ITX InTouch

[PwC InTouch Newsletter]

Issue 1, 2024 - October 2023 to March 2024

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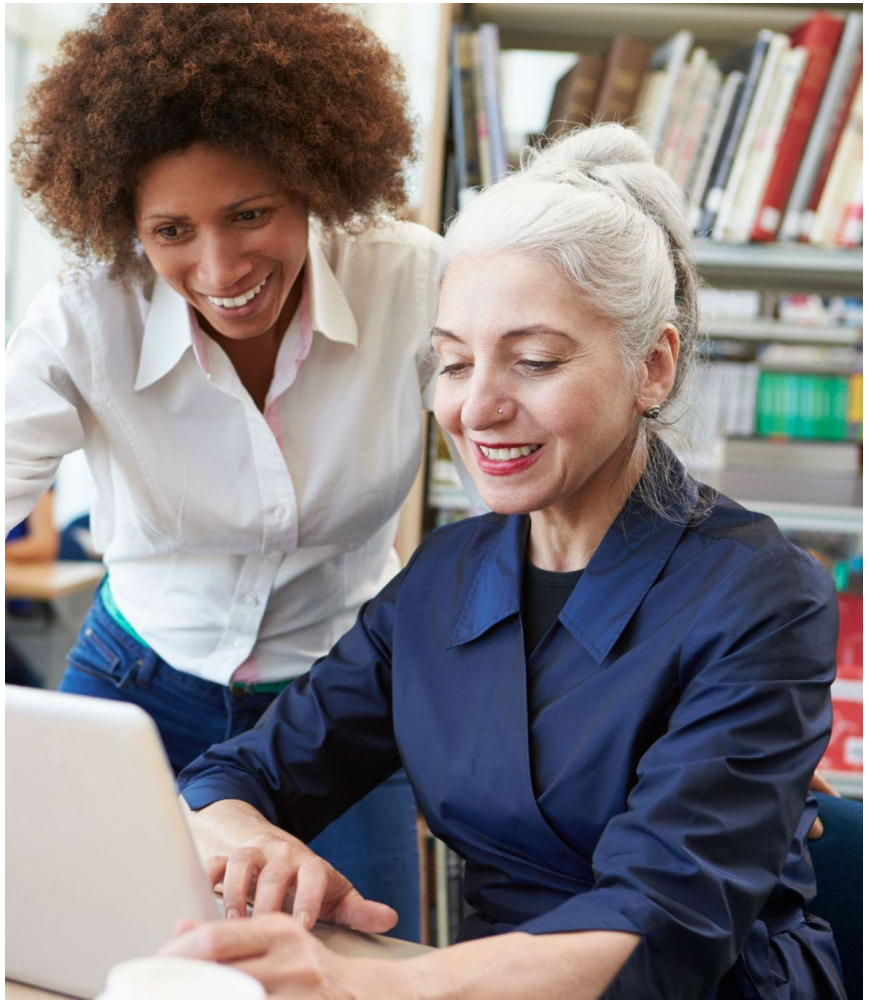
Introduction

Welcome to the latest issue of InTouch which covers the key developments in value added tax (VAT) and goods and services tax (GST) in the Asia Pacific region during the period October 2023 to March 2024. As economies within our region become increasingly impacted by Global events, the role indirect taxes play in either supporting targeted stimulus measures or aiding revenue collections will become more and more critical.

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



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Australia

Frozen Food Products Found not to be GST-Free

- In Simplot Australia Pty Limited v Commissioner of Taxation [2023] FCA 1115, the Federal Court of Australia considered the goods and services tax (GST) treatment of certain frozen food products supplied and imported, holding that the products were not GST-free as they were of a kind marketed as prepared meals, which are excluded from the GST-free category of food.
- The Australian Taxation Office (ATO) has since released a decision impact statement outlining its response to this case, confirming the Commissioner's classification of the particular products.
- A product is taxable as 'food of a kind marketed as a prepared meal' if it is within a class or genus of food marketed generally as having the attributes of a prepared meal – quantity, composition and presentation. The ATO has noted that the Federal Court has left open that a prepared meal may have attributes additional to the three stated attributes.
- The decision impact statement explains that since the concepts of 'meal' and 'meal component are not mutually exclusive, a product which is regarded as a 'meal component may be taxable as 'food of a kind marketed as a prepared meal' in some situations. This does not mean that everything which is a meal component or any particular meal component will be taxable and whether or not this is the case will depend on application of the statutory test as a 'single composite question'. In practice, it will be the facts, circumstances and evidence which determine whether a meal component is 'food of a kind marketed as a prepared meal'.
- The Commissioner considers that it will be rare that, as a result of the Simplot decision, a meal component not previously understood to be taxable will now be understood to come within a class or genus of food marketed generally as having the attributes of a prepared meal (including quantity, composition and presentation).
- The ATO recommends that taxpayers review food products to ensure correct classification is consistent with the decision in Simplot. If there is uncertainty as to the GST treatment of any products, the ATO encourages taxpayers to seek ATO advice while it develops further public guidance.
- Comments on the decision impact statement close on 8 December 2023.

Single or Multiple Supply and Calculating the Margin Scheme

- The Full Federal Court has dismissed the Commissioner's appeal in FC of T v Landcom [2022] FCAFC 204 which concerned the application of the margin scheme to the sale of four freehold land interests under a single contract. The key issue in the appeal was whether, in calculating the margin for the purposes of the margin scheme in Division 75 of the GST Act, the sale constituted a single supply or multiple supplies. If the sale was a single supply, any improvements as at 1 July 2000 on any one of the lots would result in the non-application of item 4 of the table in section 75-10(3) of the GST Act with the GST being payable on the entire increase in value of the freehold interest in all four lots since 1 July 2000.
- The Court rejected the Commissioner's contention that the reference to "a freehold interest" in section 75-10 encompasses the plural as well as the singular. Having regard to the structure

and language of Division 75 and the language of section 75-10 with its focus on "the interest, unit or lease in question", the Court did not consider that the singular "interest" in section 75-10 includes a reference to the plural and agreed with the primary judge's conclusion that the reference to "the interest" in each of the items in the table is a reference to the particular freehold interest referred to in section 75-5(1)(a). The Court also noted that the interpretation adopted by the primary judge avoids uncertainty, regardless of whether a particular freehold interest is sold separately or in conjunction with other interests.

No Input Tax Credits under Retail Credit Arrangements

- In SVYR y FC of T [20221AATA 3994, the AAT has found that a retailer of mobile telephone and tablet accessories was not entitled to input tax credits or decreasing adjustments arising from a credit arrangement provided by the telecommunications supplier (Telco) to the retailer's customers. The applicant accepts it is liable for GST on the price of the accessories sold to its customers even though it receives less than that amount due to the credit (shortfall).
- The Tribunal was not satisfied that there was a taxable supply made by Telco for which the shortfall is consideration and the taxpayer has not established that it is entitled to input tax credits in respect of the shortfall amounts.
- The Tribunal favoured the view that the shortfall is consideration for a financial supply of credit, ie commercial reality suggests the shortfall is simply the price the taxpayer pays for Telco extending credit to the customer. The taxpayer has not discharged the burden of proving the shortfall is not consideration for a financial supply.
- The arrangements for the Telco's provision of credit to the customer did not involve any event that changes the consideration for the taxpayer's supply of accessories to the customer. The consideration is the price as agreed with the customer and the customer agrees to pay the full amount of the price by instalments to Telco.

Frozen Food Products Found not to be GST-Free

- The Australian Taxation Office (ATO) has released Draft Miscellaneous Tax Ruling MT 2024/D1 which sets out the Commissioner of Taxation's preliminary view on the time limits applying to an entitlement to an input tax or fuel tax credit as provided by the goods and services tax (GST) and fuel tax law. Those limiting provisions (s93-5(1)of the A New Tax System (Goods and Services Tax) Act 1999 and s47-5(1)of the Fuel Tax Act 2006) provide that a taxpayer's entitlement to a tax credit ceases (unless an exception applies) to the extent that the tax credit has not been taken into account in an assessment during the four-year entitlement period.
- The draft Ruling explains when and the extent to which a tax credit has been "taken into account" in an assessment, when the four-year entitlement period ends, and the exceptions to the limiting provisions. The draft Ruling also explains when an objection to an assessment may preserve an entitlement to a tax credit, and the interaction between the limiting provisions and private ruling and amendment requests.
- The draft Ruling also sets out an alternative view of the meaning of "taken into account" that a tax credit forms part of the process of assessment if the acquisition or credit is identified and its inclusion in the assessment considered. The Commissioner does not consider this to be the better view of the law or of what was said by the Courts.
- When the final Ruling is issued, it is proposed to apply both before and after its date of issue.

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India

Key Update under GST & Custom Laws

Amnesty Scheme

- Central government has notified an Amnesty Scheme for filing Appeal under GST law for the taxable persons who could not file an appeal within the stipulated time, and for the persons whose appeals were rejected solely on the ground that the same is filed after due date. Under this GST Amnesty Scheme, specified GST taxpayers who disagree with a GST tax demand order, can file an appeal till January 31, 2024.

Budget 2024-25

- Budget 2024-25 was presented on February 01, 2024, wherein the following key proposals were made with respect to GST.
    a. The Govt proposed to amend the definition of Input Service Distributor u/s 2(61) and the Manner of distribution of ITC by Service Distributor u/s 20 of the CGST Act, 2017, so as to make the mechanism of Input Service Distribution mandatory for distributing credits of input service.
    b. Proposed the insertion of section 122A in CGST Act, 2017 to penalize the taxable persons not following the special procedure notified via notification no. 04/2024 – Central Tax, dated 05-01-2024, wherein persons engaged in manufacturing of the goods like Pan Masala, Tobacco and Hookah are required to get their machines registered with the government.

Other Key Updates

- The GST Council in its 52nd meeting held on October 7, 223 recommended following changes
    a. Food preparation of millet flour in powder form, containing at least 70% millets will be taxable at 5%, if sold in pre-packaged & labelled form, and 0%, if sold otherwise.
    b. Clarified that Imitation zari thread or yarn made out of Metallized polyester/plastic film, falling under HS 5605, are covered by the entry for imitation zari thread attracting 5% GST rate.
    c. Extra Neutral Alcohol (ENA) used for manufacture of alcoholic liquor for human consumption will be kept outside GST purview.
    d. GST on Molasses will be reduced from 28% to 5%.
- All the above recommendations have been made effective from October 2023.

Case Laws

- The Hon'ble High Court of Kerala in case of Praveen Bhaskaran (Proprietor) M/s Galaxy Traders, [Writ Petition no. 30538 of 2023, dated September 20, 2023] wherein it has been held that merely on the ground that in Form GSTR-2A, the tax to an extent of Input Tax Credit being claimed by the petitioner is not reflected should not be a sufficient ground to deny the claim of the assessee for Input Tax Credit. Petition disposed of by way of remand.
- The Hon'ble Allahabad High Court in the case of M/s Malik Traders vs. The State of UP [Writ petition no.1237 of 2021 dated October 18, 2023] held that in order to justify the claim of Input tax credit, the burden of proof lies on the assessee. In the case at hand, the petitioner presented only tax invoices, E-Way Bills, GR and payment through banking channel. Whereas no such details of payment of freight charges, acknowledgement of taking delivery

of goods, toll receipts, and payment thereof has been provided. Thus, in the absence of these documents, the actual physical movement of goods and genuineness of transportation as well as transaction cannot be established, and in such circumstances, further no proof of filing of GSTR 2 A has been brought on record, the proceeding has rightly been initiated against the petitioner. Thus, no interference is called for by this Court in the impugned orders – petition dismissed.

- The Hon'ble High Court of Madras in case of M/s Parle Agro Private Limited [Writ petition no. 16608 and 16613 of 2020, and 20602 & 20604 of 2020] held that the GST Council is not empowered to determine the HSN/ SAC classification of goods or services for the purpose of levy of GST rate, as prescribed in Notification No. 01/2017 – CT (Rate) dated 28-06-2017. The classification ought to have been independently determined by the Assessing Officer. It should be noted that this is not the first time where the judiciary has limited the powers of GST Council. The Hon'ble Supreme Court in the case of M/s Mohit Minerals Pvt. Ltd. also stated that the recommendations of the GST Council are not binding on the Union and States.
- The Hon'ble High Court of Madras in the case of M/s Eicher Motor Ltd. v. Superintendent GST and Central Excise and Ors. [W.P. No. 16886 of 2023 dated January 23, 2024] held that the petitioner is not liable to pay interest on GST amount, which was routinely deposited with the government in cash ledger, but the returns in Form GSTR – 3B were filed after the due date. Since the amount has already been deposited with the government, the question of payment of tax does not arise.

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Japan

Revisions to Tax-exempt Enterprise Rules

- Under the current JCT rules, situations may arise under which a foreign service provider / seller can make taxable supplies without being required to file a JCT return or remit JCT collected for the first two years after commencing taxable business. This is due to the "base-period" rules, which, in short, exempt sellers from JCT filing and remittance obligations if their taxable sales in the base period (i.e., 2 years prior to the current year) are less than JPY 10 million. The tax reform bill would narrow the scope of the exemption rules through several measures aimed at reducing the occurrence of such situations, and thus foreign companies starting JCT taxable business should be cognizant of such new rules when determining JCT filing obligations. The new rules are expected to come into force for tax periods commencing on or after 1 October 2024.

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Malaysia

Indirect Tax Measures under Budget 2024

The following are some of the key indirect tax measures announced in the Budget 2024 and implemented recently:

1. **Expansion of Scope of Service Tax**
    - The scope of taxation services subject to service tax has been expanded to include the following services:
        - Karaoke centre services
        - Maintenance or repair services
        - Brokering or underwriting services relating to non-financial services
        - Logistic services (including services relating to delivery of goods but exlcuding delivery of good & beverage).

2. **Increase in Rate of Service Tax**
    - The rate of service tax has been increased from 6% to 8% for all taxable services except for the following services:
        - Credit cards service (which is at MRY 25 per card per annum)
        - Provision of food and beverages services (remain at 6%)
        - Telecommunications services (remain at 6%)
        - Parking services (remain at 6%)
        - Logistic services (new group of taxable services at 6%)

3. **High value Goods Tax**
    - The luxury goods tax (LGT) was first proposed in the Retabled Budget 2023 on 24 February 2023 where luxury goods of a certain value are taxed at differential rates. The Budget 2024 proposed that High Value Goods Tax (HVGT) be imposed at a rate ranging from 5% to 10% on certain prescribed high value goods such as jewelleries and watches whose values exceed certain prescribed thresholds. The implementation date was proposed to be 1 May 2024 but details on the scope are currently not available.

4. **Imposition of Excise Duty on Chewing Tobacco Products**
    - Effective from 1 January 2024, chewing tobacco products have been imposed with excise duty at a rate 5% plus MYR 27 per kilogram. The rate is the same as the excise duty rate for snuff tobacco products.

5. **Increase in Rate of Excise Duty on Sugar Sweetened Beverages**
    - Effective from 1 January 2024, the excise duty rate for sugar sweetened beverages (SSB) has been increased from MYR 0.40 per litre to MYR 0.50 per litre.

6. **Import Duty and Sales Tax Exemptions on Manufacturing aids and Cleanroom Equipment**

   - Effective from 1 January 2024, eligible manufacturers can apply to the Royal Malaysian Customs Department (RMCD) for import duty and sales tax exemptions on qualifying manufacturing aids and cleanroom equipment. The RMCD has issued the Public Ruling No.2/2024 to clarify the characteristics of the manufacturing aids and cleanroom equipment that qualify for the sales tax exemption.

7. **Import Duty Exemption on Equipment and Components used for Aerospace Maintenance, Repair and Overhaul (MRO) Activities**

   - Effective from 1 December 2023, MRO companies endorsed by the Malaysia Investment Development Authority (MIDA) are no longer required to apply to the Ministry of Finance for import duty exemption on the following items endorsed by MIDA which are to be used for MRO activities provided that all the qualifying conditions have been fulfilled:

     - Machinery, equipment and specialised tools
     - Spare parts, components, materials and specialised consumables goods

8. **Implementation of Sales Tax on Low Value Goods (LVG) Import into Malaysia**

   - Effective from 1 January 2024, LVG sold by a registered seller or a seller who is liable to be registered are subject to sales tax at a rate of 10%. A "seller" is defined as a person, whether in or outside Malaysia, who sells LVG on an online platform or operates an online marketplace for the sales and purchase of LVG. LVG refers to:

     - All goods (excluding cigarettes; tobacco products; intoxicating liquors; smoking pipes (including pipe bowls); electronic cigarettes and similar personal electric vaporizing devices; and preparation of a kind used for smoking through electronic cigarette and electric vaporizing device, in forms of liquid of gel, whether or not containing nicotine);
     - Sold at a price not exceeding MYR 500; and
     - Brought into Malaysia by land, sea or air mode.

9. **Implementation Date of Imposing Excise Duty on Premix Preparations**

   - The implementation date for the imposition of excise duty on premix preparations has been fixed at 1 March 2024. Certain premix preparations which have sugar content exceeding 33.3 grams per 100 grams are subject to excise duty of MYR 0.47 per 100 grams.

10. **Sales Tax Exemption on Certain Motor Vehicles Used by Certain Groups**

    - Effective from 1 December 2023, sales tax exemptions are available for the following types of motor vehicles subject to all the qualifying conditions being fulfilled:

      - Locally manufactured motor vehicles under the Harmonized System (HS) code heading of "87.02" (i.e. motor vehicles for the transport of ten or more persons, including the driver) according to the Customs Duties Order 2022 to be converted as hearses or to used solely by certain registered non-profit institutions or organisations.

- Locally manufactured vans and buses under the HS code heading of "87.02" according to the Customs Duties Order 2022 to be solely used by the approved institutions or organisations under subsection 44(6) of the Income Tax Act 1967.
- Vans or buses with at least 18 seats under the HS code heading of "87.02" according to the Customs Duties Order 2022 to be solely used by the operators of express bus, stage bus or school bus.

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New Zealand

GST Changes – Platform Operators in the Gig and Sharing Economy

- From 1 April 2024, online marketplace operators (resident or non-resident for GST purposes) must collect and return GST of 15% in relation to supplies of listed services (below), regardless of whether or not the underlying supplier is GST registered.
- "Listed services" are defined as:
  a. Ride sharing and ride hailing;
  b. Food and beverage delivery;
  c. Short stay and visitor accommodation (with exemption for accommodation used by the customer as their principal place of residence); or
  d. Closely connected services facilitated through the marketplace operator e.g. holiday home cleaning fees.
- Due to a change in government, it was initially expected that these rules would be repealed before implementation. However, in late 2023 the new government decided to keep the rules. As a consequence, many clients are under significant time pressure for the imminent start date. Furthermore, through discussions with advisors, clients and Inland Revenue, several issues were identified with the enacted legislation, some of which require remedial legislative amendments before 1 April 2024.
- At a very high level, the new GST platform rules for listed services result in the following:

Electronic Marketplace/ Platform Operators

- Responsibility for collecting GST passes from the underlying supplier (e.g. the driver or accommodation provider) to the platform operator, and GST may be charged even if the underlying supplier is not GST registered (if the platform operator is registered or liable to be registered for GST).
- If an underlying supplier is not GST-registered, the operator would be required to pass them a flat-rate credit (equal to 8.5% of the GST exclusive price for the price), intended to compensate the supplier for the average amount of GST that they would have been able to recover as input tax if they were registered. The operator can claim this credit as a GST deduction. Operators will also need to provide a monthly statement to the underlying supplier showing the flat-rate credit passed on to them.
- As a default, operators should treat underlying suppliers as non-GST registered, unless they have been informed that the supplier is GST-registered at the time of supply of the listed service.
- There are also rules allowing some large commercial enterprises which provide accommodation (e.g. hotels) to opt out of the rules, and continue to account for GST as they have done previously.

GST-registered Underlying Suppliers

- Will need to inform the platform of the GST registration status.
- Will no longer need to account for GST at 15% on supplies of accommodation booked through a platform. These will need to be reported as zero-rated supplies, however, will still be able to claim GST on the costs of making supplies of listed services.
- May opt out of marketplace rules and carry on being responsible for their GST obligations if they meet certain criteria.

Non-GST Registered Underlying Suppliers

- The change does not require GST registration or to account for GST – the platform will do this. This also does not impact the GST treatment on sale of the property (i.e., should not be deemed in the scope of GST and taxable on sale).
- Non-registered underlying suppliers should receive the flat-rate credit (discussed above).
- Monitoring of when supplies reach the GST registration threshold will still be required. If they breach the threshold, then GST registration will be necessary, and the platform must be notified of the change in GST registration status. The consequences above will apply ("GST-registered underlying suppliers").

GST – Who can Group Register? PUB00322

- This interpretation statement considered:
  a. Which entities can register as a GST group of companies;
  b. Which registered persons can register as a mixed group; and
  c. The special grouping requirements for non-residents registered under s 54B
- The interpretation statement focuses on tests of "control" and how this can apply to a variety of entities and structures including those involving: partnerships, limited partnerships, trusts, and joint ventures.
- Broadly, the forming of a mixed group has the same GST impacts as those listed above for the grouping companies (e.g. the representative member is treated as carrying on all group members' activities and a member of the GST group is jointly and severally liable with the other members of the GST group for all tax payable and not paid by the representative member for each taxable period or part of a taxable period in which the company was part of the GST group).

GST Grouping for Companies PUB00355

- The draft interpretation statement states the purpose of the GST grouping rules is to treat a group of related companies as a single company for GST purposes. Members of the group act as a single company, carried on by the representative member.
- The statement provides examples of how the GST grouping rules apply to a range of situations. The consequences of GST grouping for companies are summarised below:
  a. The representative member is treated as carrying on all group members' activities, as a registered person;
  b. Taxable supplies made by group members to persons outside the GST group are treated as taxable supplies made by the representative member, as a registered person;,
  c. Taxable supplies made to group members from persons outside the GST group are treated as taxable supplies made to the representative member;
  d. Taxable supplies between group members are mainly disregarded;
  e. Non-taxable supplies made by or to group members are treated as made by or to the representative member;

f. Intra-group non-taxable supplies are not disregarded;

g. The representative member claims all input tax deductions;

h. The representative member makes all input tax adjustments where there is a change in the use of goods or services that were acquired by group members; and

i. A member of the GST group is jointly and severally liable with the other members of the GST group for all tax payable and not paid by the representative member for each taxable period or part of a taxable period in which the company was part of the GST group.

- Under the GST grouping rules, most supplies made by group members to persons outside the GST group are treated as made by the representative member, as a taxable person. This can have significant implications for the treatment of a supply. For example:

  a. If a non-registered company is part of a GST group and makes supplies to persons outside the GST group, those supplies will be treated as being made by a registered person and therefore GST is charged; and

  b. If a non-resident company is part of a GST group and the representative member is a New Zealand resident, supplies made by that non-resident company are treated as being made from New Zealand.

When is a Subdivision Project a "Taxable Activity" for GST Purposes? PUB00427

- Inland Revenue provided a draft "Question We've Been Asked" for consultation in order to clarify on when a subdivision project constitutes a taxable activity. This is likely to be of interest to persons undertaking smaller scale developments / subdivisions.
- The draft QWBA updates IR's 1995 policy statement based on case law in the intervening 28 years. Most of the factors in the 1995 policy statement remain relevant, as listed below, and the QWBA provides more analysis based on the increased body of case law. However, the QWBA differs from the 1995 policy statement by confirming that the commerciality of the subdivision / whether it was "commercial in nature" is not relevant when determining if a taxable activity exists.
- The draft QWBA states that whether or not a subdivision is a taxable activity is fact-sensitive, should be considered on a case by case basis, and will depend on consideration of the following non-exhaustive factors:

  a. Scale of subdivision

  b. Level of development work

  c. Number of lots created and sold

  d. Time and effort involved

  e. Level of financial investment

  f. Level of repetition

  g. Whether the subdivision is done in the course or furtherance of an existing taxable activity

Unit Title Body Corporate – GST Interpretation Statement

- Inland Revenue has released IS 23/08 which provides guidance and clarification on the application of GST to transactions involving a unit title body corporate (UTBC), its members, and third-party suppliers. This interpretation statement would primarily impact a UTBC that is considering registering for GST and, therefore, may be of limited wider application.
- The Goods and Services Tax Act 1985 (NZ) (GST Act) has specific rules that apply to UTBCs. While most UTBCs are not liable to be GST registered (because of the GST registration threshold) a UTBC can voluntarily register for GST. The interpretation statement sets out the GST treatment for UTBCs that are registered for GST.
- Can generally claim input tax deductions on transactions with third parties. However, if a UTBC wants to register for GST, there are a number of complex GST rules that apply (for example, a one-off output tax adjustment based on the money and investments it holds). Therefore, financial analysis, together with consideration of

the use of each underlying unit title property would likely be required to determine whether GST registration was economically beneficial.

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Philippines

Polices and Guidelines for the Optional VAT-Registration of Registered Business Enterprises ("RBE") Classified as Domestic Market Enterprise ("DME")

- Specific guidelines have been provided for optional VAT registration of RBEs classified as DMEs. DMEs located inside the Economic or Freeport Zone may retain availment of the 5% GIE incentive (in lieu of all taxes) during the ten (10) year transitory period [pursuant to Rule 18, Section 5 of the amended IRRs of Republic Act No. 11534 (CREATE Act)] and be allowed to register as a VAT taxpayer, provided it secures from the concerned Investment Promotion Agency (IPA) a Certification expressly stating that the 5% GIE shall be in lieu of all taxes, except VAT.
- For this purpose, DMEs shall submit to the concerned IPA the following documentary requirements:
  a. Request letter stating its intention to avail of the option to register as a VAT taxpayer with the BIR;
  b. Notarized "Deed of Waiver of Right to Avail of the VAT Exemption Incentive" in the form prescribed in Annex "A" of the Regulations; and
  c. Other documents that may be prescribed by the concerned IPA.
- The waiver of rights to avail of the VAT exemption incentive shall be irrevocable from the time it is made and shall be binding in the remaining transitory period.
- Non-VAT registered DMEs that have been issued the Certification shall update their registration with the concerned Revenue District Office (RDO) to reflect their registration from non-VAT to VAT taxpayer. Consequently, such DMEs shall be treated on par with regular corporations insofar as the VAT imposition and compliance is concerned.
- Upon the effectivity of these Regulations, the concerned IPA shall furnish the BIR through the Assessment Service, Attention: Audit Information, Tax Exemption and Incentives Division (AITEID) within 20 days following the close of each taxable quarter a list of RBEs that have been issued the Certification.

(Revenue Regulations No. 13-2023 dated 10 November 2023)

The List of VAT-Exempt Medicines under Republic Act (R.A.) No. 10963 (TRAIN Law) and R.A. No.11534 (CREATE Act)

- An updated List of VAT-Exempt Medicines has been published in a letter from the Food and Drug Administration (FDA) of the Department of Health (DOH) dated 29 November 2023 under R.A. No. 10963 (TRAIN Law) and R.A. No. 11534 (CREATE Act), particularly the following (see attached letter from FDA):
  a. Inclusion of certain medicines for cancer, diabetes, hypertension, kidney disease, mental illness, and tuberculosis; and
  b. Deletion of medicine for hypertension.
- As clarified under Q&A No. 1 of RMC No. 99-2021, the effectivity of the VAT exemption of the covered medicines and medical devices under the CREATE Act shall be on the date of publication by the FDA of the updates to the said list.

(Revenue Memorandum Circular No. 17-2024 dated 26 January 2024)

Adjustment of the Selling Price Threshold of the Sale of House and Lot, and Other Residential Dwellings for Value-Added Tax Exemption Purposes

- For the sale of house and lot and other residential dwellings for VAT-exempt purposes, the new threshold is P3,600,000.00, no longer P3,199, 200.00. This is pursuant to Revenue Regulations No. 1-2024 which further amends Section 2, Sub-section 4.109-1(B)(p) of RR No. 4-2021, as amended by RR No. 8-2021.
- Hence the VAT-exemption for the sale of house and lot and other residential dwellings (not held for lease in the ordinary course of trade or business) shall only apply to those with selling price not more than P3,600,000.00.

(Revenue Regulations No. 1-2024 dated 10 January 2024)

Amendments Related to VAT Pursuant to the Ease of Paying Taxes (EOPT) Act

- On 5 January 2024, the Ease of Paying Taxes (EOPT) Act was signed into law. The EOPT Act introduced significant amendments to the National Internal Revenue Code of 1997 ("Tax Code") which are intended to protect and safeguard taxpayer rights and welfare, to modernize tax administration by providing mechanisms that encourage easy compliance at the least cost and resources, and to update the tax system and adopt best practices. The EOPT Act became effective on 22 January 2024. The implementing regulations shall be issued within 90 days from effectivity of the law.
- The salient amendments related to VAT include the following:
  a. Imposition of VAT on services based on gross sales and no longer on gross receipts
  b. VAT invoices are sufficient to substantiate input VAT arising from the purchase of both goods and services
  c. Classification of VAT refund claims into low-risk, medium-risk, and high-risk based on the amount of VAT refund claim, tax compliance history and frequency of filing, among others. Medium-risk and high-risk claims shall be subject to audit or other verification processes of the BIR.
  d. Invoicing requirements:
     - A VAT official receipt is no longer required to be issued for the sale of services or lease of property. A VAT invoice must be issued instead.
     - 'Business style' is no longer required to be indicated on the invoice.
     - If a VAT invoice lacks information required under the invoicing rules, the following are the consequences:
       - Issuer shall be liable for non-compliance; and
       - Purchaser shall still be allowed to claim the input tax if the invoice contains the sales amount, VAT amount, name and TIN of both parties, description of the goods or service, and transaction date.
  e. Taxpayers shall issue duly registered invoices for sales valued at PhP500 or when buyer requires, or if seller is VAT-registered.
- Under the transitory provision of EOPT, taxpayers are given six months from the effectivity of the implementing regulations to comply with the VAT amendments.

(Republic Act No. 11976 promulgated on 5 January 2024)

Further Clarification on the Proper Tax Treatment of Cross-Border Services in View of the Supreme Court Decision in the Case of Aces Philippines Cellular Satellite Corporation Versus Commissioner of Internal Revenue (G.R. No. 226680, 30 August 2022)

- This RMC has been issued to clarify the tax treatment of cross-border services in light of the Supreme Court's Decision in Aces Philippines Cellular Satellite Corporation versus Commissioner of Internal Revenue (G.R. No. 226680, 30 August 2022).
- The Supreme Court held that the Philippines is the situs of Aces Bermuda's income from satellite air time fee payments as the income-generating activity is directly associated with the gateways located within the Philippine territory, and engaging in the business of providing satellite communication services in the

Philippines is a government-regulated industry. The Supreme Court further underscored that the income generation is dependent on the operations of facilities situated in the Philippines, which contributes to the income's Philippine situs.

- Based on this Supreme Court Decision, the BIR laid down the following guidelines on the situs of taxation of international or cross-border services akin to the Aces case:
    a. Coverage – cross-border services rendered to clients in the Philippines by companies that operate in different countries. These include consulting services, IT Outsourcing, financial services, telecommunications, engineering & construction, education & training, tourism & hospitality, and other similar services that are provided, processed or performed overseas and then utilized, applied, executed or consumed within the Philippines.
    b. The source of income is in the Philippines if the property, activity or service that produces the income is in the Philippines. Under the source-based taxation principle, the source of income should be determined by the location of the business activity that generates the income, rather than the location of the payout or where it is physically received.
    c. In cases where business transactions occur in multiple stages across different taxing jurisdictions, it should be ascertained whether the particular stages occurring in the Philippines are so integral to the overall transaction that the business activity would not have been accomplished without them. If the income-generating activities in the Philippines are deemed essential, the income derived from these activities would be considered as sourced from the Philippines for tax purposes, regardless of where the payment is ultimately received.
    d. The payment or income generated from service fees paid to the foreign company, including those made through the internet or other electronic means with the use of information technology, is considered an inflow of economic benefits in favor of the foreign company.
    e. On reimbursable or allocable expenses charged by a foreign corporation in the Philippines, the reduction of expenses for a foreign corporation can be considered as income because it represents financial gain or savings for the company, which effectively increases the foreign corporation's net income or profit.
    f. The income generated by the foreign company which is considered sourced in the Philippines shall be subject to FWT and also to Final Withholding VAT.
- PwC PH Comment: The Supreme Court held in the Aces case that the income is Philippine-sourced as the income-generating activity is directly associated with the gateways located within Philippine territory. However, the RMC appears to have generalized the application of the case to all cross border services where the situs of taxation is considered to be in the Philippines if the services rendered by non-resident foreign corporations are utilized, applied, executed or consumed within the country. The Aces case which is the basis of the RMC did not rule on the VAT implications of the transaction.

(Revenue Memorandum Circular No. 5-2024 dated 10 January 2024)

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ITX Policy Developments

Let's talk

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

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Thailand Digital Tokens

- VAT exemption is granted to digital tokens for investment purposes, as per the laws governing the digital asset business.

Draft GST Determinations on the Waiver of Requirement to Provide Tax Invoice

- In Australia, the Australian Taxation Office (ATO) issued a range of draft GST legislative determinations (LI 2022/D16 to LI 2022/D25) in relation to the waiver of the requirement to provide tax invoices for certain supplies. Comments were due to be made by 16 December 2022. Once finalised, these instruments will have effect on the day after this instrument is registered.

ATO Compliance Approach for GST and Tertiary Residential Colleges

- In Australia, the ATO has issued Practical Compliance Guideline PCG 2022/3 which sets out the Commissioner of Taxation's compliance approach for universities and residential colleges supplying accommodation, meals, tertiary residential college courses and religious services to resident students and claiming input tax credits. The guideline is intended to assist residential colleges in determining if supplies of accommodation, meals, tertiary residential college courses and religious services can be treated as GST-free supplies.
- PCG 2022/3 applies to GST periods starting on and from 1 January 2023.

GST Grouping Draft Statements

- In New Zealand, Inland Revenue has issued two draft interpretation statements for consultation in relation to GST grouping:
  a. GST Grouping for companies PUB00355 which explains how the GST grouping rules apply to companies.
  b. GST – Who can group register? PUB00322 which considers the grouping rules for mixed groups, for example including partnerships and trusts.
- There are two tests for group registration. Firstly, companies that qualify as a "group of companies" under s IC 3 of the Income Tax Act 2007 (e.g. companies with at least 66% common ownership

interests) can group register. Secondly, under s 55(8), non-companies and limited partnerships may group register (with or without companies) as a mixed group if they are under common control.

- These two interpretation statements consider these two types of group registration respectively.

Tax Reform for Platformer Taxation

- In Japan, under 2024 Tax Reform there will be significant changes in the method to impose Japanese consumption tax ("JCT") on inbound cross-border digital services provided to consumers in Japan through certain platforms. Under the proposed rules, platform operators will be liable to pay consumption tax on behalf of foreign service providers. This is a substantial change from the current system, under which foreign providers of such digital services are liable for determining their JCT filing obligations and filing JCT returns.
- Specifically, under the reform, B2C-type digital services provided by a foreign enterprise via a digital platform (for which consideration is received via the "qualified platform operator") shall be deemed to have been provided by that qualified platform operator. A qualified platform operator will be those receiving consideration exceeding JPY 5 billion in a given tax period, with the names of such operators being published on a public website. Further details about the scope of qualified platform providers remain to be clarified.
- However, foreign providers of B2C-type digital services may still have their own JCT reporting obligations if they are making supplies through means other than qualified platform providers (e.g., via their own website).
- The rules are expected to be formally enacted as of 1 April, 2024, with an effective go-live date of 1 April, 2025.

Thank you

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