Asia Pacific VAT/GST Alert

InTouch

with indirect tax news

Issue 02/18

pwc

Cambodia
- Guidelines on process for obtaining VAT refunds

China
- VAT treatment on import of aircrafts under leasing arrangement
- One-off VAT refund on excess input VAT credit

India
- Notifications/Circulars for CGST
- Case law for CGST
- Notifications/Circulars for IGST
- Case law for IGST
- Notifications/Circulars for SGST
- Case law for SGST

Malaysia
- Abolishment of GST
- Price control and anti-profiteering

New Zealand
- GST treatment of credit or debit card surcharges

Philippines
- Imposition of VAT on goods disposed of or existing as of the date of change in or cessation of status of a person as a VAT-registered taxpayer

Singapore
- Proposed amendments to the GST Act

South Korea
- Case law for sale of voluntary gas emission reductions

Taiwan
- Clarification on applicability of 0% VAT on sales of bonded goods to foreign customers while held in storage

Thailand
- 7% VAT rate extension

Welcome to issue 02/18 of InTouch* which covers the key developments in VAT/GST in Asia Pacific during the period April 2018 to June 2018.

Please feel free to reach out to any of the PwC contacts on the back of this issue if you have any questions on the news items.

Cambodia

Guidelines on process for obtaining VAT refunds

The Ministry of Economy and Finance ("MEF") issued Prakas No. 576 to provide guidelines on the process for obtaining VAT refunds to increase taxpayers' confidence in the VAT refund process. The Prakas provides the criteria that must be met in order to obtain a VAT refund.

The Prakas applies to enterprises registered with the tax authorities that are classified as medium or large taxpayers based on turnover, foreign diplomatic or consular missions, international organisations, and technical cooperation agencies of other governments.

For more information, please contact

Heng Thy
heng.thy@kh.pwc.com
+855 (23) 860 606 ext: 1052

China

VAT treatment on import of aircrafts under leasing arrangement

On 11 May 2018, the State Administration of Taxation ("SAT") and General Administration of Customs ("GAC") jointly issued Public Notice [2018] No.24 ("PN 24") to clarify the VAT treatment of the import of aircrafts under a leasing arrangement as follows:

- With effect from 1 June 2018, Customs will stop collecting VAT on aircrafts imported into China under a lease and under the import supervision categories of 1500 (lease under one year), 1523 (lease trade) and 9800 (lease tax); and
- The collection of VAT on the import of leased aircrafts will be administered by the tax authorities in accordance with the existing VAT policy.

On one hand, VAT tax payment relating to cross border leasing arrangements is collected by Customs when the leasing equipment is imported into China and the domestic lessee (i.e. the importer of the leasing equipment) is the VAT taxpayer.

On the other hand, the leasing service is subject to VAT and as the overseas lessor is providing a leasing service to the domestic lessee in China, the domestic lessee is required to withhold and remit VAT to the tax authorities on lease payments to the overseas lessor. In effect, there is double taxation on imported equipment under a lease, including aircrafts.

PN 24 will come into effect on 1 June 2018, but applies only to the importation of aircrafts under a lease. Cross border leasing of other equipment would still face the double taxation problem.

Subsequent circulars are expected to be released with more details on implementation issues of PN 24.

One-off VAT refund on excess input VAT credit

On 27 June 2018, the Ministry of Finance ("MOF") and SAT jointly issued Caishui [2018] 70, to clarify the refund policy of VAT credit balance for certain industries for 2018. The major points of the circular are as follows:

- The scope of industries and enterprises which are eligible to enjoy the VAT credit balance refund includes:
  1. Enterprises in the advance manufacturing industries and modern service sectors, such as the research and development sector. Specifically, the enterprises should fall within the 18 major industries listed in the classification of national economic activities. Refund priority would be given to enterprises falling within the 10 key fields specified in the "Made in China 2025 Initiative", high-technology enterprises, technology-advance service enterprise and small/medium size technology enterprises; and

2. Power grid enterprises that have obtained the power business license.

- Caishui 70 lists the major criteria for the application, detailed method for calculating the amount of the refundable VAT credit balance and the timeframe.
- The relevant working requirement for fiscal departments in different government levels are also clarified in the Circular.

For more information, please contact

Robert Li
robert.li@cn.pwc.com
+86 (21) 2323 2596

India

Notifications/Circulars for CGST

- Pursuant to Notification No. 28/2018 of Central Tax dated 19 June 2018, the CGST Rules, 2017 was amended in relation to Form GST ENR-02 for transporters registered in more than one state or union territory having the same Permanent Account Number ("PAN").
- Pursuant to Notification No. 25/2018 of Central Tax dated 31 May 2018, the due date of filing of the GSTR-6, a monthly return for an Input Service Distributor ("ISD"), has been extended for the months of July 2017 to June 2018, until 31 July 2018.
- Pursuant to Notification No. 11/2018 of Central Tax (Rate) dated 28 May 2018, Notification No. 04/2017- Central Tax (Rate) dated 28 June 2017 is amended to introduce the levy of Priority Sector Lending Certificate ("PSLC") under the Reverse Charge Mechanism ("RCM").
- The Central Board of Indirect Taxes and Customs ("CBIC") has provided various clarifications relating to the Special Economic Zones ("SEZ") and the refund of unutilised input tax credit for job workers.
- The CBIC provided clarification on refund related issues for refunds filed by an Input Service Distributor, a person paying tax under section 10 or a non-resident taxable person and other refund related issues.
- The CBIC has provided clarification on issues related to the furnishing of a bond/letter of undertaking for exports and the procedure for interception of conveyances for the inspection of goods in movement, detention, release and confiscation of such goods and conveyances.

Case law for CGST

- The National Anti-Profiteering Authority ("NAA") in the case of M/s Abel Space Solution LLP (Applicant) vs. Schindler India (P) Ltd. (Respondent) has passed an order dated 31 May 2018. The Applicant had purchased a lift from the Respondent and the Respondent had issued three invoices, one of which was issued on 28 June 2017 with the then applicable Service Tax charged. The remaining two invoices were issued on 27 July 2017, after the implementation of GST. Tax was charged on the two invoices without excluding the pre-GST regime Excise Duty and hence, the Applicant had been charged tax twice; once on the pre-GST Excise Duty and subsequently on the full value of the material used in the lift. The NAA rejected the application as only the installation of the lift had been completed after GST was implemented and the Applicant was liable to be charged the GST at the rate which was prevalent on 27 July 2017. The NAA found no violation of the provisions of section 171. The Court allowed the Applicant to obtain credit of the Clean Energy Cess paid on stocks lying with it as at 30 June 2017, subject to certain conditions.

- The Hon'ble Chhattisgarh High Court, in the case of Shree Raipur Cement Plant v. State of Chhattisgarh [2018-TIOL-37-HC-CHHATTISGARH-GST] held that the CGST Act, 2017 has not by its repealing provision repealed the CST Act, 1956 which is vivid from the focused perusal of section 174 of the CGST Act, 2017. The provisions of the CST Act, 1956 are still applicable for inter-State trades even after the roll-out of the GST Act confining to "goods" defined in section 2(d) of the CST Act, 1956. Section 9(2) of the CGST Act, 2017 specifically excludes six items including high speed diesel. In order to levy GST on high speed diesel, the recommendation of the GST Council and notification by the Central Government would be necessary. Neither the GST Council has recommended to levy GST on high speed diesel nor has the GST Council been notified by the Central Government to do so. Thus, the petitioner, having a valid registration certificate under the CST Act, 1956 is still valid for the goods defined in section 2(d) of the CST Act, 1956, including high speed diesel, and the petitioner though having migrated to the GST regime by obtaining registration under the CGST Act, 2017 with effect from 1 July 2017 is entitled for the issuance of C-Form for inter-state purchases/sale of high speed diesel against the said C-Form.

Notifications/Circulars for IGST

- The CBIC has issued a circular on the applicability of IGST on goods supplied while being deposited in a customs bonded warehouse.

Case law

- In the case of Marwar Art Exports Vs CCE [2018-TIOL-1471-CESTAT-DEL], the applicant, a 100% Export Oriented Unit ("EOU") engaged in the manufacture of wooden furniture, opted to exit from the EOU scheme and accordingly, applied for the issuance of a no-objection certificate ("NOC") for the de-bonding of the EOU. It was observed by the Audit Wing of the Hon'ble Delhi CESTAT that the applicant did not discharge duty liability on the finished goods held in stock. On the basis of the audit report, the department initiated show cause proceedings against the applicant. The applicant contended that in the absence of suppression, misstatement and fraud, the extended period of limitation cannot be invoked for confirmation of duty demand. Based on the letter dated 26 December 2007 of the assessee, the Jurisdictional Assistant Commissioner of Central Excise has positively recommended for the issuance of final de-bonding permission to the competent authority. On perusal of the said letter of the Jurisdictional Central Excise Authorities, it was discovered that the process of de-bonding initiated by the applicant was known to Department on 26 December 2007 and upon satisfaction that the applicant deserved for de-bonding of its unit, the authorities have recommended positively for the issuance of the NOC. Thus, it cannot be said that the applicant had indulged in activities of suppression and fraud with intent to defraud Government revenue. Hence, the show cause notice ("SCN") should have been issued within the normal period of the date of knowledge regarding de-bonding of the unit by the applicant. Since the SCN was issued beyond the period of one year, the SCN is barred by the limitation of time. Therefore, the adjudged duty demand confirmed that the applicant cannot be sustained on the grounds of limitation.

Notifications/Circulars for SGST

Delhi

- Notification No. 03/2018 dated 15 June 2018 prescribes the applicability of e-waybill provisions on intra-state movement of goods.

Chhattisgarh

- Notification No. F 31/2018/CT/V (46) dated 19 June 2018 prescribes the applicability of e-waybill provisions on intra-state movement of goods on fifteen specified products.

Rajasthan

- The Rajasthan Government empowered state officers to verify e-waybills during the intra-state & inter-state movement.

Madhya Pradesh

- Pursuant to Notification No. F.A3-92-2017(49), dated 31 March 2018, the date for assessment and reassessment proceedings has been extended.

Maharashtra

- A trade circular has been issued by the Maharashtra Government which launches the online functionality for delayed registration relief under commercial tax.

Case law for SGST

- The Hon'ble Kerala High Court in the case of M/s Speed Marine vs. Assistant State Tax Officer, Kollam [2018-TIOL-50-HC-KERALA-GST] held that where the Competent Authority had detained goods of the assessed under Section 129, the authority is required to complete adjudication within a week and release the goods if the assessed complies with rule 140(1) of the Kerala State Goods and Services Tax Rules.
- The Hon'ble Chhattisgarh High Court in the case of Om Disposals v. State of U.P. [2018-TIOL-34-HC-ALL-GST], held that where two judgments of the Coordinate Benches of Allahabad High Court gives diametrically opposite conclusions on the validity of notification and prescribing E-way bill-01 to be carried for the purposes of importation of goods for an amount exceeding Rs. 50,000 in inter-state transactions, the matter will be referred to Larger Bench for an affirmative pronouncement.

For more information, please contact

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

Malaysia

Abolishment of GST

The new Government, which had won the General Election in May 2018, announced that GST will be abolished and replaced by the Sales Tax and Service Tax ("SST") regime from 1 September 2018.

While preparing for the abolition of GST, the Government has reduced the standard rate of GST from 6% to 0% with effect from 1 June 2018.

While the Government has yet to release the SST legislation, some details of the proposed SST implementation framework have been published by the Royal Malaysian Customs Department.

Price control and anti-profiteering

With the reduction of the standard rate of GST from 6% to 0% from 1 June 2018 and in an effort to curb profiteering activities by businesses, the new Government has enlarged the scope of the anti-profiteering framework with effect from 6 June 2018 to apply to all goods and services.

Previously, the scope of the anti-profiteering framework was only limited to non-durable household goods and food & beverages.

For more information, please contact

Raja Kumaran
raja.kumaran@my.pwc.com
+60 3 2173 1701

New Zealand

GST treatment of credit or debit card surcharges

The Inland Revenue has released a draft exposure document discussing the GST treatment of fees/surcharges that suppliers charge customers for using a credit or debit card to pay for goods and services. The document concludes that these fees will almost always form part of the consideration for the underlying goods or services being supplied. The fees/surcharges will be treated as being part of the consideration for the dominant supply and not as consideration for a separate supply of a payment facility. Hence, if the underlying supply of goods or services is subject to GST, GST will also apply to the fee. If the underlying supply is exempt, the fee will also be exempt from GST.

The above treatment applies where:

- The supplier provides the payment facility directly to the customer; or
- The supplier arranges for an agent to provide the payment facility to the customer on the supplier's behalf; or
- The supplier contracts with a third party to provide a payment facility to the customer.
- The comments on the document are due by 31 July 2018.

For more information, please contact

Eugen Trombitas
reugen.x.trombitas@nz.pwc.com
+64 9 355 8686

Ian Rowe
ian.rowe@nz.pwc.com
+64 4 462 7274

Sarah Sue
sarah.j.sue@nz.pwc.com
+64 4 462 7362

Philippines

Imposition of VAT on goods disposed of or existing as of the date of change in or cessation of status of a person as a VAT-registered taxpayer

The Commissioner of Internal Revenue ("CIR") has issued Revenue Memorandum Circular ("RMC") No. 39-2018 dated 8 May 2018 to reiterate and clarify the taxability of goods or properties originally intended for sale or use in business, including capital goods, disposed of or existing as of the date of change in or cessation of VAT-registered status pursuant to the Tax Reform for Acceleration and Inclusion ("TRAIN") Law.

It has been observed that taxpayers who changed their status from VAT to non-VAT due to the increase of the VAT threshold to PHP3m are submitting only the "Application for Registration Information Update" (BIR Form No. 1905) without filing the quarterly VAT returns and paying the tax due on the inventories existing as of the date of change of status.

Section 106(C) of the Tax Code of 1997, as implemented by Section 4.106-8 of Revenue Regulations ("RR") No. 2005, states that VAT shall apply to goods disposed of or existing as of a certain date if under the circumstances to be prescribed in the rules and regulations to be promulgated by the Secretary of Finance and upon the recommendation of the CIR, the status of a person as a VAT-registered taxpayer changes or is terminated.

Under Section 4.106-8(a) of RR No. 2005, VAT shall apply to goods or properties originally intended for sale or lease in business, and capital goods which exist as of the occurrence of the following events:

1. Change of business activity from VAT to VAT-exempt status;
2. Approval of a request for cancellation of registration due to reversion to exempt status;
3. Approval of a request for cancellation of registration due to a desire to revert to exempt status after the lapse of three consecutive years from the time of registration by a person who voluntarily registered despite being exempt under Section 109(2) of the Tax Code; and
4. Approval of a request for cancellation of registration of one who commenced business with the expectation of gross sales/receipts exceeding PHP3m but who failed to exceed this amount during the first 12 months of operation.

As such, goods or properties originally intended for sale or use in business, including capital goods, disposed of or existing as of the date of change of status from VAT to non-VAT are subject to 12% VAT. Hence, taxpayers are required to file the quarterly VAT return covering the period when the change of status transpired and pay the corresponding VAT due thereon.

For more information, please contact

Malou P. Lim
malou.p.lim@ph.pwc.com
+63 2 459 2016

Singapore

Proposed amendments to the GST Act

The Ministry of Finance ("MOF") has released the draft GST (Amendment) Bill 2018 for public consultation. The proposed amendments covers the following key areas:

- Introduction of GST on imported services (as announced in the 2018 Budget Statement);
- Enhancement of the Inland Revenue Authority of Singapore ("IRAS")'s powers to investigate tax crimes;
- Sharing of information by the IRAS with law enforcement agencies to combat serious crimes; and
- Extension of the customer accounting rules to transactions with the Government.

Interested parties can provide feedback on the draft bill to the MOF from 27 June to 18 July 2018.

For more information, please contact

Soo How Koh
soo.how.koh@sg.pwc.com
+65 6236 3600

Weijie Lin
weijie.lin@sg.pwc.com
+665 9758 3678

South Korea

Case law for sale of voluntary gas emission reductions

A recent Supreme Court Decision (Daebeop2017 du65524, 2018. 4. 12.) determined whether the sale of voluntary gas emission reductions would be subject to VAT.

In this case, a company participating in a voluntary greenhouse gas emission reduction project sold the emission reductions to the Korean government via a state-run organisation as subcontracted by the government for the operation of the emission reduction project. The company received consideration in question from the state-run organisation for the sale of the emission reductions from the 1st quarter of 2010 to the 1st quarter of 2011. This case concerns whether the emission reductions would fall under "goods" for VAT purposes and hence, whether the transfer of the reductions would be subject to VAT.

Generally, the delivery or transfer of goods by contractual or legal causes should be subject to VAT. The term "goods" is defined to be any tangibles or intangibles such as rights having property value according to the VAT Law. For the scope of intangibles having property value, the Supreme Court ruled in the past that whether certain intangibles have property value should not be determined based on the subjective valuation between transaction parties, but determined objectively based on the economic exchange value of the intangibles. The Court further ruled that in order to fall under the

meaning of "supply of rights" for VAT purposes, the transferred rights should be utilisable in practice and it should have an objective property value such as an economic exchange value.

In April 2018, the Supreme Court ruled against the taxpayer on the basis that the emission reductions sold by the company could be treated as the rights having property value since the certified emission reductions could be traded with other entities, government, etc. and it could be viewed that the property value of the reductions was recognised by the government given the consideration paid for the purchase of the reductions. The Court further decided that since the ownership to the emission reductions was attributed to the government while the emission reductions of the company was reduced, the attribution of the emission reductions should be viewed as a supply of goods.

For more information, please contact

Changho Jo
changhojo@samil.com
+82 2 3781 3264

Dong-Keon (D.K.) Lee
dklee@samil.com
+82 2 709 0561

Taiwan

Clarification on applicability of 0% VAT on sales of bonded goods to foreign customers while held in storage

Business entities (both in taxable and bonded zones) that sell bonded goods to foreign customers while held in storage in the bonded zone, and who receive payment in foreign currency, may apply 0% VAT on the said sales.

For sale of bonded goods to foreign customers, where the title of goods is transferred without physical delivery of goods, i.e. goods continue to be stored in a bonded warehouse, the overall VAT liability is zero. This is the same as if the goods had been exported and re-entered the bonded warehouse for storage.

To simplify the administrative process and reduce transportation cost associated with this type of transaction, reduce operating costs and improve the competitiveness of the operating model, the Ministry of Finance issued Tax Ruling 10704514390 on 23 May 2018 to clarify that 0% VAT may apply on the said transaction if inward remittance of foreign currency is received.

For more information, please contact

Li-Li Chou
li-li.chou@tw.pwc.com
+886 2 27296666 Ext. 2368

Thailand

7% VAT rate extension

The current reduced VAT rate of 7% has been in effect for many years and the rate is valid until 30 September 2018.

A further extension of the reduced VAT rate until 30 September 2019 has been approved by the Cabinet but has not been enacted as law.

For more information, please contact

Somsak Anakkasela
somsak.anakkasela@th.pwc.com
+66 (0) 2844 1253

Contact details

Australia
Michelle Tremain, Partner
michelle.tremain@au.pwc.com
Tel: +61 (8) 9238 3403

Cambodia, Laos
Heng Thy, Partner
heng.thy@kh.pwc.com
Tel: +855 (23) 860 606 ext: 1052

China
Robert Li, Partner
robert.li@cn.pwc.com
Tel: +86 21 2323 2596

India
Anita Rastogi, Partner
anita.rastogi@in.pwc.com
Tel: +91 124 330 6531

Indonesia
Ali Widodo, Partner
ali.widodo@id.pwc.com
Tel: +62 21 52890623

Abdullah Azis, Partner
abdullah.azis@id.pwc.com
Tel: +62 21 5289 0601

Japan
Takashi Murakami, Partner
takashi.murakami@jp.pwc.com
Tel: +81 (0) 80 3592 6121

Kotaku Kimu, Director
kotaku.kimu@jp.pwc.com
Tel: +81 3 5251 2713

Malaysia
Raja Kumaran, Executive Director
raja.kumaran@my.pwc.com
Tel: +60 3 2173 1701

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

Ian Rowe, Director
ian.rowe@nz.pwc.com
Tel: +64 4 462 7274

Sarah Sue, Manager
sarah.j.sue@nz.pwc.com
Tel: +64 4 462 7362

Philippines
Malou P. Lim, Partner
malou.p.lim@ph.pwc.com
Tel: +63 2 459 2016

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

Weijie Lin, Senior Manager
weijie.lin@sg.pwc.com
Tel: +65 9758 3678

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

Changho Jo, Partner
changhojo@samil.com
Tel: +82 2 3781 3264

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

Taiwan
Li-Li Chou, Partner
li-li.chou@tw.pwc.com
Tel: +886 2 2729 6666 Ext. 2368

Thailand
Somsak Anakkasela, Partner
somsak.anakkasela@th.pwc.com
Tel: +66 (0) 2844 1253

Vietnam
Annett Perschmann-Taubert, Partner
annett.perschmann@vn.pwc.com
Tel: +84 28 3823 0796

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