- **Circular No. 165/21/2021-GST dated 17-11-2021** issues clarification relating to applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020;

**Circular No. 166/22/2021- GST dated 17-11-2021** provided clarification in respect of refund related issues

- **Circular No. 167/23/2021- GST dated 17-12-2021** provided clarification in respect of GST on service supplied by restaurants through e-commerce operators

### Case laws

- Calcutta High Court in the case of **M/s LGW Industries Limited & Ors.** has held that Input Tax Credit (ITC) should not be disallowed to a genuine buyer. In the present case, the Petitioners were disallowed ITC on the ground that it was purchased from non-existing suppliers and the Petitioner did not verify the genuineness of the suppliers. The Hon'ble High Court directed the Respondents to consider afresh the cases by considering the documents the Petitioners relied in support of their claim of genuineness of the transactions and to also consider as to whether payments on purchases in question along with GST were actually paid or not to the suppliers. Further, it was also held that if it was found that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers, the Petitioners were to be given the benefit of ITC.
- Maharashtra bench of the Authority for Advance Ruling (AAR) in the case of **M/s B.G. Shirke Construction Technology Pvt Ltd.**, held that managerial and leadership services by Registered/Corporate Office to its Group Companies/ construction sites registered in different States (branches) is "supply of service" in terms of Section 7 of the Central Goods and Services Tax Act, 2017 (CGST Act).



- Madhya Pradesh, bench of the Appellate authority for advance ruling (AAAR) in the case of **M/s Bharat Oman Refineries Limited**, held that services provided by an employee to the employer is treated as neither supply of goods or services under Schedule III of the CGST Act - Merely because the employer is being compensated does not mean that any services have been provided by him or that he has 'tolerated' any act of the employee for premature exit. Further, services by an employee to the employer in the course of or in relation to his employment have been placed out of the purview of GST. In this case, canteen services are also provided to employees by the employer. So, this is not a case where some services have been provided by the employee to the employer. There is nothing on record to show that the said facility provided to employees is part of the wage structure. Therefore, there is no reason to hold that canteen facilities would fall under Schedule III of the CGST Act. Provision of canteen services to all the employees without charging any amount (free of cost) will not fall under Para 1 of Schedule III of GST Act.

**For more information please contact:**

**Pratik Jain**

Partner, National Leader - Indirect Tax, PwC India

Phone: +91 98111 41868

Email: [pratik.b.jain@pwc.com](mailto:pratik.b.jain@pwc.com)



# Malaysia

## **Postponement of Implementation of Tourism Tax on Accommodation Premises Booked Through Digital Platform Service Providers**

The implementation date of the imposition of tourism tax (TTx) on accommodation premises booked through digital platform service providers (DPSPs) has been postponed for one year, i.e. from 1 January 2022 to **1 January 2023**. As such, the implementation date for the registration of DPSPs has also been postponed from 1 October 2021 to 1 October 2022.

## **Special Voluntary Disclosure & Amnesty Program (“VA Program”)**

The Royal Malaysian Customs Department (“RMCD”) is having a Special Voluntary Disclosure & Amnesty Program (“VA”) from 1 January 2022 to 30 September 2022 (9 months). The VA program will involve two distinct programs:

- **Voluntary disclosure program** - businesses can voluntarily disclose any unpaid or underreported indirect tax/duty not known or discovered by RMCD under this program; and
- **Amnesty program** - businesses with any outstanding Bill of Demand (“BOD”) or who have been audited by the RMCD Compliance Division and received audit findings on non-compliance areas can enjoy penalty and tax/duty remissions under this program. The VA program will cover all indirect taxes administered by RMCD, including Sales Tax, Service Tax, GST, Tourism Tax, Departure Levy, Import Duty, Export Duty and Excise Duty. Its application is limited to tax, duty or penalty liabilities arising **on or before 31 October 2021**. The key incentives for those participating in the VA program include:

- 100% penalty remission if application and full payment is made within Phase 1 (1 January 2022 to 30 June 2022 - 6 months).
- 50% penalty remission if full payment is made within Phase 2 (1 July 2022 to 30 September 2022 - 3 months).
- A percentage of the unpaid tax/duty will also be remitted, depending on the case.

## **Imposition of service tax on delivery services**

Currently, courier delivery services for documents or parcels weighing less than 30kg by a service provider licensed under the Postal Services Act 2012 is subject to service tax while all other delivery services are not subject to service tax.

With effect from **1 July 2022**, service tax will be imposed on delivery services provided by any service provider including e-commerce platforms (but excluding food and beverage delivery services as well as logistics services).

## **Service tax exemption on brokering services in relation to trading of listed stocks**

With effect from **1 January 2022**, the brokerage services relating to the trading of shares listed on Bursa Malaysia are exempted from service tax.

## **Imposition of sales tax on low value goods**

Currently, an importer of low value goods (LVG), i.e. goods whose value does not exceed RM500, is exempted from paying sales tax on importation, subject to certain conditions. It was announced in the Budget 2022 speech that the above sales tax exemption for LVG be abolished with effect from **1 January 2023** and sales tax will be imposed on such

LVG that are sold online and imported using air courier service into Malaysia. The Budget speech further indicated that local and foreign sellers who sell such LVG to Malaysian customers are required to register for and impose sales tax on the sale.

#### **Extension for sales tax exemption on passenger motor vehicles**

The following sales tax exemptions on passenger motor vehicles, which were from 15 June 2020 to 31 December 2021, has been extended for 6 months until **30 June 2022**:

- 100% exemption in relation to the sale of locally assembled passenger **motor** vehicles; and
- 50% exemption in relation to imported passenger motor vehicles.

#### **Exemption of import duty, excise duty and sales tax on imported and locally manufactured electric vehicles**

Excise duty and sales tax on the locally manufactured electric vehicles (“EVs”) are fully exempted from **1 January 2022 to 31 December 2025**.

Import duty, excise duty and sales tax on imported complete built up (CBU) EVs are also fully exempted from **1 January 2022 to 31 December 2023**.

#### **Excise duty on pre-mixed preparation of sugar sweetened beverages**

Currently, only certain ready-to-drink sugar sweetened beverages (SSB) exceeding a certain amount of sugar content are subject to excise duty. With effect from **1 April 2022**, the excise duty will be extended to certain pre-mixed preparations of SSB containing a total sugar content exceeding 33.3 grams per 100 grams.

#### **Excise duty on liquid or gel containing nicotine used in e-cigarettes and vapes**

Currently, excise duty is imposed on electronic cigarettes (e-cigarettes), vapes and nicotine-free liquids or gels used in e-cigarette and vape devices.

It was proposed in the Budget 2022 that excise duty be imposed on liquid or gel products containing nicotine which are used in e-cigarettes and vape devices . The Budget 2022 proposals also include the increase of the excise duty for nicotine-free liquids or gels used in e-cigarettes and vape devices from RM0.40 per milliliter to RM1.20 per milliliter.

However, the implementation date of 1 January 2022 has been deferred to a later date which has yet to be announced by the authorities.



**For more information please contact**

#### **Raja Kumaran**

Tax Director, Indirect Tax, PwC Malaysia

Phone: +60 (3) 2173 1701

Email: [raja.kumaran@pwc.com](mailto:raja.kumaran@pwc.com)

# New Zealand

## **GST Technical Decisions**

A number of Technical Decision Summaries (TDS) have been issued in relation to a wide range of GST issues. Specifically, many of these decisions have concerned whether an entity's GST registration was valid or not. In many cases, the GST registration was ordered to be ceased and GST claims required to be repaid. Inland Revenue has recently increased their focus in relation to taxable activities and GST claims. As such, organisations should ensure they fully consider whether registering for GST is appropriate or not.

We provide a brief summary of several recent TDS items below.

### **TDS 21/01**

This technical decision concerned the ability for a GST-registered non-profit body to claim input tax deductions where it only made exempt supplies. As the non-profit body was unable to prove it was making any taxable supplies, it was not entitled to the input tax deductions it claimed. As such, its GST registration was cancelled from the date it was registered.

### **TDS 21/02**

Company A was an overseas incorporated company and it registered for GST in New Zealand on the basis its taxable activity was ticket selling for non-residents airlines. Company A's GST returns showed zero-rated supplies of flights and input tax credit claims. It was ultimately held that Company A was acting as agent for the airlines and made no taxable supplies of itself. As such, Company A was not entitled to the input tax claims and its GST registration was cancelled from the date it registered.

## **TDS 21/03 & TDS 21/04**

Company X was a retailer. During the GST periods in dispute, bank statements and vouching data showed unexplained cash deposits made into the joint private bank account of two shareholders of Company X and into the bank account of a family trust. The Tax Counsel Office decided that the unexplained deposits made into the bank accounts of the shareholders were undisclosed cash sales for GST purposes. Company X was liable for evasion penalties.

### **TDS 21/05**

The taxpayer is an incorporated company registered for GST whose taxable activity was the importation and distribution of goods. However, the Tax Counsel Office challenged the Taxpayer stating that they were not carrying on a taxable activity. The onus of proof was on the taxpayer to show it had a taxable activity, in which it failed to produce sufficient evidence of. The taxpayer's GST registration was ceased and a 40% penalty was imposed.

## **Draft GST publications**

### ***Goods purchased on deferred payments terms***

Inland Revenue released a draft Question We've Been Asked (PUB00330) regarding when a person registered for GST on a payments basis can claim an input tax deduction for goods purchased on deferred payment terms.

The deadline for comments on this publication closed 24 December 2021.

## ***GST and Finance Leases***

Inland Revenue released a draft interpretation statement (PUB00357) in relation to GST and finance leases (the GST Act refers to an *agreement to hire* and a *hire purchase agreement*). The statement is comprehensive and explains how to classify leases of goods for the purposes of the time of supply rules. It also explains how to account for GST on these leases when applying any special time and value of supply rules.

The deadline for comments on this statement closed on 17 December 2021. Once finalised, this statement is intended to update and replace the IS2450.



## **Digital GST Developments**

New Zealand introduced an offshore vendor/platform model and has been taxing remote services since 1 October 2016 and low-value imported goods (LVIG) since 1 December 2019. Both models have been very successful for the government and compliance is relatively easy. The number of remote services registrations sits at about 570 and the number of LVIG registrations at just under 750. The New Zealand rules have been used by other countries as a template.

The next chapter in relation to GST and the digital economy is how to deal with the gig economy, for example ride sharing, food delivery and short-term accommodation facilitated by a platform or an electronic marketplace. As is evident from recent developments in this area in Australia and India, this is expected to generate some debate as there are a range of options covering information sharing, joint liability or even full liability for platforms.

### **For more information please contact:**

#### **Eugen Trombitas**

Partner, PwC New Zealand

Phone: +64 21 493 903

Email: [eugen.x.trombitas@pwc.com](mailto:eugen.x.trombitas@pwc.com)

# Philippines

## Disseminating the updates to list of VAT-exempt products

The Bureau of Internal Revenue (BIR) published the Food and Drug Administration (FDA)'s Letter dated 8 November 2021 containing updates to the "List of VAT-Exempt Products Under R.A. No. 11534." The letter attached to Revenue Memorandum Circular (RMC) No. 124-2021, may be viewed at, or downloaded from [www.bir.gov.ph](http://www.bir.gov.ph).

RMC No. 124-2021 updates and supplements RMC No. 81-2021 which published the consolidated list of VAT-exempt products and is the controlling list insofar as the VAT-exempt items under Sections 109(1)(AA) and 109(1)(BB) of the Tax Code are concerned.

(Revenue Memorandum Circular No. 124-2021, issued on 14 December 2021)

## Disseminating the updated list of VAT-exempt drugs and vaccines

The BIR published the Department of Health (DOH)'s letter dated 17 November 2021 containing a copy of the updated "List of VAT-Exempt

Drugs and Vaccines Prescribed and Directly Used for COVID-19 Treatment. The letter, attached to Revenue Memorandum Circular (RMC) No. 123-2021, may be viewed at, or downloaded from [www.bir.gov.ph](http://www.bir.gov.ph).

(Revenue Memorandum Circular No. 123-2021, issued on 14 December 2021)

## Amendments to the VAT Regulations

In light of the new Title on Tax Incentives in the Tax Code and its implementing rules and regulations, the BIR amended Revenue Regulations No. 16-2005 (Consolidated VAT Regulations) as follows:

1. Section 4.106-5(c) is amended to read:

"Sales to persons or entities whose exemption from **direct and indirect taxes** under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate;"

2. Export sales under Section 4.106-5 now includes this provision:

"Sale of raw materials, inventories, supplies, equipment, packaging materials, and goods, to a registered export enterprise, to be used directly and exclusively in its registered project or activity x x x for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP; x x x Provided further, That the above-described sales to existing registered export enterprises located inside ecozones and freeport zones shall also be qualified for VAT zero-rating under this sub-item until the expiration of the transitory period."

3. Section 4.108-5(b)(2) is amended to read as follows:

"Services rendered to persons or entities whose exemption from **direct and indirect taxes** under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;"

4. Transactions subject to the VAT zero rate under Section 4.108-5(b) now includes this provision:

“Sale of services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, to a registered export enterprise, to be used directly and exclusively in its registered project or activity x x x for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP; x x x Provided further, That the above-described sales to existing registered export enterprises located inside ecozones and freeport zones shall also be qualified for VAT zero-rating under this sub-item until the expiration of the transitory period.”

The above amendments took effect immediately after publication and shall cover transactions entered into during the third quarter of taxable year 2021 and onwards.

(Revenue Regulations No. 21-2021, published on 10 December 2021)

**Clarifying the tax treatment of integrating the international passenger service charge at the point of sale of airline tickets**

The BIR has issued guidelines to standardize the tax treatment of integrating the Domestic Passenger Service Charge (DPSC) and International Passenger Service Charge (IPSC), commonly referred to as terminal fees, into airline tickets at the point of sale.

**A. Collection of IPSC**

Domestic Airline Companies shall collect IPSC from passengers and shall include the IPSC in the official receipt to be issued to the latter. The VAT-exempt and VAT-exempt components of the IPSC shall be separately reflected in the official receipt.

The share of the Airport Authority in the IPSC should be shown in the Airline Company official receipts as part of receipts subject to VAT while the Aviation Security Fee and other fees should be reflected as VAT-exempt. The VAT component of the IPSC should be included in the total VAT.

For International Airline Companies, the collected IPSC shall also be reflected in their official receipts. The share of the Airport Authority, Aviation Security Fee and other fees should be reflected as VAT-exempt.

The accounts to record the IPSC (share of the Airport Authority, Aviation Security Fee, and other fees) may be shown in the financial statements as other income/expense.

**B. Remittance of IPSC by Airline Company to Airport Authority**

The IPSC collected by the Airline Company shall be paid to the Airport Authority which shall issue an official receipt indicating the full amount of the IPSC (*i.e.*, ₱550 per passenger).

**C. Payment of Service Fees by Airport Authority to Airline Company**

The service fees paid by the Airport Authority to the Airline Company shall be governed by the rules on government money payments, hence, subject to the 5% creditable withholding VAT and 2% creditable withholding tax. The Airline Company shall issue VAT official receipts.

The service fees shall be treated as other income subject to corporate income tax.

(Revenue Memorandum Circular No. 122-2021, issued on 14 December 2021)

**For more information please contact:**

**Malou Lim**

Tax Managing Partner, PwC Philippines

Phone: +63 (2) 8845 2728

Email: [malou.p.lim@pwc.com](mailto:malou.p.lim@pwc.com)

# Vietnam

## 1. New Circular guiding the Tax admin law 2019 and Decree 123/2020 on invoices

On 17 September 2021, the Ministry of Finance released a new circular 78/2021 guiding certain provisions of the Law on Tax Administration 38/2019 and Decree 123/2020 on invoices and documents. Circular 78 will take effect from 1 July 2022 and taxpayers are encouraged to implement e-invoices before this date.

### Key points

- From 1 July 2022 onwards, all businesses, economic organizations, business households and individuals paying tax under the declaration method must compulsorily apply e-invoices (except for certain cases).
- Circular 78 provides detailed guidance on certain e-invoices matters, such as authorization to issue e-invoices; form number and serial number; conversion into e-invoices with verification code; handling of e-invoices with errors; storage of e-invoices, etc.
- Regarding the authorisation for e-invoice issuance, the authorised party must be a related party of the seller and must not belong to cases where e-invoice usage is postponed as regulated. The authorisation must be agreed in writing. Both the authoriser and the authorised party are required to send the notification to the tax authorities on this authorisation in a prescribed form.
- In case enterprises are using e-invoices without verification code and would like to change to e-invoices with verification code, they are required to follow the guidance on the change of information under Article 15 of Decree 123/2020.
- Enterprises using e-invoices without verification code must transmit e-invoice data to the tax authority within the date the e-invoice is sent to the buyer at the latest, except for certain cases such as

telecommunication, insurance, banking, air transportation, securities, etc.

- Circular 78/2021 also provides guidance on handling e-invoices issued with errors. For instance, for e-invoices with errors that require adjustment or replacement as regulated, the seller can choose to notify the amendment for each e-invoice with errors or for multiple e-invoices with errors using a prescribed form. This notification can be submitted to the tax authorities at any time but at latest by the last day of the VAT declaration period in which the adjustment invoices are issued.
- There is a specific guidance for e-invoices with verification code issued from cashiers which have a connection to transmit data to the tax authorities (relevant to supermarket, food and beverage, restaurants, retail, etc).
- There are conditions for companies providing e-invoice solutions and data transmission.
- From the effective date of Circular 78/2021, certain circulars and decisions in relation to invoicing will expire such as Circular 32/2011 on e-invoices, Circular 39/2014 on invoices, Circular 68/2019 guiding Decree 119/2018/ND-CP on e-invoices, etc.
- For companies which use e-invoices or invoices under previous regulations, they can continue using such invoices until 30 June 2022.
- On a related matter, in late September, the Ministry of Finance issued decisions to implement e-invoices in accordance with Decree 123/2020 and Circular 78/2021 in 6 cities and provinces (i.e. Hanoi, Ho Chi Minh City, Hai Phong, Phu Tho, Quang Ninh and Binh Dinh) from 1 November 2021. Based on that, the General Department of Taxes also issued Decision 1417 dated 27 September providing a detailed implementation plan in these 6 provinces.



## 2. Circular 80/2021 guiding the implementation of the Law on tax admin 2019 and Decree 126/2020

On 29 September 2021, the Ministry of Finance released Circular 80/2021 providing guidance on a number of articles in the Law on Tax Admin 2019 and Decree 126/2020. The new Circular will be effective from 1 January 2022 and replaces a number of existing regulations, including Circular 156/2013.

Some notable points in relation to general tax admin matters are included in this new Circular.

### 2.1. More guidance on VAT allocation

Under Decree 126/2020, companies which have multiple business activities in different provinces, where such activities are accounted for centrally at the head office, must declare tax centrally at head office, but are required to apportion and pay such tax to the respective provinces. Circular 80/2021 dedicates a whole chapter to providing further guidance in this respect. We've summarised some notable points below.

- **The allocation rule for VAT shall be applied in the following cases:**
  - Manufacturing dependent units/business locations
  - Real estate transfer
  - Construction activities
  - Hydropower plants located in various provinces
  - Electronic lottery business
- The VAT payable allocated to manufacturing dependent units/business locations located in different provinces is the revenue before VAT of the respective manufacturing dependent unit/business location multiplied by 2% (for goods subject to 10% VAT) or 1% (for goods subject to 5% VAT). In the event that the allocated VAT payable according to the above formula is higher than the VAT payable of the head office, the allocated VAT payable should be recalculated based on the VAT payable of the head office, prorated by the ratio of the revenue (before VAT) of the respective manufacturing dependent unit/business location over the total revenue (before VAT).

- The new Circular also states that where a dependent unit directly makes sales, issues invoices and can properly record its input VAT and output VAT, then such dependent unit shall declare VAT and pay VAT directly to its local tax department. However, it is not clear under the new Circular whether for a dependent unit, which has both manufacturing and trading activities, the VAT payable should be based on the allocation principle as mentioned above, or based on its output VAT less its input VAT.
- For transfer of real estate in different provinces, VAT shall be allocated to the provinces based on 1% of the revenues therefrom. This is different from the current mechanism where VAT is based on 2% of VAT taxable revenue from the transfer.

### 2.2 Clearer guidance for tax refund claims - but stricter controls

#### Clearer guidance

For VAT refunds, the new Circular sets out the supporting documents required to be submitted together with VAT refund requests for each category of VAT refund (e.g., export sales, investment projects etc.). It also sets out cases where VAT refunds can be clawed back. For example, in the case exported goods are returned, the taxpayer must repay the refunded VAT corresponding to the export sales returns and pay corresponding late payment interest.

In the case of liquidation, taxpayers are not required to submit a VAT refund claim. Instead, during the tax audit for liquidation purposes, the tax authorities will work out the final input VAT amount which is eligible to be refunded, and pay this after netting off any other taxes due.

The new Circular also sets out rules for handling overpaid tax, late payment interest and penalties (collectively referred to as the overpaid amounts). There are a number of changes compared with the existing guidance under Circular 156/2013. For instance,

- In principle, the overpaid amounts shall be firstly offset against payables of the same tax/nature. Under Circular 156/2013, this offsetting had to be applied for 6 consecutive months before a refund could be claimed. The new Circular removes this 6-month timeline,

which means the remaining balance after the first offsetting can be claimed for a refund immediately.

- The new Circular also outlines the procedures to claim refunds for the overpaid amounts, where the guidance was not clear under Circular 156/2013.

### Stricter control mechanism

Circular 80/2021 introduces various measures for resolving tax refund claims. These cover cooperation between the tax authorities, the customs authorities and banks to identify high risk claims and detect tax evasion.

#### 2.3 Circular 80/2021 - Formalising taxing rules on cross-border e-commerce and digital business

The Circular provides detailed guidance on the Law on Tax Administration on various matters, of which regulates the tax filing mechanism for foreign companies doing e-commerce, digital business and other business in Vietnam without a permanent establishment. There is a specific definition for e-commerce and digital business.

Having only less than three months to go, we recommend businesses who are affected by the new guidance to study and assess the potential impact thereof and prepare for the compliance process.

#### New tax filing mechanism

##### Base case

- The Circular sets out a clearer mechanism for foreign companies, either by themselves or via their authorised person(s), to directly register, declare and pay taxes in Vietnam.
- The taxes comprise value added tax (“VAT”) and corporate income tax (“CIT”).
- Specifically, foreign companies
  - will be awarded with a tax code
  - can declare tax online at the portal of the General Department of Taxation (“GDT”) on a quarterly basis
  - can pay tax online

### How the mechanism works in alternative cases

If foreign companies do not directly register, declare and pay tax in Vietnam, Vietnamese organisations and parties have the following responsibilities:

- If the Vietnamese purchasers or **distributors** have business registration, they are responsible to withhold and declare tax on behalf of the foreign suppliers (same as the current mechanism of foreign contractor tax).
- If the Vietnamese purchasers are individuals, **banks or payment intermediary companies** are required to withhold and declare tax on a monthly basis. The GDT will provide the names and websites of such foreign companies to the banks and/or payment intermediaries for tax withholding.
- If the individuals use cards or other payment methods from which the banks or payment intermediary companies cannot withhold, the banks or payment intermediary companies are required to track and report payments made to foreign companies to the GDT on a monthly basis.

*(\*) Wording in **red** are notable points from the author’s point of view. It could be a development from the draft Circular or a concerned point from practical perspective.*

#### How to determine taxable income?

##### Principle

- The tax payable will be determined based on the revenue derived in Vietnam at the deemed rates in accordance with the current VAT and CIT regulations.
- The tax rates would depend on the nature of goods or services provided by foreign suppliers.

##### Revenue derived in Vietnam

- The Circular introduces the mechanism to collect data for determining taxable revenue, specifically:

- (i) information relating to payments made by the purchasers (organisations and individuals) (e.g. BIN number of credit card, bank account, etc); and
- (ii) information relating to the residential status of the purchasers (e.g. payment address, delivery address, etc.) and/or information relating to the access point of the purchaser (e.g. SIM card, IP address, etc) in Vietnam

If (i) cannot be obtained or it contradicts with (ii), then information relating to the residential status and IP address can be used.

- Taxpayers or their authorised person are required to archive relevant documents and information and promptly present to Vietnam tax authorities if being requested and/or during the course of a tax audit. The archive period is generally 10 years aligning with the statute of limitation.

### *Claiming tax treaty*

#### **Principle**

- Foreign companies in a country which has a tax treaty currently in force with Vietnam may consider applying tax treaty benefits for the CIT portion.
- There is no separate provision for claiming tax treaty benefits for foreign companies doing ecommerce or digital business. Thus, foreign companies in those fields may consider claiming tax treaty benefits similarly to other foreign companies.

#### **Claiming tax treaty benefits**

- There is a separate clause providing guidance on claiming tax treaty benefits including the procedures and documents required for the submission.
- Notably, the tax authorities will review and either approve or deny the tax treaty claim. This will remove the current uncertainty in applying tax treaty benefits of foreign companies.

### *Enforcement*

#### **Principle**

- The GDT will handle the registration, declaration and payment of foreign companies.
- The GDT will publish a list of foreign companies that have registered and pay tax in Vietnam (either directly or via authorised persons).
- It will also publish the names of foreign companies which have not registered for tax in Vietnam.

#### **Other measures**

The Vietnamese tax authorities will:

- cooperate with other overseas tax authorities to push foreign companies to declare and pay taxes
- recapture tax if the foreign companies do not declare and pay tax correctly
- cooperate with other relevant authorities to implement measures in case where the foreign companies do not comply with the Vietnamese tax obligations.

### *Effectiveness*

While the Circular will become effective from 1 January 2022, the direct registration, declaration and payment of taxes of foreign companies will only be implemented from the notice of the GDT that the online portal has come into operation.

### **3. Decree 85 amending e-commerce regulations**

Following on from the new rules to tighten up the taxation of e-commerce, on 25 September the Government issued Decree 85/2021 setting out new rules on e-commerce.

Key points of Decree 85 include:

- **Focusing on e-commerce** and excluding other activities such as e-transactions relating to banking, insurance, money exchange, online games, radio, and television services.
- **Expanding the range of entities** governed by Decree 52/2013 to include all *“foreign traders and organisations that have e-commerce*

*activities in Vietnam*” notwithstanding whether they have a physical presence in Vietnam.

- **A social network will be considered an e-commerce platform** if the participants directly or indirectly pay a fee to conduct any of the following activities:
  - to open booths to display and introduce goods/services on the network;
  - to open accounts to perform the process of entering into contracts with customers on the network;
  - to post information about buying/selling goods/services on a network that has a buying and selling section.
- **Detailing obligations of foreign traders that have e-commerce activities in Vietnam and related parties**
  1. Foreign traders selling goods/services via Vietnam-based e-commerce platforms must select one of the following three options:
    - Option 1: The foreign traders shall exercise the import rights applicable to foreign traders without a presence in Vietnam. Decree 85 does not provide further details on this. However, according to Decree 90/2007 regulating export/import rights of foreign traders without a presence in Vietnam, the foreign trader must register and obtain an import licence from the Ministry of Industry and Trade (MoIT). While this provision has existed for many years, it seems that there has been little if any precedent to date for foreign traders registering thereunder.
    - Option 2: The platform owner shall arrange the import on behalf of the buyers/consumers for the goods from overseas that are purchased via the platform.
    - Option 3: The foreign traders shall appoint commercial agents in Vietnam. According to the Commercial Law, commercial agents will then sell goods/services to buyers/consumers.

The platform owners must authenticate the identity of foreign traders, who sell goods/services via their platforms, and represent the foreign traders

to settle consumers’ complaints as well as make the required tax notifications.

2. Foreign traders selling goods/services from their own websites which (i) are under Vietnamese domain names, or (ii) in Vietnamese language, or (iii) have over 100,000 transactions from Vietnam per year must:
  - register with the MoIT. It is unclear whether the registration should take place upon reaching the threshold of 100,000 transactions per year, or prior to that, based on the expected (or historical) number of transactions; and
  - either set up representative offices or appoint legal representatives in Vietnam; and
  - report to the MoIT on an annual basis; and
  - cooperate with the Vietnam authorities to prevent transactions in goods/services that violate Vietnamese laws; and
  - ensure the quality of goods/services and protect the interests of buyers/consumers.
3. Foreign investors that set up companies in Vietnam engaging in e-commerce activities must:
  - satisfy the applicable market access conditions for foreign investors in e-commerce services under the Law on Investment; and
  - obtain appraisal opinions from the Ministry of Public Security in case of ‘control’ investments in the top five e-commerce companies in Vietnam, as announced by the MoIT.

However, these requirements will not apply for foreign investment in innovative start-up small and medium size enterprises.

All imported goods sold via the platform or from foreign traders’ websites must go through customs procedures.

- **Transitional period:** Foreign traders/investors mentioned in (2) and (3) above must complete required procedures/obligations within 12 months from the effectiveness of Decree 85, i.e. 1 January 2022.

Other local e-commerce traders must re-register/re-notify within 180 days from then.

#### **4. Resolution 406/NQ-UBTVQH15 on tax support measures for taxpayers impacted by COVID-19**

On 19 October, the National Assembly approved Resolution 406/NQ-UBTVQH15 introducing certain tax policies to support corporate and individual taxpayers impacted by COVID-19.

The Resolution stipulates four key measures as below:

- 30% reduction of CIT liability for 2021 for companies having total revenue in 2021 not exceeding VND200b and lower than what they earned in 2019. The latter requirement will not be applied in certain cases, such as newly established companies and companies having undergone a merger or demerger in 2020 or 2021.
- Exemption from PIT, VAT and other taxes arising in Quarter 3 and Quarter 4 of 2021 for business households and business individuals doing businesses in locations impacted by COVID-19 in 2021 (except for certain sectors such as software products and software services, digital content products and services, games, digital films, etc.). The locations treated as impacted will be determined by the Chairman of the provinces or the city's People Committee.
- Reduction of 30% of the applicable VAT rates/deemed VAT rates for companies conducting business in certain sectors, including transportation, tourism, accommodation and catering services, cinema, sports activities and entertainment activities for the period from 1 Nov 2021 to 31 Dec 2021.
- Waiver of late payment interest on tax debts, land use fee and land rental fee incurred in 2020 and 2021 for companies (including their dependent units, business locations) which incurred losses in 2020. This will not be applied if the late payment interest has already been paid.

This Resolution took effect from the signing date. The Government will provide implementing guidance to ensure consumers benefit from the

VAT reduction and consider applying other measures to support companies impacted by COVID-19.

#### **5. Decree 92/2021 guiding the implementation of Resolution 406 on tax support measures**

Following Resolution 406 dated 19 October setting out some measures to help taxpayers affected by COVID-19, the Government has released Decree 92/2021 guiding the implementation of Resolution 406.

##### *5.1 Tax exemption for business households and business individuals*

Exemption from VAT and other taxes arising in Quarter 3 and Quarter 4 of 2021 for business households and business individuals doing businesses in locations impacted by COVID-19 in 2021 (except for certain sectors). The Chairman of the provinces or the city's People Committee will determine the impacted locations.

Decree 92/2021 further stipulates that:

- Other taxes covered by the exemption include special sales tax, natural resource tax, environmental protection tax.
- The tax exemption amount will be determined based on the tax notification issued by the tax authority or based on the tax liability self-declared by taxpayers.
- Where these taxes have been paid already, they can be offset against outstanding taxes of subsequent periods or refunded.

##### *5.2 Reduction of VAT liabilities*

Reduction of 30% of the applicable VAT rates/deemed VAT rates for companies conducting business in certain sectors for the period from 1 Nov 2021 to 31 Dec 2021.

Decree 92/2021 further stipulates:

- A list of goods, services which are entitled to the reduction, as an appendix to the Decree.
- How to reflect the reduction amount on invoices. Particularly, for those declaring VAT under the deduction method, the VAT rate line is indicated as (5% or 10%) \*70% while for those declaring VAT under the direct method, the total amount will be the amount after 30%

reduction and it must be stated on the invoice that “*reduce xxx corresponding to 30% deemed VAT rate according to Resolution no. 406/NQ-UBTVQH15*”.

- In case companies have issued invoices and declared at the normal VAT rates, the seller and buyer shall prepare invoice adjustment minutes and an adjustment invoice should be issued.
- In case companies use pre-printed invoices and/or tickets with a face value that has not been used up, they shall stamp a 30% VAT deduction and/or a 30% price discount besides such face value to continue with the usage of the pre-printed invoices.
- Companies must declare the activities that are entitled to the VAT rate reduction in a prescribed form when preparing the relevant VAT return.

#### **6. Additional guidance for the treatment of COVID-19 expenses**

The General Department Of Taxation (“GDT”) issued Official Letter 4110/TCT-DNNCN on 27 October 2021 (“OL 4110”) providing additional guidance for the treatment of COVID-19 expenses. The GDT confirmed that the following expenses are not taxable:

- Mandatory quarantine costs (incurred in Vietnam or overseas) for overseas business trip.
- Costs of COVID-19 test kits and essential devices for employees for the purpose of protecting them from the risk of infection during work.
- Costs of food and accommodation provided to employees participated in the “3 on-site” production model (see \*).

\* During the 4th wave of the COVID-19 pandemic in Vietnam, the Government introduced “3 on-site” measures, which means employees must work, eat/drink and rest at company’s factory site. This measure was aimed at supporting factories to maintain production activities during the 4th wave of the COVID-19 pandemic in Vietnam.

#### **7. 2% VAT rate cut in 2022**

On 11 January 2022, the National Assembly has approved a Resolution on fiscal and monetary policies to support the Socio-Economic

Development and Recovery Program which is effective from 11 January 2022 to 31 December 2023. The Resolution includes a 2% VAT reduction applicable for 2022.

#### **Below are some notable points:**

- Applicable to 2022, goods and services which are currently subject to 10% VAT shall be entitled to a reduced VAT rate of 8%, except for the following types of goods and services:
  - Telecommunications, IT services;
  - Finance and banking services, securities, insurance;
  - Real estate business;
  - Metal production and manufacture of prefabricated metal products;
  - Mining industry (excluding coal mining), production of coke (“than cốc”), refined petroleum, production of chemicals and chemical products; and
  - Goods and services which are subject to special sales tax.
- The Resolution requests the Government and relevant ministries to implement the policies set out therein. It is expected that the guiding documents with details on the implementation of the above VAT reduction will soon be issued.

#### **For more information please contact:**

##### **Annett Perschmann-Taubert**

Partner, Tax Services, PwC vietnam

Phone: +84 28 3823 0796

Email: [annett.perschmann@pwc.com](mailto:annett.perschmann@pwc.com)

# Thank you



© 2022 PricewaterhouseCoopers. All rights reserved.

PwC refers to the Australia member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details. This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

Liability limited by a scheme approved under Professional Standards Legislation.

PWC200331522