



InTouch

The latest in indirect tax news for the Asia Pacific region

Issue 2 – January-March 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 January to March 2021. Current global events continue to place a focus on indirect taxes, including the potential for future reform as economies look to rebuild and tax authorities try to restore revenue collections.

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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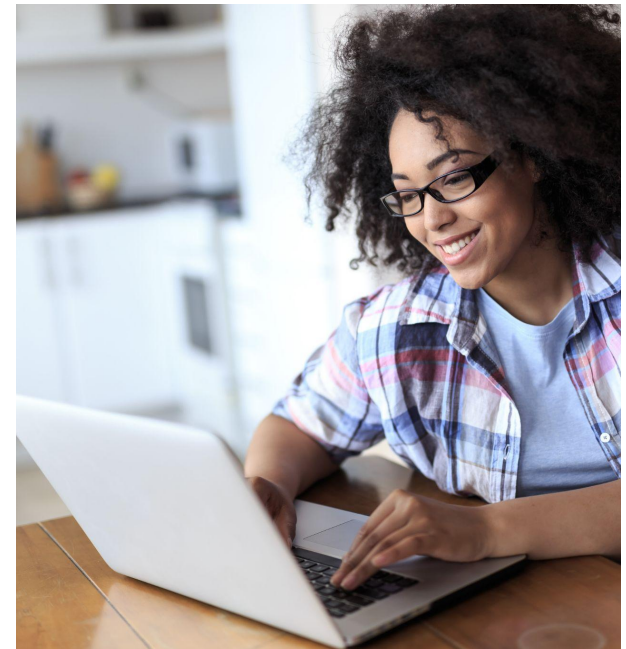
Payment Times Reporting

The Payment Times Reporting Scheme (**PTRS**) has fostered a high level of client interest since coming into effect 1 January 2021. PwC Australia has been on the front foot in assisting clients navigate through the requirements of this regime, winning substantial jobs with key clients. Our market offering broadly includes assisting clients to determine their eligibility to the PTRS, ensuring the correct data is reported, identifying any outliers or opportunities to address results before they are reported, and producing a report that meets the PTRS requirements.

An entity subject to the PTRS is required to publicly report every six months on payment terms and practices for their small business suppliers that have an annual turnover below \$10 million. The first report will be **due on 30 September 2021** for the six month period to 30 June 2021.

The PTR regime applies to businesses with annual gross income greater than \$100m. For corporate groups with aggregate gross income in excess of \$100m, reporting requirements apply to each entity within the group that has annual gross income in excess of \$10m.

Penalties for failing to report are up to 0.2% of annual turnover and producing a false or misleading report are up to 0.6% of annual turnover. The identity of non-compliant entities and details around non-compliance can also be reported publicly.



ATO updates

Draft GST determination on adjustable beds, pressure management mattresses and overlays

A draft GST determination has been made to explain when the supply of adjustable beds, pressure management mattresses and pressure management overlays are GST-free under ss 38-45(1) and 38-45(2) of the GST Act.

Draft GST Determination GSTD 2021/D1 provides guidance on the GST treatment for an adjustable bed, pressure management mattress or pressure management overlay. A medical aid or appliance covered by schedule 3 of the GST Act is GST-free if it is specifically designed for people with an illness or disability and not widely used by people without an illness or disability.

The draft determination sets out an essential character test to determine whether a bed, mattress or overlay and associated spare parts are GST-free by examining its basic nature, composition, function, and other factors.

Draft GSTD 2021/D1 also includes a practical compliance approach to recognise the practical difficulties a supplier may encounter in applying the widely used test to products covered by the determination.

When finalised, the determination is proposed to apply both before and after its date of issue. It will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue.

GST impact of development arrangements in the ACT

A GST determination has been made to clarify the GST implications of development arrangements carried out by developers on land acquired under a long-term Crown lease in the Australian Capital Territory (**ACT**).

GST Determination GSTD 2021/1 provides that the arrangements considered in the Determination typically have the following features:

- a developer enters into a contract for sale with a government agency to acquire a Crown lease over land in the ACT for a monetary purchase price
- on completion of the contract, a government agency is required to grant the Crown lease to the developer
- the contract is contingent upon the developer entering into a project delivery agreement (**PDA**) with a government agency before or at the same time of entering into the contract
- the Crown lease and the PDA provide that the developer must complete building works within a specified time period
- regarding works, the PDA typically provides for
 - the developer to complete building works on land subject to a Crown lease
 - the developer to undertake associated site works, and
 - other conditions relating to the Crown lease include a requirement to provide a proportion of the dwellings as affordable housing
- the Crown lease may be terminated if the completion of the approved development is not done within the agreed timeframe from the Crown lease's commencement, and
- if the Crown lease is terminated before its expiry or not automatically renewed, the developer (as lessee) is entitled to compensation for the value of the improvements on the land (eg any building works or associated site works on the land)

The Determination clarifies that the building works and the associated site works that a developer completes under a building arrangement are not a consideration for the supply of the Crown lease by the government agency under s 95 of the GST Act 1999. While the developer must complete these

works within a certain time period after acquiring the Crown lease, this stipulated timeframe does not make these works non-monetary consideration for the Crown lease supply.

The Determination applies both before and after 31 March 2021. It was previously issued as draft GSTD 2019/D1.

ATO Proposes Draft GST determinations on EFTPOS Interchange Services

The ATO has released for comments the following draft GST legislative determinations:

- Draft Goods and Services Tax: Waiver of Adjustment Note Requirement (eftpos Interchange Services Reports) Determination 2021 (WAN 2021/D1) proposes to allow a member to attribute a decreasing adjustment arising from an adjustment event in respect of an electronic funds transfer at the point of sale (EFTPOS) interchange service without holding an adjustment note in certain circumstances, and
- Draft Goods and Services Tax: Waiver of Tax Invoice Requirement (eftpos Interchange Services Reports) Determination 2021 (WTI 2021/D1) proposes to allow a member to claim an input tax credit on a creditable acquisition of EFTPOS interchange services without holding a tax invoice in certain circumstances.

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Malaysia

Charging of Tourism Tax by Digital Platform Service Providers

The legislation for digital platform service providers (DPSPs) to charge tourism tax (TTx) on online bookings of accommodation premises in Malaysia was gazetted in February 2021. Under the legislation, existing DPSPs are required to register for TTx three months before the effective date while new DPSPs who operate after the effective date are required to register for TTx within 30 days from the date they provide online bookings of accommodation premises in Malaysia.

The effective date was initially fixed on 1 July 2021. However, the Government announced on 17 March 2021 that the TTx exemption which was supposed to end on 30 June 2021 will be extended until 31 December 2021.

In this regard, the effective date for imposition of TTx by DPSPs has been deferred to 1 January 2022. As such, existing DPSPs are required to register for TTx by 1 October 2021 if they provide online bookings of accommodation premises in Malaysia.

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New Zealand

Avoiding cash costs and mistakes: lessons from ten years of compulsory zero rating for land transactions

The 1st of April 2021 marked ten years since the GST compulsory zero-rating (CZR) rules for land transactions were introduced. The CZR rules were introduced to stop abusive arrangements in respect of B2B transactions where the vendor did not account for GST but the purchaser claimed a GST deduction.

CZR is now better understood by the market, but there have been some challenges along the way. CZR fundamentally shifted the GST risk on transactions involving land (and buildings) from the Inland Revenue to the parties involved. The biggest failing that we regularly see in relation to CZR is the lack of attention by the parties to proper execution of contracts and information requirements. This has resulted in cash costs, time delays, failed deals, or a combination of these.

In our latest GST report, 10 years on from the introduction of CZR, we examine lessons learnt and highlight the key 'watch outs' for vendors, purchasers and all parties involved in property transactions. Read the report [here](#).

Question We've Been Asked: When does section 5(23) of the Goods and Services Tax Act 1985 apply to shift GST liability to the purchaser of land?

Inland Revenue recently released a Question We've Been Asked (QWBA) exposure draft for comment and discussion. The QWBA considers under what circumstances the GST liability would shift to the purchaser in a land transaction when the supply has been incorrectly zero-rated.

The conclusion reached by Inland Revenue is that both parties must have treated the supply as zero-rated in order for the GST liability to be shifted to the purchaser if it transpires after settlement that zero-rating criteria were not met. Inland Revenue observes that in the event of a unilateral action of a vendor to zero-rate a transaction (contrary to the information the purchaser has provided) the purchaser cannot be liable under the GST Act. As such, a purchaser will only be liable to report the output GST if the parties have contractually agreed that the supply will be zero-rated, but it is determined after settlement that CZR does not apply because the parties' GST information turns out to be incorrect.

This conclusion emphasises the requirement that the purchaser must provide information to the vendor (at or before settlement) that enables the vendor to determine whether the CZR rules apply. The vendor is entitled to rely on this information in making their assessment of the CZR applicability.

Update on E-commerce and GST on Low Value Imported Goods (LVIG)

As detailed in previous issues of InTouch, NZ introduced an LVIG regime on 1 December 2019 which makes offshore suppliers liable to register and charge NZ GST on certain supplies of low value goods to NZ private customers.

As at 31 December 2020, over 600 offshore suppliers of low value imported goods have registered in NZ. The total new GST revenue as at 31 December 2020 was estimated at around NZD130 million and the number of registrations is expected to grow.

Impacted offshore sellers are encouraged to register and Inland Revenue has been continuing its “light touch” to any potential penalties imposed on late registrants (provided a voluntary disclosure is made). However, use of money interest (at 7 % p.a.) needs to be considered and can apply in the case of a late registration.

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Clarifying the Effectivity Date of Revenue Memorandum Order (RMO) No. 47-2020 which imposed New Documentary Requirements for the Processing of VAT Refund Claims Pursuant to Section 112 of the Philippine Tax Code

The Commissioner of Internal Revenue has issued Revenue Memorandum Circular (RMC) No. 14-2021 to clarify that RMO No. 47-2020 became effective only on 19 January 2021. Based on the RMC, those affected by the said RMO shall observe the following:

- VAT refund claims filed prior to 19 January 2021 shall be filed and processed following the guidelines set forth in RMC No. 47-2019 and RMO No. 25-2019; and
- VAT refund claims filed on or after 19 January 2021 shall be filed and processed in accordance with the guidelines and procedures indicated in RMO No. 47-2020.

(Revenue Memorandum Circular No. 14-2021 dated 12 January 2021)

Extension of deadline for the filing of position papers, replies, protests, documents and other similar letters and correspondences in relation to ongoing BIR audit investigations, and filing of VAT Refund with VAT Credit Audit Division (VCAD)

This Circular was issued to extend the deadlines for filing of replies to BIR correspondences, in relation to the government's imposition of Enhanced Community Quarantine (ECQ) in National Capital Region (NCR) Plus which includes Metro Manila, Laguna, Cavite, Bulacan, and Rizal.

The deadline for filing of the following letters and documents falling due on 5 April 2021 and during the ECQ period, including extensions thereof, and for filing of VAT refund with VCAD, for taxpayers registered with Revenue District Offices in NCR Plus areas and other registered taxpayers outside NCR Plus who have transactions with any BIR office within NCR Plus, is hereby extended as follows:



Letter/Correspondence	Extended Deadline
Position Paper and Supporting Documents in Response to Notice of Discrepancy	30 days from lifting of the ECQ
Reply and Supporting Documents in Response to the Preliminary Assessment Notice (PAN)	15 days from lifting of the ECQ
Protest Letter in Response to the Final Assessment Notice/Formal Letter of Demand (FAN/FLD)	30 days from lifting of the ECQ
Transmittal Letter and Supporting Documents in relation to Request for Reinvestigation	30 days from lifting of the ECQ
Request for Reconsideration to the Commissioner of Internal Revenue (CIR) on Final Decision on Disputed Assessment (FDDA)	30 days from lifting of the ECQ
Submission of Documents in Response to Subpoena Duces Tecum	15 days from lifting of the ECQ
Submission of Documents in relation to First, Second Final Notice	10 days from lifting of the ECQ
Other Similar Letters and Correspondences	30 days from lifting of the ECQ
Filing of VAT Refund with VCAD which falls due on 12 April 2021 per RMC No. 39-2021	30 days from lifting of the ECQ

Face-to-face meetings with BIR officials and employees in NCR Plus areas are also deferred and rescheduled until the lifting of the ECQ. (Revenue Memorandum Circular No. 45-2021 dated 5 April 2021)

Corporate Recovery and Tax Incentives for Enterprises Act (CREATE) signed into law

On 26 March 2021, the Philippine President signed into law Republic Act (RA) No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act. The law contains amendments to several provisions of the National Internal Revenue Code of 1997 (“Tax Code”), primarily on the reduction of the corporate income tax rate and the introduction of a new title on tax incentives.

The following are the amendments related to VAT:

Tax Particulars	National Internal Revenue Code of 1997	CREATE (RA No. 11534)
<p>VAT exemption of sale of real properties</p>	<p>Section 109 (1)(P) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business, or real property utilized for low-cost and socialized housing as defined by Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992, and other related laws, residential lot valued at One million five hundred thousand pesos (PHP1.5m) and below, house and lot, and other residential dwellings valued at Two million five hundred thousand pesos (PHP2.5m) and below.</p> <p>Provided, that beginning January 1, 2021, the VAT exemption shall only apply to sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business, sale of real property utilized for socialized housing as defined by RA 7279, sale of house and lot, and other residential dwellings with selling price of not more than Two million pesos (PHP2m)</p> <p>Provided, further, that every three (3) years thereafter, the amount herein stated shall be adjusted to its present value using the Consumer Price Index, as published by the Philippine Statistics Authority (PSA).</p>	<p>Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business, or real property utilized for low-cost and socialized housing, and other lot’s value is increased to PHP2.5m.</p> <p>Sale of house and lot, and other residential dwellings’ value is increased to PHP4.2m.</p> <p>Beginning 1 January 2024, and every three (3) years thereafter, the amount herein stated shall be adjusted to its present value.</p> <p>[ITEM VETOED] VAT exemption on the sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of business, or real property utilized for low-cost and socialized housing shall remain at PHP1.5m and below, house and lot, and other residential dwellings shall remain at PHP2.5m and below.</p>
<p>VAT exemption of sale, importation, printing or publications of literary works.</p>	<p>Section 109 (R) Sale, importation, printing or publication of books and any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements.</p>	<p>Modified to include journals and any educational reading material covered by the UNESCO Agreement on the importation of educational, scientific, and cultural materials, including the digital or electronic format. Provided that the materials enumerated are not devoted principally to the publication of paid advertisements.</p>

VAT exemption on the sale or importation of medicines for cancer, mental illness, tuberculosis, and kidney diseases	Section 109 (AA) Sale or importation of prescription drugs and medicines for cancer, mental illness, tuberculosis, and kidney diseases shall be exempt from VAT beginning 1 January 2023.	Effectivity of the VAT exemption is moved to 1 January 2021.
On the exemption of health-related materials and drugs.	No existing provision	<p>Section 109 (BB) Effective 1 January 2021 until 31 December 2023, the following are exempt from Value-added tax (VAT):</p> <ol style="list-style-type: none"> 1. Capital equipment, its spare parts and raw materials, necessary for the production of personal protective equipment components for COVID-19 prevention. 2. All drugs, vaccines and medical devices specifically prescribed and directly used for the treatment of COVID-19 <ul style="list-style-type: none"> • Within sixty (60) days of effectivity of this Act, and every three (3) months thereafter, the Department of Health (DOH) shall issue a list of prescription drugs and medical devices covered. 3. Drugs for the treatment of COVID-19 approved by the Food and Drug Administration (FDA) for use in clinical trials, including raw materials directly necessary for the production of such drugs <ul style="list-style-type: none"> • The Department of Trade and Industry (DTI) shall certify that such are not locally available or insufficient in quantity or not in accordance with the quality or specification required. <p>Above exemptions are subject to post audit by the BIR or Bureau of Customs as may be applicable.</p>
Tax on persons exempt from VAT	Section 116 Any person whose sales or receipts are exempt under Section 109 (V) of this Code from the payment of value-added tax and who is not a VAT-registered person shall pay a tax equivalent to three percent (3%) of his gross quarterly sales or receipts.	<ul style="list-style-type: none"> • Effective 1 July 2020 until 30 June 2023, the rate shall be one percent (1%).

CREATE shall take effect fifteen (15) days from its complete publication in the Official Gazette or in a newspaper of general circulation. This was published in the Business Mirror (Philippine newspaper) on 27 March 2021.

Republic Act No. 1111534 dated 27 March 2021)

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GST developments in Budget 2021

GST rate change

In Budget 2018, the Government announced its intention to increase the goods and services tax (GST) from 7% to 9% sometime between 2021 and 2025. The Government subsequently decided in Budget 2020 that the GST rate increase will not take place in 2021 due to the uncertain economic outlook. While no announcement was made on the specific date for the GST rate increase in Budget 2021, the Government indicated that the GST rate increase should take place "sooner rather than later" during 2022 to 2025.

Imposition of GST on low value imported goods and non-digital services

With effect from 1 January 2023, the Government will impose GST on the following transactions:

- Low-value goods imported via air or post that are valued up to and including \$400 (the current GST import relief threshold)
- Business-to-consumer imported non-digital services

These measures (which are intended to level the playing field between local and overseas vendors) will be implemented by requiring the offshore supplier (or intermediaries such as parcel forwarders and electronic marketplaces) to register for GST in Singapore and account for the GST on business-to-consumer transactions. GST on business-to-business sale of low-value imported goods will be accounted for by the business customers in Singapore through the reverse charge mechanism. A public consultation exercise (which ended 19 March 2021) of the draft rules was carried out and the Inland Revenue Authority of Singapore would release a summary of the feedback received by 31 May 2021.

Changes to zero-rating rules for media sales

With effect from 1 January 2022, a supply of media sales will be zero-rated if the contractual customer belongs to a foreign country and the direct beneficiary of the services is either from outside Singapore or is GST-registered in Singapore. This is a departure from the current rules which uses the "place of circulation" as the criteria for determining if zero-rating would apply. The IRAS has yet to release details on the new rules.

New rules on Missing Trader Fraud

The GST legislation has been amended with effect from 1 January 2021 to provide the Comptroller of GST powers to deny input tax credits if the Comptroller is of the view that the business seeking the input tax credit "knew or should have known" that the purchase was part of any arrangement to cause loss of public revenue (whether or not the loss was in fact caused). This is pursuant to the Government's efforts to combat missing trader fraud which happens when a business fails to account for the output GST collected while other parties in the supply chain claim input tax credits on purchases made, resulting in a loss in public revenue.

The IRAS has released an e-tax guide to provide guidance on the due diligence checks which businesses can put in place to avoid being involved in missing trader fraud. The IRAS also announced that they are currently focusing its audit and investigation efforts on business involved in missing trader fraud arrangements.

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Draft Circular on tax administration – Specific guidance on cross-border e-commerce and digital business

The draft Circular provides detailed guidance on the Law on Tax Administration on various matters, including tax filing mechanisms for foreign suppliers doing e-commerce and digital business in Vietnam.

By giving only a short timeline for public consultation, the Ministry of Finance (“MoF”) indicates its intention to promptly finalise this Circular. Therefore, we recommend businesses who are affected by the new guidance to study and assess the potential impact thereof and prepare for the compliance process.0.710.05

New tax filing mechanism

- The draft Circular sets out a clearer mechanism for foreign suppliers, either by themselves or via their authorised person(s), to directly register, declare and pay taxes in Vietnam.
- Specifically, the foreign suppliers:
 - will be awarded with a tax code of 10 digits;
 - can declare tax online at the portal of the General Department of Taxation (“GDT”) on a quarterly basis; and
 - can pay tax online.
- If foreign suppliers do not directly register, declare and pay tax in Vietnam, Vietnamese organisations and parties have the following responsibilities:
 - If the Vietnamese purchasers 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 suppliers 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 suppliers to the GDT on a monthly basis.
- There remain many open questions as to how the mechanism would actually work in practice.

How to determine taxable income?

- The tax payable will be determined based on the revenue derived in Vietnam at the deemed rate in accordance with the current foreign contractor tax regime. The tax rate would depend on the nature of goods or services provided by foreign suppliers.
- The draft Circular introduces a mechanism to collect data for determining taxable revenue, specifically:
 - a. Information relating to payment made by the purchasers (organisations and individuals) (e.g. BIN number of credit card, bank account, etc)

- b. 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 (a) cannot be obtained, then information relating to the residential status and IP address can be use
- However, whether such information is available and sufficient for tax filing purposes for all players in this sector is still a concern.

When the new tax filing mechanism becomes effective?

- Based on the draft Circular, the new filing mechanism will be effective when the circular is effective. However, the actual tax registration and tax filing can only be carried out when the e-portal developed by the GDT is officially launched.
- The draft Circular also provides that if the e-portal is (likely) available after the effective date of the Circular, taxpayers are required to keep track of their taxable revenue from the effective date of the Circular until the official launch of the e-portal. No interest and late payment penalty will be applied for this period.



Virtual permanent establishment (“PE”)

- One notable point is the “permanent establishment” concept in Article 84 of the draft Circular which provides “foreign suppliers having no fixed place of doing business in Vietnam, but having e-commerce and/or digital transactions with Vietnamese organisations and individuals are deemed to have a PE in Vietnam”.
- This is an extension of the PE definition set out in the Law on corporate income tax and clear intention of Vietnam to introduce the virtual PE concept.

Guidance on the validity of certain existing tax circulars, pending the issuance of a new circular guiding the new Tax admin law

While the draft Circular guiding the Law on Tax administration 38/2019/QH14 remains under progress, the Ministry of Finance has released a letter to all local tax departments providing guidance on the validity of certain existing circulars.

Some key points:

- Letter 1938 states that pending the issuance of a circular guiding the Law on Tax administration 38/2019 and Decree 126/2020, the circulars as listed in Point 1 of this letter shall continue to be valid until being replaced.
- The existing circulars, as listed under Letter 1938, include:
 - c. Circular 156/2013 guiding the Law on tax administration.
 - d. Circular 92/2015 guiding value added tax (VAT) and personal income tax (PIT) of resident business individuals and other PIT matters.
 - e. Circular 130/2016 guiding Decree 100/2016 on VAT law, special sales tax law and tax administration law.
 - f. Circular 26/2015 guiding Decree 12/2015 on VAT and tax administration.

- Notwithstanding the above, Letter 1938 also states that for matters which have been “specifically guided” in the Law on Tax administration 38/2019 and Decree 126/2020, such guidance shall be applicable from the effectiveness of the Law on Tax administration 38/2019 and Decree 126/2020. However, Letter 1938 does not clearly indicate which contents could be considered as “specifically guided” in this respect.
- Dealing with the ever and fast changing regulations in Vietnam is always a challenge, but this is particularly important in this case where there remains a hiatus between the old and new tax administration rules. There will be certain scenarios, e.g. tax audits and appeals, where ensuring adherence to the correctly applicable regulations is especially important during this transitional period.

We will keep you updated if there are further developments in this regard.

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Thailand

Digital service tax in Thailand

The Act Amending the Revenue Code No. 53 (the digital service tax law) was published in the Royal Gazette on 10 February 2021 and came into force on 11 February 2021. However, the VAT liability under this law will apply to overseas digital service providers or operators of electronic platforms on revenue received from 1 September 2021 onwards.

Under this law, the overseas digital service providers or operators of electronic platforms will be required to file VAT returns and pay output tax to the Thai Revenue Department without any input tax deduction.

The following are the key conditions for VAT collection:

1. Digital services are provided from overseas;
2. Services are provided by electronic means and are used in Thailand; and
3. The recipient of the service is not a VAT registrant.

Furthermore, VAT registration may be affected by electronic means. Details of the registration procedures will be released at a later date. Overseas digital service providers that are VAT registrants are prohibited from issuing tax invoices.

The following definitions are included:

'Electronic services' means a service, including intangible assets, delivered via the internet network or any other electronic network in which the nature of the service is substantially automated, such that the service cannot be performed without information technology.

'Electronic platform' means a market, channel or other process that many service providers use to provide electronic services to the recipients.

Subordinate regulations providing more guidelines will also be announced.

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Notifications/Circulars for CGST

CGST Notifications

- Notification No. 04/2021-Central Tax dated 28-02-2021 Seeks to extend the time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2019-20 till 31.03.2021.
- Notification No. 05/2021-Central Tax dated 08-03-2021 Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 50 Cr from 01st April 2021.
- Notification No. 06/2021-Central Tax dated 30-03-2021 Seeks to waive penalty payable for non-compliance of provisions of Notification No. 14/2020 dated 21st March 2020 (capturing of dynamic QR code on B2C invoices).
- CGST Circulars
- Circular No. 145/01/2021- Central Tax dated 11-02-2021 issues clarifications in respect of Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017.
- Circular No. 146/02/2021- Central Tax dated 23-02-2021 issues clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020.
- Circular No. 147/02/2020- Central Tax dated 12-03-2021 seeks to clarify certain refund related issues.

Amendments (Finance Act 2021)

- Section 44 of the CGST Act is substituted as “Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52 (i.e. TCS and TDS), a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed.”
- Section 50 of the CGST Act is substituted retrospectively w.e.f. 01.07.2017 as “Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.”



Case law

- Hon'ble Delhi High in the case of M/s TMA International Pvt. Ltd. & Ors. vs. UOI & Ors. [TS-135-HC(DEL)- 2021-GST] holds that interest is payable for delayed remittance of IGST refund on goods exported during transitional period, noting that duty drawback qua Central Excise has not been availed by assessee; Further, having regard to case history, HC put to Revenue as to time-frame in which IGST could be refunded to assessee; Following the principle set-forth in Amit Cotton Industries, HC grants interest at the rate of 7% from the date when shipping bills were filed by assessee till actual refund date.
- Hon'ble Gujarat HC in the case of M/s Rameswar Udyog Pvt. Ltd. vs. Union of India [TS-127-HC(GUJ)- 2021-GST] directs Revenue to sanction IGST refund noting that exporter may approach the port of export/customs Zonal Office with the copy of GSTR-1 and GSTR-3 B along with the certificate of CA stating that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount on exports; Certain errors were made while filing details of outward supplies in FORM GSTR-1 on account of which there was a mismatch between the GST portal data and data on the ICEGATE customs portal; While assessee was allowed to amend 28 invoices on the portal, 14 invoices remained un-corrected due to technical error on the portal; Thus, instructs Revenue to follow four step procedure as enumerated in Circular No. 12/2018- Customs dated May 29, 2018.
- Gujarat HC in the case of M/s Western Enterprises vs. State of Gujarat [TS-108-HC(GUJ)-2021-GST] directs revenue to release goods once Petitioner deposits an amount towards the tax and penalty and executes a bond for the balance amount of tax; Noting that almost one month has passed but no effect has been given to HC's earlier order of release of goods, only because of the GST Officer's misconception of law; Petitioner filed miscellaneous application seeking that HC may clarify that the "bond" as mentioned in order dated February 08, 2021 is not required to be accompanied by bank guarantee/security and that the goods/vehicle are required to be released on the basis of challan and bond as submitted by the Petitioner; Thus clarifies that bond means "bond in accordance with law and not the bank guarantee in its true sense. The difference between a Bank Guarantee and a Bond is that to obtain a Bank Guarantee, there is a requirement of collateral to satisfy the bank, while Bonds do not need collateral to act as a surety.
- Delhi HC in the case of M/s Proex Fashion Pvt. Ltd. vs. Government of India & Ors. [TS-67-HC(DEL)- 2021-GST] holds that the provisional attachment order is "ultra vires the statutory powers" of Assistant Commissioner in terms of action under Sec. 83; Quashes the order since no proceedings under Sections 62, 63, 64, 67, 73 or 74 of the CGST Act were in fact initiated against the Petitioner; Thus, opines that "the attachment of bank account entails serious consequences to the assessee, particularly in the case of a running concern".
- Gujarat HC in the case of M/s Syed Jafar Abbas vs. Commercial Tax Officer [TS-29-HC(GUJ)-2021-GST] quashes order cancelling Assessee's GST registration as it was passed without issuing SCN in Form GST REG-17 and the same being bereft of any details; Notes that Assessee had no opportunity to put forward its case before the impugned order of cancellation was passed; Clarifies that if Revenue is of the firm view that the registration deserves to be cancelled, only then, it may initiate exercise of issuing fresh SCN and passing fresh order, otherwise, the original registration may be restored in accordance with law.

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New VAT Reduction Policies of 2021

In March 2021, the Fourth Session of the 13th National People's Congress was held in Beijing. The Government Work Report was released during the meeting, which reviewed the tax cuts for 2020, and expounded the main objectives of the 14th Five-Year Plan period (i.e. from 2021 to 2025). The new VAT reduction policies related to 2021 are as follows:

- The incremental VAT credit for advanced manufacturing enterprises will be fully refunded on a monthly basis, and the preferential measures may be expanded. (The details are expected to be released soon.)
- The revenue threshold for VAT for small-scale taxpayers will be raised from RMB100,000 to RMB150,000 per month, and the implementation period of some phased policies, such as VAT concessions for small-scale taxpayers, will be extended to support small and medium-sized enterprises and to support real economy.



China is Implementing Special E-invoices for Newly Registered Taxpayers

In order to fully implement the Regulations on Optimizing the Business Environment, deepen the reform designed to delegate powers, improve services in the taxation administration, and promote the use of electronic invoices, the State Taxation Administration ("STA") has announced the implementation of electronic special VAT invoices (the "electronic special invoices") for newly registered taxpayers across the country (the "new taxpayers").

- Since 21 December 2020, electronic special invoices will be applied to new taxpayers in 11 regions, namely Tianjin, Hebei, Shanghai, Jiangsu, Zhejiang, Anhui, Guangdong, Chongqing, Sichuan, Ningbo and Shenzhen, with the scope of recipients covering the whole country.
- Since 21 January 2021, electronic special invoices will be applied to new taxpayers in 25 regions, namely Beijing, Shanxi, Inner Mongolia, Liaoning, Jilin, Heilongjiang, Fujian, Jiangxi, Shandong, Henan, Hubei, Hunan, Guangxi, Hainan, Guizhou, Yunnan, Tibet, Shaanxi, Gansu, Qinghai, Ningxia, Xinjiang, Dalian, Xiamen and Qingdao, with the scope of recipients covering the whole country.

The details are as follows:

- Tax authorities shall verify the number of special VAT invoices that can be received by taxpayers based on the total number of electronic special invoices and paper special invoices.
- The limit of the electronic and paper special VAT invoices (VAT tax control system) shall be the same.
- When issuing special VAT invoices, taxpayers may issue either electronic or paper special invoices. Where recipients request paper special invoices, the issuers shall issue paper special invoices.
- Where a recipient has received and used an electronic special invoice for declaring deductions of input VAT, or applying for export VAT refund, it shall log into the VAT invoice comprehensive service platform to confirm the purpose of the invoice.

VAT Preferential Policy for Small-scale VAT Payers Extended to 31 December 2021

Under the preferential policy, the small-scale VAT payers located in Hubei Province are exempted from VAT. For other small-scale VAT payers located outside Hubei Province, the VAT levy rate (under the simplified VAT calculation method) is reduced from 3% to 1%.

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Thank you