



# ITX InTouch

The latest in indirect tax news for the Asia Pacific region

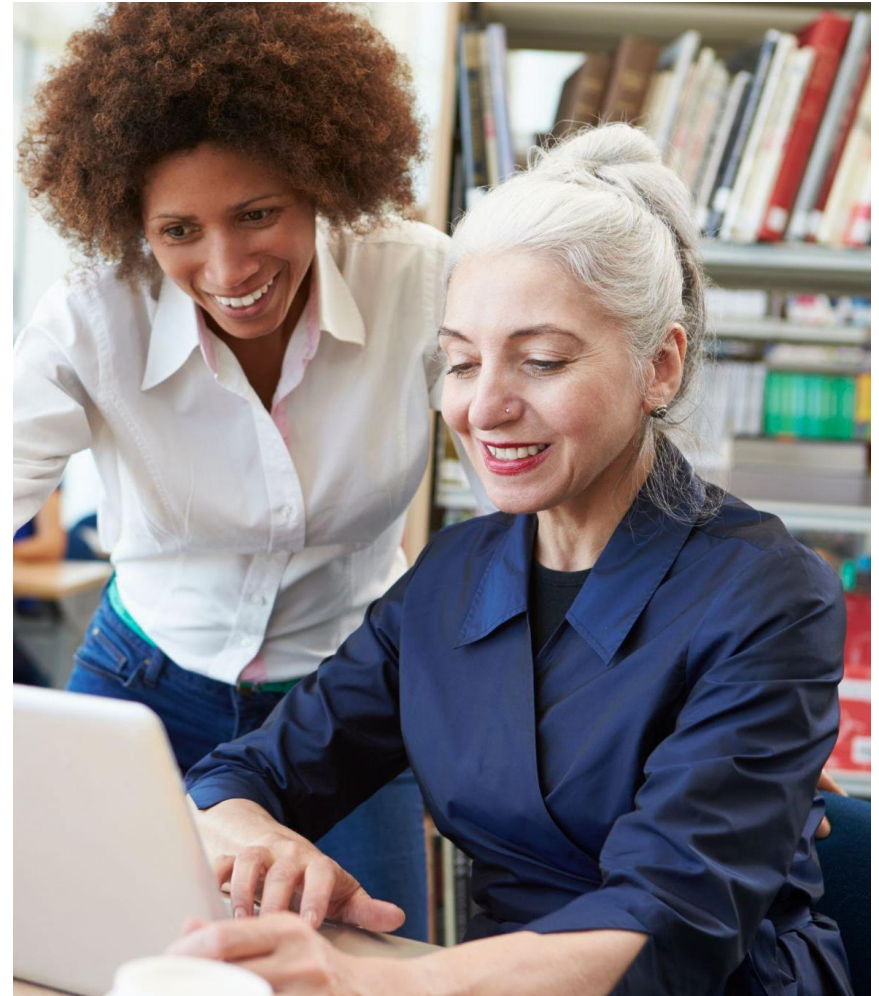
Issue 3, 2022 – June 2022



# Introduction

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

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



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# India

## Goods and Services Tax (GST)

### Notifications/Circulars for CGST

#### Circular/Instruction

- **Instruction No. 01/2022-23 [GST-Investigation] dated May 25, 2022** regarding no coercive actions to be taken for deposit of money during Search & Seizure.

It is clarified that there may not be any circumstance necessitating 'recovery' of tax due during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/ short payment of taxes before or at any stage of such proceedings. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

#### Case laws

- The Hon'ble Supreme Court in **Union of India & Anr. v. M/s Mohit Minerals Pvt. Ltd.** [Civil Appeal No. 1390 of 2022 dated 19 May, 2022] upheld the judgment given by the Hon'ble Gujarat High Court to hold that no IGST is payable on ocean freight under RCM for Cost, insurance, and freight ("CIF") imports as an Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc, in a CIF contract; a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act.
- The Hon'ble Supreme Court in the case of **CC, CE&ST v. Northern Operating Systems Private Limited, 2022-VIL-31-SC-**

ST, has upheld the levy of service tax on employee secondment arrangements between Indian and Foreign entities. The Apex Court emphasised that a host of factors need to be weighed together to conclude employer-employee relationship and noted that solely 'Direction and Control Test' will not be determinative. The Court analysed the agreements and facts of the case to conclude that employer-employee relationships do not exist between Indian entities and seconded employees. Accordingly, the Court held that secondment of employees by foreign entities qualifies as a 'manpower supply service' and thus is leviable to service tax under reverse charge arrangements in the hands of Indian entities.

- The Hon'ble Gauhati High Court in **Century Plyboards (India) Ltd. & Anr. v. the Union of India & Ors.** [WP(C) 3210 of 2022 dated 18 May, 2022] held that the Managing Director ("MD") of a company should not be directly summoned by authorities under Section 108 of the Customs Act. It was further held that, authorized representatives of a company are to be summoned and MDs can only be summoned, if the former is not cooperating or if an investigation is to be completed expeditiously.
- The Hon'ble Madras High Court in **Aathi Hotel v. Assistant Commissioner (ST) (FAC)** [W.P.No.3474 of 2021 W.M.P.Nos.3980 & 3982 of 2021 dated 8 December, 2021] has held that, the interest is to be attracted only where credit is not only availed but also utilised for discharging tax liabilities, and if there is an attempt to wrongly avail the credit and utilise the same, then tax liability would arise. Further, Section 50(3) of the CGST Act has been substituted retrospectively from 1 July, 2017, see the Finance Act, 2022, so as to provide for the levy of interest on ITCs wrongly availed and utilised against payment of output

liabilities, which would come into force on the date as appointed by way of a notification.

- The Hon'ble Kerala High Court in the case of **M/s NIKUNJAM CONSTRUCTIONS PVT LTD** held that the issuance of SCN without following the mandatory requirement of pre-show cause consultation is arbitrary and against the circulars – SCN is set aside.
- The AAR, Maharashtra in the matter of M/s. MEK Peripherals India Pvt. Ltd., [Advance Ruling No. GST-ARA59/2020-21/B-56 dated 27 April, 2022] has held that incentives received by an Indian reseller of the products for providing marketing services within India for increasing the business of the foreign company cannot be considered as trade discount, nor it is an export service.



**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)

# Indonesia

## E-commerce transactions

- Sales of foreign intangible goods or services into Indonesia through e-commerce systems is subject to VAT and the VAT rate is 11% effective from 1 April 2022 (previously 10%). This includes supplies by foreign sellers, foreign service providers, or foreign e-commerce organisers (collectively referred to as “foreign e-commerce players”) and domestic e-commerce organisers.
- E-commerce organisers are defined as business players providing electronic communication platforms to be used in e-commerce. Foreign sellers or service providers are individuals or companies residing or domiciled outside of Indonesia which carry out transactions with domestic parties in Indonesia through electronic platforms.
- If a foreign supplier falls under this category, they are required to collect VAT and return and report on these amounts to the Indonesian tax authority at a rate of 11%. Foreign e-commerce players can appoint a representative in Indonesia to fulfil their VAT obligations. Should a foreign e-commerce supplier fail to meet its Indonesian obligations it will be subject to:
  - Administrative penalties based on KUP Law; and
  - Access to Indonesian markets will be disconnected by KOMINFO.

## Fintech activities

- On 30 March 2022, the MoF also issued Regulation No.69/PMK.03/2022 (PMK-69) stipulating the Income Tax treatment of interest income in peer-to-peer (P2P) lending, as well as the VAT treatment of Financial Technology (“Fintech”) activities.
- Fintech is an activity using technology in a financial system which generate products, services, technology, and/or new business model, that contributes to the monetary and financial system stability as well as efficiency, continuity, safety and reliability of payment systems.
  - The high-level categories of Fintech services that are subject to VAT are as follows:
    - a. Payment;
    - b. Investment settlement;
    - c. Capital raising;
    - d. P2P lending;
    - e. Investment management;
    - f. Online insurance product;
    - g. Market support; and
    - h. Digital finance support and other financial services.
  - Regular VAT rate is applicable on the VATable services provided under each of these categories. This is a highly specialised area of Indonesian VAT and specific advice should be taken.

## Digital assets and cryptocurrency

- On 30 March 2022, the Minister of Finance (MoF) issued MoF Regulation No.68/PMK.03/2022 (PMK-68) that outlines the Value-Added Tax (VAT) and Income Tax treatment of Crypto Asset trading transactions.

- Crypto Asset (CA) is defined as an intangible commodity in the form of digital asset, using cryptography, peer-to-peer network, and distributed ledger, to manage the creation of new units, verify transactions, and to secure a transaction without any involvement of other party.
- There are various parties involved in CA trading, namely:
  1. CA Seller – an individual or company who sells or trades the CA; and
  2. CA Buyer – an individual or company who receives the CA and pays for it (or should have received/paid for the CA).
  3. CA Physical Trader – a party that is authorised by the commodity futures trading regulator, to carry out CA transaction for themselves or to facilitate a CA Seller or CA Buyer transaction. This trader can be in the form of e-commerce VAT Collectors (Penyelenggara Perdagangan Melalui Sistem Elektronik/“PPMSE”) who provide an electronic channel for CA trading.
  4. CA Miners – an individual or company who verifies CA transaction for a fee in the form of CA, either individually or in a mining pool.
- VAT is due on the delivery of:
  1. Taxable intangible asset in the form of CA within the Indonesian customs area. This delivery can be carried out using fiat money, swapping a CA for another CA, and/or swapping CA for other assets/goods or services;
  2. Taxable service in the form of provision of electronic channel for CA trading by PPMSE; and
  3. Taxable service in the form of CA transaction verification services and/or management service of a mining pool by CA Miners.

- Any transaction value carried out using fiat money in non-Rupiah currency must be converted using the Ministry of Finance (MoF) exchange rate at the time of VAT collection. Any transaction value carried out using a CA is converted into Rupiah based on the value set by the CA futures exchange, or the value in the PPMSE system, which is applied consistently.

### Trading between CA Buyers and CA Sellers

- The VAT is collected, paid and reported by PPMSE based on a Final VAT rate of:
  1. 1% of the general VAT rate (effectively 0.11%) multiplied by the CA transaction value, if the PPMSE is a CA Physical Trader; or
  2. 2% of the general VAT rate (effectively 0.22%) multiplied by the CA transaction value, if the PPMSE is not a CA Physical Trader.
- The CA Seller must issue a VAT Invoice on the CA delivery and report the VAT collection under the monthly VAT Return if registered as a VATable Entrepreneur (Pengusaha Kena Pajak/ PKP) in Indonesia.
- PPMSE must prepare a VAT collection slip in the form of Document deemed equal to Unification Tax Withholding/Collection Slip. If the PPMSE reside or domicile outside custom area, they can be appointed as VAT Collector based on the prevailing regulation.

### Delivery of taxable service in the form of provision of electronic channel for CA trading by PPMSE

- A PPMSE must at least facilitate CA transaction carried out using fiat money, swapping CA with another CA, and/or e-wallet services (i.e., consisting of deposit, withdrawal, transfer of CA to other party’s account and providing and/or managing CA storage media).
- VAT on these services is collected by the PPMSE and imposed based on the commission or fee in any form, including the one received by PPMSE to be forwarded to CA Miners. The regular VAT rate of 11% applies, and the PPMSE must issue a VAT Invoice for their services. The commercial invoice issued for these services is deemed as Document equal to VAT Invoice.

## **Delivery of taxable service in the form of CA transaction verification services and/or management service of a mining pool by CA Miners**

- VAT on these services is collected and paid by the CA Miners based on a Final VAT rate of 10% of general VAT rate of 11% (i.e., effectively 1.1%) of CA value received by CA Miners, including CA received from CA system (block reward).
- The CA Miners may issue VAT Invoice on the delivery of these services under the Retailer regime which allows for the omission of the buyer's name and seller's signature in the VAT Invoice.



**Abdullah Azis**

Partner

Phone: + 62 8111801658

Email: [abdullah.azis@id.pwc.com](mailto:abdullah.azis@id.pwc.com)



# New Zealand

## Public Ruling (BR Pub 22/07): Importers and GST input tax deductions

- In our previous InTouch publication (covering January - March 2022), we summarised Inland Revenue's draft ruling covering imports and GST input tax deductions.
- Inland Revenue has now released a binding ruling BR Pub 22/07 (a re-issue of BR Pub 06/03) which outlines when invoice-based importers can claim an input tax deduction of GST levied by the New Zealand Customs Service.
- The key differences between the draft and the current binding ruling are:
  - References have been updated for the Customs and Excise Act 2018; and
  - Commentary to the ruling has been revised to reflect updated practices and processes.
- In addition, the ruling covers new ground such as circumstances where a manual invoice or statement will be issued and record-keeping requirements.
- The ruling re-confirms the following four different types of documents issued by Customs can be used as "invoices" to claim an input tax deduction:
  1. an electronic import entry once the entry has been passed; or
  2. a deferred payment statement issued to an importer; or
  3. a cash statement; or
  4. a manual invoice/statement.

## GST and finance leases - IS 22/02

- Inland Revenue has released a new interpretation statement IS 22/02, "GST and finance leases". The statement's key focus is how the time of supply and value of supply rules apply to finance leases.
- This statement updates Inland Revenue's previous statement on GST and finance leases. The key principles for applying GST to finance leases are largely unchanged and the main reasons for updating the statement are due to a number of issues that have arisen since, such as changes to the definition of "hire purchase agreement" and "credit contract" in the Credits Contract and Consumer Finance Act 2003.
- Before the time of supply rules are applied, finance leases need to be correctly classified as either:
  - An agreement to hire - in which case the goods are treated as being successively supplied and each successive supply is treated as taking place at the earlier of when a payment becomes due or is received.
  - A hire purchase agreement - in which case the time of supply is the time the agreement is entered into.
  - Falling outside the previous two definitions (a third category agreement), so the ordinary rules will generally apply, and the time of supply is the earlier of the time the supplier issues an invoice or receives a payment for that supply.
- In order to calculate the value of supply, it first needs to be determined whether the finance lease is a credit contract:
  - If yes, GST is calculated on the "cash price" of the leased goods.

- If not, the ordinary rules apply and GST is calculated on the total amount payable under the lease.

### Case - Breach of GST warranty

- The High Court of New Zealand has held in *The Park Homes Ltd v Miah* [2022] NZHC 1352 that a vendor breached a GST warranty given to a purchaser.
- The vendor, Mr Miah, gave a warranty to the purchaser, Park Homes, that he was not registered for GST. This unregistered status was subsequently challenged by Inland Revenue, who denied the purchaser (Mr Wong of Park Homes Ltd) a GST refund.
- It was held that the vendor could not avoid the application of the Goods and Services Tax Act 1985 (“the Act”), and that a person’s liability for registration is governed by s 51 of the Act. A person is liable to be registered if, in a 12-month period, they carry on a taxable activity exceeding the relevant threshold (\$60,000), or there are reasonable grounds for believing they will.
- Mr Miah was required to pay Park Homes the GST component of the purchase price of the property.

### Technical Decision Summary TDS 22/10 - GST payable on property sale but assessment time-barred

- A purchaser confirmed in the GST Schedule of the sale and purchase agreement that they intended to use the property to make taxable supplies. However, this intention was never realised. The Tax Counsel Office (TCO) decided that GST should have been charged on the sale of a property at 15%, and not zero-rated as a business to business purchase.
- However, the TCO also found that the proposed amendment to the taxpayer’s GST return (to include output tax on the supply of the property) was time-barred under s 108A(1) of the Tax Administration Act 1994.



#### Eugen Trombitas

Partner, PwC New Zealand

Phone: +64 21 493 903

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

# Malaysia

## Postponement of implementation of expansion in scope of taxable delivery services

- It was announced in the 2022 Budget in October 2021 that with effect from 1 July 2022 service providers of delivery services including e-commerce platforms, irrespective of whether they are licenced under the Postal Services Act 2012, will be required to register for service tax and impose service tax on their delivery services (but excluding food and beverage delivery services as well as logistics services). However, the Royal Malaysian Customs Department (RMCD) made an announcement on 30 June 2022 that the above implementation has been postponed to a later date that is to be announced. We will provide you with the date and details of the implementation once the RMCD has finalised and released them.

## Registration of Passenger Motor Vehicles Ordered During Sales Tax Exemption Period

- Sales tax exemption on passenger motor vehicles had been given from 15 June 2020 to 30 June 2022. Due to the shortage of semiconductor microchips globally which causes disruption to the supply chain in the automotive industry, a large number of passenger motor vehicles ordered during the above sales tax exemption period have yet to be delivered to the purchasers. In order to allow purchasers of passenger motor vehicles who placed their orders during the exemption period to enjoy the sales tax exemption, the Ministry of Finance has decided to extend the period of registration of the passenger motor vehicles with the Road Transport Department to 31 March 2023.

## Customs Duties Order 2022

- The Customs Duties Order 2022, which prescribes the import duty of goods imported into Malaysia and the export duty of goods exported out from Malaysia, was issued on 15 April 2022 and came into effect on 1 June 2022 to replace the Customs Duties Order 2017. The latest order is issued to take into account the updates in the Harmonized System (HS) Codes which are administered by the World Customs Organization.



### Raja Kumaran

Tax Director, Indirect Tax, PwC Malaysia

Phone: +60 (3) 2173 1701

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

# China

## Accelerating the Implementation of Period-end Excess Input VAT Credit Refund

- On 17 April 2022, the Ministry of Finance and the State Taxation Administration (“STA”) issued the “Public Notice on Further Accelerating the Implementation of Period-end Excess Input VAT Credit Refund Policies (the ‘Public Notice’)” to quickly release the benefits relating to the large-scale refunds of period-end excess input VAT credit and boost the effect to help market participants to overcome difficulties. The policies are summarized as follows:
  1. Accelerate the input VAT credit refund application process to ensure the refund of the existing VAT credit to micro and small enterprises in a centralized way by 30 April and 30 June 2022 respectively.
  2. Accelerate the refund of existing VAT credits to medium-sized enterprises in a centralized way by 30 June 2022.
- On 17 May 2022, the Ministry of Finance and STA issued “Announcement on Further Accelerating the Implementation Process on Period-end Excess Input VAT Credit Refund Policies”, under which an eligible large-scale enterprise in manufacturing or other industries may apply with the in-charge tax authority for a one-off refund of its existing input VAT credit amount before 30 June 2022 on voluntary basis.

## Further Implementing the Pilot Program of All Digital E-invoices

- On 19 May 2022, the Shanghai Municipal Tax Bureau of the State Taxation Administration issued the "Announcement on Further Implementing the Pilot Program of All Digital E-invoices" (hereinafter referred to as the "Announcement"). The tax authorities upgraded

the e-invoice service platform to improve taxpayers' experience of using e-invoices and provide better support for pilot program of e-invoices. The key contents of the "Announcement" are summarised as follows:

1. Starting from 23 May 2022, the pilot program of e-invoices will be further rolled out among certain taxpayers in Shanghai, and those who use the e-invoice service platform will be the pilot taxpayers.
2. The Shanghai Municipal Tax Bureau shall supervise the production of e-invoices in Shanghai. An e-invoice has no duplicate copy and contains the following information: the dynamic QR code, invoice number, invoice date, buyer's information, seller's information, item name, specification & model, unit, quantity, unit price, amount, tax rate/levy rate, tax amount, total, price with tax included, remarks, and issuer.
3. After the pilot taxpayers pass the real-name verification, there is no need for them to use special tax control equipment, or to go through the verification of the invoice type, and they may issue invoices through the e-invoice service platform.
4. The tax authority shall supervise and control the total quota for invoices issued by pilot taxpayers.
5. The pilot taxpayers' tax digital accounts on the e-invoice service platform automatically collects invoice data, which can be accessed, downloaded, and printed by pilot taxpayers.
6. The Announcement comes into effect on 23 May 2022.

## Announcement on VAT Exemption Policies on Express Delivery Services

- The Ministry of Finance and State Taxation Administration issued “Announcement on VAT Exemption Policies on Express Delivery Services”.
- During the period from 1 May 2022 to 31 December 2022, for the revenue derived by providing express delivery services for essential living materials required by the residents, the relevant VAT shall be exempted.
- The specific scope of express delivery services shall be assessed in accordance with “Notice on Sales Services, Intangible Assets and Real Estate”, which was issued along with Cai Shui [2016] No. 36.



### **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)

# Australia

## Federal Court ruling on GST margin scheme

- The recent decision of *Landcom v Commissioner of Taxation* [2022] FCA 510 heard in the Federal Court considers the application of the GST margin scheme to amalgamated land sold under a single contract by a state-owned corporation. This case overturned the previous ATO administration of the application of the margin scheme to property transactions, giving rise to an opportunity to revisit the GST implications of certain property transactions.
- The Court found that the margin scheme provisions do not require a consideration of the identification of the “supply” under the basic rules. The policy and context of the margin scheme was different from the context of the general provisions contained in the “basic rules”. The focus of the margin scheme, in so far as it applied to selling freehold interests in land, was on the sale of individual interests in land. According to the Court, the better construction was that the margin scheme provisions looked to where there had been a supply by selling a particular freehold interest in land and the supplier and recipient had agreed that the margin scheme was to apply. Where that had occurred, the margin was calculated by reference to the particular freehold interest that was sold. It applied whether or not that particular supply, made by selling a freehold interest in land, was part of a larger supply.
- The Court ruling has broader considerations for the application of the margin scheme in the form of:
  1. Eligibility to apply the margin scheme should be considered on a per supply basis which may have the consequence that some supplies qualify as opposed to the whole sale of land being subject to GST at the full rate of 10 per cent; and

2. The calculation of the margin scheme should be considered on a per supply basis with the various provisions to determine that margin applying based on the factors of that land title, such as whether the land is improved, how it was acquired, etc.

## Impact statement on Collins case — GST on sales of subdivided land, 09 June 2022

- The ATO has issued a decision impact statement on the AAT decision in *Collins & Anor ATF The Collins Retirement Fund v FC of T* 2022 ATC ¶10-627; [2022] AATA 628.
- The case considered whether the sale of subdivided lots was to be disregarded from the GST turnover of a superannuation fund (the taxpayer) under s 188-25 of the A New Tax System (Goods and Services Tax) Act 1999
- (GST Act). In order to be disregarded from the taxpayer’s projected GST turnover under s 188-25, the sales were required to be supplies made, or likely to be made:
  - by way of transfer of ownership of a capital asset (s 188-25(a))
  - solely as a consequence of ceasing to carry on an enterprise (s 188-25(b)(i)), or
  - solely as a consequence of substantially and permanently reducing the size or scale of an enterprise (s 188-25(b)(ii)).
- The AAT found that, for the purpose of s 188-25(a), the character of an asset was determined at the time the supply was made or was likely to be made. With regard to the limbs under s 188-25(b), the AAT considered the sale of land to be the central objective of a land development enterprise. Accordingly, the sales were made in the

course of, and as a consequence of, the taxpayer carrying on an enterprise. The sales were not as a consequence of ceasing or reducing the size or scale of that enterprise.

- The Commissioner considers the AAT's reasoning to be consistent with the view set out in GST Ruling GSTR 2001/7 on the meaning of GST turnover. The ATO also noted that the activities of some entities (such as superannuation funds) are deemed to be an enterprise under s 9-20(1) of the GST Act. It said that the case illustrated how the GST liabilities of such entities turn on the requirement for registration.

### **GST fraud: ATO-led taskforce executes raids across the country, 17 June 2022**

- A dozen warrants were executed across the country this week as part of Operation Protego, as the ATO continues to work with the AFP and other Government agencies to crackdown on individuals suspected of defrauding the community by inventing fake businesses to claim false refunds.
- The ATO-led Serious Financial Crime Taskforce (SFCT) launched a coordinated action on 15, 16 and 17 June in 12 locations across NSW, Victoria, Tasmania, South Australia, Western Australia, and Queensland, which saw warrants executed against 19 individuals suspected of being involved in GST fraud.
- ATO Deputy Commissioner and SFCT Chief, Will Day, said these warrants followed warnings last month for participants to come forward before stronger action was taken. However, despite these strong warnings, Mr Day said people were still attempting to engage in this fraud.
- "The ATO has stopped more than a billion dollars in attempted fraud. This is a clear warning to individuals considering participating – you will not be successful, you are not anonymous, and you will face the consequences of your attempts. This week's activity in relation to Operation Protego will most definitely not be the last," Mr Day said.

- The fraud involves offenders inventing fake businesses and Australian Business Number (ABN) applications, many in their own names, then submitting fictitious Business Activity Statements in an attempt to gain a false GST refund. In some cases, people have been encouraged to hand over their personal details to facilitators.

### **Reminder about fraudulent GST claims, 20 June 2022**

- The ATO is reminding the community not to engage in GST fraud.
- The ATO has identified a significant number of GST fraud attempts. The fraud involves offenders inventing fake businesses and Australian Business Number (ABN) applications, then submitting fictitious Business Activity Statements in an attempt to gain a false GST refund. The fraudulent activity has been circulating as online advertising and content, particularly on social media.
- The ATO views GST fraud seriously and is urging anyone involved in this type of activity to come forward on a voluntary basis or face tougher consequences, which for some offenders has included prosecution or criminal charges.



#### **Michelle Tremain**

Partner, PwC Australia

Indirect Taxes lead, Asia-Pacific

Phone: +61 8 9238 3403

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

# Philippines

## IN TOUCH NEWSLETTER

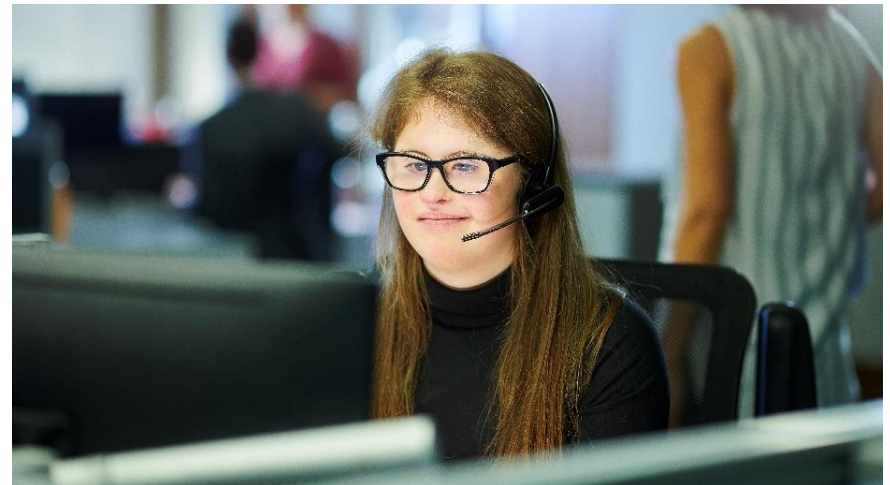
(VAT updates covering April – June 2022)

### Prescribing the Uniform Template for VAT Zero Percent Certification to be Issued by Investment Promotion Agencies (IPAs) in relation to Q&A No. 34 of RMC No. 24-2022

- RMC No. 36-2022 has been issued to prescribe the format of VAT Zero Percent Certification issued by IPAs to the duly registered export enterprises (REEs).
- Question and Answer No. 34 of RMC No. 24-2002 provides that the concerned IPA shall issue annually a VAT Zero Percent Certification to REEs which shall indicate the following:
  - Registered export activity (*i.e.*, manufacturing, IT BPO, etc.);
  - Tax incentives entitlement under agreed terms and conditions with validity period; and
  - The applicable goods and services (or category thereof), *i.e.*, raw materials, supplies, equipment, goods, packaging materials, services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity without which the registered project or activity cannot be carried out.

- This circular also provides the templates for the VAT Zero Percent Certification to be issued for both REEs registered under Republic Act No. 11534, otherwise known as CREATE Act and for those existing REEs prior to CREATE Act.
- Lastly, the BIR mandates that all IPAs provide a master list of all REEs which have been issued a VAT Zero Percent Certification for counterchecking purposes.

(Revenue Memorandum Circular No. 36-2022 dated 6 April 2022).



#### Malou Lim

Tax Managing Partner, PwC Philippines

Phone: +63 (2) 459 2016

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



# Vietnam

## Tax system reform strategy up to 2030 approved

- On 23 April, the Prime Minister signed Decision 508/QD-TTg approving the tax system reform strategy through to 2030, with a focus on building a modern and effective taxation regime. In relation to VAT, a number of measures to reform tax policies, are proposed including:
  - Expand the tax base by narrowing the supplies which are VAT exempt and subject to 5% VAT;
  - Apply a single VAT rate;
  - Review the revenue threshold for applying VAT deduction method;
  - Review regulations relating to VAT credits, refunds to make simple
- It is envisaged that the Government will provide implementing guidance for certain of the above measures soon.

## Decree 34/2022 extending deadline for tax payments in 2022

- On 28 May 2022, the Government released Decree 34 which stipulates the extension of deadlines for payments of taxes applicable for the 2022 tax year.
- The Decree took effect from the signing date.
- Decree 34 is applicable to companies engaging in various business activities and which have generated revenue from such activities in 2021 or 2022.

- The eligible business activities for payment extension remain the same as under Decree 52/2021 issued on 19 April 2021. Specifically, the below would be applied for those eligible:

### Extension of deadline to pay VAT

- Generally, the deadline for payments of VAT is extended. As such, the deadline for VAT payments for March, April, May 2022 (for companies declaring VAT on monthly basis) and Quarter 1 of 2022 (for companies declaring VAT on quarterly basis) will be extended by 6 months; VAT payments for June 2022 and Quarter 2 of 2022 will be extended by 5 months; VAT payments for July and August 2022 will be extended by 4 months and 3 months, respectively.

### Extension of deadline to pay VAT for individuals and business households

- Similar to Decree 52/2021, the deadline for payment of VAT for 2022 will be extended to 30 December 2022, applicable to individuals and business households which engage in in-scope business activities.

### Other notes

- Companies which engage in multiple business activities shall be entitled to extension of taxes incurred pertaining to all activities provided that at least one of their business activities falls under the in-scope activities.
- In case the extended deadline falls on a public holiday, the deadline shall be the next working day.

## Administrative requirements

- The Decree requires eligible taxpayers to submit a deferral request (in prescribed form as attached to Decree 34) to their local tax department together with the monthly or quarterly tax return.
- The deadline for submitting the request is 30 September 2022 and failure to meet the deadline will result in forfeiture of these benefits. The submission can be done either electronically, by hard copy directly sent to the local tax department, or by postage and should be done once, covering all types of taxes for all eligible periods.

## No requirement for issuance of electronic VAT invoices for export customs declarations

- The General Department of Customs (“GDC”) has recently issued an Official Letter on the requirements for invoices for exported goods. GDC confirms that the invoice to be used for export customs declarations is a commercial invoice or equivalent document. There is no requirement to issue electronic VAT invoices (“e-invoices”) to perform export customs procedures.
- On 03 June 2022, the General Department of Customs issued Official Letter No. 2054/TCHQ-GSQL to the General Department of Taxation on the use of invoices for exported goods, making the following key points:

### Regarding the invoice to be submitted in the export customs dossier:

Pursuant to current customs regulations, the customs dossier for exported goods includes commercial invoice or equivalent document. It is not required to issue electronic VAT invoices in order to carry out export procedures.

### Regarding the timing of VAT e-invoice assurance for exported goods

- Pursuant to points b and c, Clause 3, Article 13 of Decree 123/2020/ND-CP, the timing for VAT e-invoice issuance for exported goods is after the completion of export customs procedures.

- This is welcome guidance and clarifies questions raised by many exporters as to which invoices should be used for customs purposes. For the issuance of e-invoices under Decree 123/2020/ND-CP, companies should review and ensure their procedures and timing are in accordance with these regulations.

## Decree 41/2022 amending Decree 123/2020 on invoicing and Decree 15/2022 on VAT reduction

- On 20 June, the Government issued Decree 41/2022 amending certain provisions of Decree 123/2020 on invoicing and Decree 15/2022 on VAT reduction. Notably, the requirement for separate invoicing of goods/ services subject to 8% VAT under Decree 15/2022 is abolished.

Decree 41/2022 took effect from 20 June 2022.

### Notable points

- A new form is released for Notice of receipt and handling of incorrect e-invoices:
  - Decree 41/2022 introduces Form 01/TB-HDSS to replace Form No. 01/TB-SSDT of Appendix IB of Decree 123/2020.
- Invoicing requirements for goods/services entitled to 8% VAT rate:
  - In case a taxpayer declares VAT under the (conventional) deduction method, when selling goods and services which are subject to different VAT rates, the VAT invoice must specify the
  - VAT rate applicable to each of the goods and services.
  - In case a taxpayer pays VAT using the direct method (i.e. as a percentage of revenue), the VAT invoice must specify the amount of the reduction.
  - The requirement for issuance of separate VAT invoices for goods/services entitled to the 2% VAT reduction is abolished.

- If taxpayers have adopted the new invoicing approach mentioned above (i.e. one invoice with different VAT rates for different types of goods/services) from 1 February 2022 up to now, the VAT reduction can still be applied. They are not required to amend invoices and are not subject to administration penalties.



**Annett Perschmann-Taubert**  
Partner  
Tax and Legal Services  
PwC (Vietnam) Ltd.  
29 Le Duan Street, Ben Nghe Ward  
District 1, Ho Chi Minh City, Vietnam  
Telephone: +84 28 3824 0113  
E-mail: [annett.perschmann@pwc.com](mailto:annett.perschmann@pwc.com)

# Cambodia

## Supplementary instructions on implementation of value added tax (VAT) on tangible fixed assets

- Further to Instruction No. 15301 dated 22 June 2020, the General Department of Taxation (GDT) issued the above supplementary instructions to clarify the below points.
  1. Regardless of whether a taxpayer has claimed the input VAT credit or not (at the time of purchase), the sale of the tangible fixed assets (which are no longer used in the taxpayer's business) as reusable assets or scraps shall be subject to 10% VAT following tax laws and regulations in force.
  2. Any disposal of fixed assets (which are destroyed, damaged or have no sale value) shall not be subject to 10% VAT, provided there is clear evidence of the disposal. Enterprises are required to notify the GDT at least ten working days before any destruction of any fixed assets with accounting net book value (NBV) from KHR200,000 (approx. USD50). The GDT will assign tax officers to visit the destruction site within ten working days after receiving the notification.
  3. For a charitable contribution (as stated in Article 16 of Law on Taxation) of any tangible fixed assets that the taxpayer has already claimed VAT input credit and has been used in the business, it shall not be treated as sales and so shall not be subject to 10% VAT and Tax on Income in the below cases:
    - tangible fixed asset class 2 has been used in the business for over three years, and its accounting NBV does not exceed KHR1,000,000 (approximately USD 250)
    - tangible fixed asset classes 3 and 4 have been used in the business for over five years, and its accounting NBV does not exceed KHR2,000,000 (approximately USD 500).
  4. For tangible fixed asset class 1 (whether newly built or purchased) of which the input VAT credit has been claimed but not yet been put into use in the business is not treated as a sale and therefore not subject to 10% VAT. If a tangible fixed asset class 1 has been put into use in the business but then ceased to be used for more than one year, the enterprise [taxpayer] shall notify the GDT of the appropriate reason for stopping using the asset to be exempt from the obligation to pay 10% VAT.
    - The term 'tangible fixed asset which is no longer used' refers to a tangible asset maintained but not used in the business to produce any output from one year onwards.
    - These instructions shall be used to supplement Instruction No. 15301 GDT dated 22 June 2020 on the same subject.

# Thank you



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