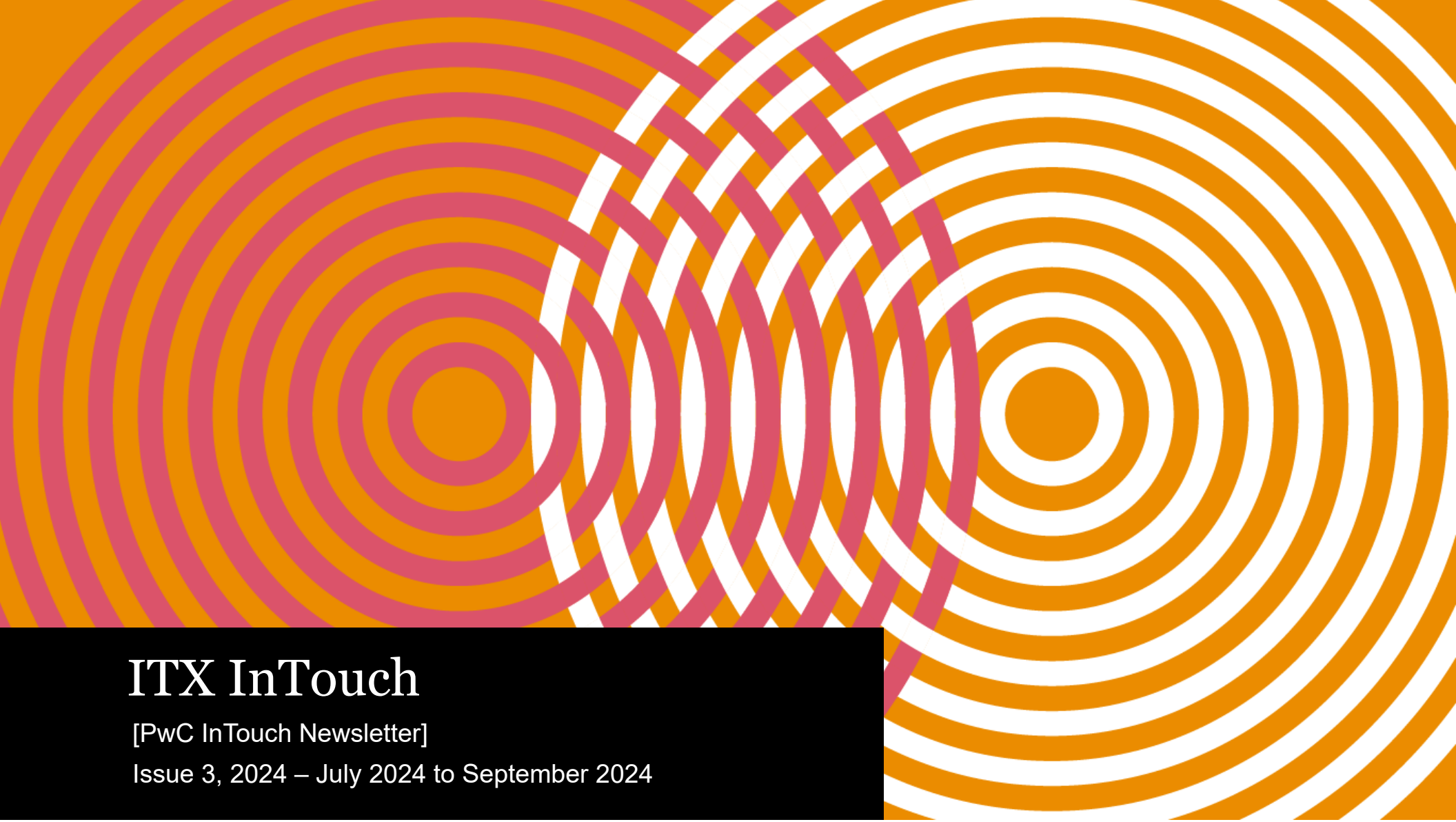

ITX InTouch

[PwC InTouch Newsletter]

Issue 3, 2024 – July 2024 to September 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 July 2024 to September 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

Finalised Reporting Exemptions for EDPs

Under the Sharing Economy Reporting Regime (SERR), operators of electronic distribution platforms (EDPs) are required to report information about certain supplies made through their platforms to the Commissioner of Taxation.

The Australian Taxation Office (ATO) has finalised Legislative Instrument LI 2024/17, which exempts operators of EDPs from having to include specified classes of transactions for reporting periods starting on or after 1 July 2024. Although the Instrument repeals the Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023 with effect from 1 July 2024, the exemptions provided in that determination have generally been replicated, meaning that entities that satisfied the requirements of the previous determination will generally satisfy the requirements of this instrument. LI 2024/17 also contains new, additional exemptions that cover certain types of suppliers and transactions, including new exemptions for scheduled events, and permanent attractions or experiences.

The legislative instrument applies to exempt the operator of an EDP from having to report the following types of transactions:

- Supplies made through the EDP where the supply is also made through at least one other EDP, and the first platform does not itself provide any consideration it receives in relation to the supply directly to the supplier, and the operator of another EDP provides all or part of the consideration given by the recipient of the supply to the supplier and has a reporting obligation in relation to that transaction.
- Supplies made by a listed entity or a wholly owned subsidiary of a listed entity, or a government department, agency, authority, or entity wholly owned by the government, or where the supplier is a 'substantial supplier' (i.e. a supplier that, in relation to a reporting period and an EDP, made a total value of supplies facilitated by that EDP of at least $1,000,000 (including goods and services tax (GST)).
- Supplies involving 'substantial property' (i.e. property where, for a reporting period, at least 2,000 transactions were facilitated by the EDP).
- Supplies of certain services outside Australia.
- Where an EDP facilitates a mere booking or reservation but does not otherwise facilitate the supply.
- The supply of certain scheduled passenger travel services.
- The supply of a right to attend or participate in a scheduled event in certain circumstances (i.e. events for which the supplier has made 200 or more places for the event available for booking on the platform).
- The supply of a right to attend or participate in a permanent attraction or experience in certain circumstances (i.e. if the supplier has made 50 or more places for that attraction or experience available for booking on the platform each day it was open during the reporting period).
- The rental or lease of assets, other than real property, in certain circumstances.

No LCT Refund for Import of Luxury Car

In Waller and Comptroller-General of Customs (Taxation) [2024] AATA 1097, the Administrative Appeals Tribunal (AAT) found in favour of the Comptroller-General, finding that the taxpayer was not entitled to a refund of customs duty related to LCT on the importation of a motor vehicle from New Zealand for AUD 162,782.80.

The Tribunal found that the importation of the car was a taxable importation of a luxury car as provided by the A New Tax System (Luxury Car Tax) Act 1999 and none of the exemptions applied. It followed that duty regarding LCT was properly payable.

Draft WET Determination Regarding Water Addition to Cider or Perry

The ATO has released draft WTED 2024/D1, which sets out how much water can be added before a beverage will no longer meet the definition of cider or perry for the purposes of A New Tax System (Wine Equalisation Tax) Act 1999 (WET Act).

According to the draft Determination, the addition of water must not cause the final beverage, being the product that must meet the definition of cider or perry, to no longer be regarded as the product of the complete or partial fermentation of the juice or must of apples or pears. A beverage, which because of the addition of water, has an unfermented component exceeding the fermented component, will not be regarded as the product of the complete or partial fermentation of the juice or must of apples or pears under the 'cider or perry' definition for the purposes of the WET Act.

A beverage that does not satisfy the definition of 'cider or perry' under the WET Act is an 'other excisable beverage' for the purposes of the Schedule to the Excise Tariff Act 1921, with that beverage subject to excise duty at the applicable rate.

When the final Determination is issued, it is proposed to apply from 1 July 2024. Comments close 12 July 2024.

No Input Tax Credit Allowed for 'Abandoned' Transaction

In Ecosse Group Holdings Pty Ltd and Commissioner of Taxation (Taxation) [2024] AATA 2073, the Administrative Appeals Tribunal (AAT) upheld the Commissioner's assessments, finding there had been no acquisition to permit the taxpayer to claim an input tax credit. The taxpayer operated an investment management business and accounted for goods and services tax (GST) on an accruals basis. The taxpayer's sole director and co-shareholder was the sole director and shareholder of another corporate entity, which held assets used by the taxpayer in its business.

The taxpayer entered into a sales agreement with the related company to purchase various business assets for a purchase price of $3.4 million less a 'deferred price' of $3.4 million (the effect being that the taxpayer would pay nothing on completion). The deferred price was to be paid 'on demand' by the related company, with a final date for payment included within the sale agreement, although it was not clear what the effect of this date was, nor whether any demand was ever made. Subsequently, the acquisition was 'abandoned'.

Ultimately, having regard to the evidence the AAT was not satisfied that anything was acquired under the sale agreement. Furthermore, there is another basis that resolved the issue of whether there was an acquisition under the sale agreement which is the fact that the agreement completely failed because there was no consideration ever paid at any time further, and in any event, the whole transaction was eventually 'abandoned'. Therefore, there was no acquisition (in whole or in part) for a creditable purpose, and so there was no creditable acquisition.

Self-review Guides to GST Classification of Food and Health Products

The Australian Taxation Office (ATO) has released a self-review checklist for small to medium businesses, and a self-review guide for medium to large business in relation to the goods and services tax (GST) treatment of food and health products. This guidance has issued in the context of the supply of food and health products, but is of use to any business, i.e. manufacturers, wholesalers, retailers etc., that undertake high-volume, low-value transactions where GST classification errors can lead to significant under-reporting of GST. The checklists each provide practical, step-by-step guidance on how a business can:

- Self-review the GST classification of its supplies (products it purchases as stock, or import, or produce for sale).

- Assess the robustness of its business systems, processes and controls that directly impact its GST classification decisions.

Although the use of either guide is not mandatory, the ATO encourages regular self-review of the GST classification of supplies, and the adoption of better practice processes and controls listed in each respective checklist/guide. It is considered better practice to assess GST classification processes and controls annually.

Draft GST Determination on Supplies of Sunscreen

The ATO has released draft GST Determination GSTD 2024/D2, which explains the Commissioner's preliminary view on when a supply of a sunscreen product is GST-free.

According to the draft Determination, a supply of a product that contains sunscreen is GST-free if that product is of a kind of sunscreen preparation for dermal application, with SPF of 15 or more, that is required to be included on the Australian Register of Therapeutic Goods (ARTG) and is marketed principally for use as a sunscreen.

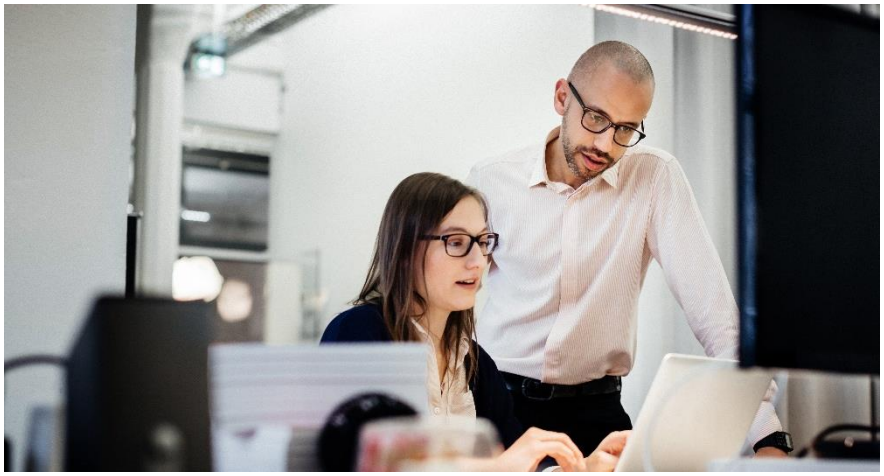
Sunscreen preparations may be in various forms, including creams, lotions, gels, balms, oils or mousses and be packaged in bottles, tubes, pump packs, sprays or sticks. However, supplies of products with an SPF of less than 15 are not GST-free.

In determining whether a product is of a kind marketed principally for use as sunscreen, it is necessary to consider the kinds of sunscreens that are marketed principally for use as sunscreens. The marketed use of a product is to be determined objectively, having regard to what a reasonable observer would understand from the content of the marketing. The draft Determination contains a table which lists common terms and features used in the marketing of sunscreen products and assists in determining whether a product is of a kind principally marketed for use as a sunscreen.

The draft Determination replaces two product classification issues listed in the Pharmaceutical Health Forum concerning sunscreen preparations for dermal application and when sunscreen preparation is marketed principally as a sunscreen, as the ATO's views in GSTD 2024/D2 are consistent with those expressed in the issues register.

When the final Determination is issued, it is proposed to apply both before and after its date of issue.

Comments on the draft determination can be made by 13 September 2024.



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Cambodia

VAT Exemption on Certain E-commerce Financial Transaction Services

The General Department of Taxation (GDT) issued letter No. 29613 to confirm to the Associations of Banks and Microfinance that certain e-commerce financial transaction services are considered non-taxable supplies. They are summarised as follows:

1. Expenses on education, training, relevant study documents and educational documents in electronic form (e.g. electronic documents, books, videos) supplied by educational institutions officially recognised by the countries where the institutions are established.
2. Overseas lawyer service fee expenses supplied by law firms.
3. Independent director fee expenses.
4. Expenses on risk rating assessment services provided by Moody, S&P or Fitch, the agencies recognised by the National Bank of Cambodia.
5. Monthly fees, bank charges and TT fees and charges related to money settlement transactions, money transfers or inward remittance services for customers or the bank itself from overseas banks.
6. Expenses on overseas transfers for customers.
7. Expenses on transactions to obtain overseas loans (e.g. interest and other charges by the lenders).
8. Direct expenses incurred for money transfers charged by SWIFT or BOTTOMLINE. Annual fees for system usage, license, royalty or system maintenance paid to SWIFT or BOTTOMLINE are subject to VAT on e-commerce transactions.
9. Direct expenses incurred for settlement transactions via credit or debit card and cash withdrawal services from ATM charged by Visa, Mastercard, Union Pay, UPI, AMEX or JCB company. Annual fees for system usage, license, royalty or system maintenance paid to Visa, Mastercard, Union Pay, UPI, AMEX, or JCB companies are subject to VAT on e-commerce transactions.
10. Customer's expense for staying at VIP lounge in airports in other countries is not non-taxable supply and not subject to VAT on E-commerce transactions.

The above confirmation is not retroactive for tax amounts already paid.

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Malaysia

Service Tax Policy No. 7/2024 – Service Tax Treatment on Issuance of Virtual Credit Card

The Royal Malaysian Customs Department (RMCD) issued the Service Tax Policy No. 7/2024 ("STP 7/2024") dated 26 July 2024 to state that the Minister of Finance has decided that virtual credit card issued as a product enhancement on an existing physical credit card is not subject to service tax if all the following conditions are fulfilled:

- The activation/renewal date, expiry date and card verification value (CVV) number of the virtual credit card are the same as that of the existing physical credit card.
- Only one credit card statement or bill is issued to the customer based the number of the existing physical credit card.
- Service tax has been imposed on the issuance and renewal of the existing physical credit card.

The STP 7/2024 also states that service tax has to be imposed on the issuance of a virtual credit card if:

- The virtual credit card is issued without any physical credit card.
- The virtual credit card is issued to fully replace the functions of a physical credit card.

Service Tax Policy No. 4/2024 (Amendment No. 1) – Policy Improvement to Service Tax Treatment for Logistics Services

The RMCD issued the Service Tax Policy No. 4/2024 (Amendment No. 1) ["STP 4/2024 (A1)"] dated 23 August 2024 to update and amend the scope of service tax exemption for the logistics sector which was previously given in the Service Tax Policy No. 4/2024 ("STP 4/2024") dated 29 March 2024 . However, the amendments are deemed to be effective from 1 March 2024 which is the effective date of STP 4/2024.

The implications of the amendments are as follows:

1. The special treatment of excluding the logistics services provided within designed area (DA)/special area (SA) or between DA and SA from service tax can only be used if:
   a. The service providers have their principal place of business located in DA or SA; and
   b. The customers have their principal place of business located in DA, SA or outside Malaysia.
2. Service providers who use the services from third parties to provide the door-to-door goods delivery services on their behalf can also qualify for the service tax exemption on door-to-door goods delivery services.
3. The logistics services related to transit activities for the purpose of service tax exemption should not include any bulk breaking activity.

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Japan

Revisions to Tax-exempt Enterprise Rules

The recent Japanese Consumption Tax ("JCT") reforms introduce several changes that will impact foreign enterprises conducting taxable transactions in Japan. These changes, effective for tax periods beginning on or after 1 October 2024, will reduce the instances in which foreign enterprises conducting sales in Japan can enjoy the tax-exempt JCT status. Below is a summary of the key changes.

1. Revision of special exemption rules related to taxable sales and salary payments

Whether a taxpayer has the obligation to remit JCT is, in general, determined by the volume of taxable sales it made during a "base period", which is generally the year two years prior to the current fiscal year. If the JCT taxable sales amount for the base period does not exceed JPY 10 million, the taxpayer is generally treated as a JCT-exempt enterprise. However, even if a business meets the exemption under the base period rules, it may still not be treated as a JCT exempt enterprise if the previous year test is not satisfied.

Under the previous year test, before the tax reform, foreign enterprises could be exempt from JCT if their taxable sales or local salary payments in the first six months of the previous fiscal year did not exceed JPY 10 million. The JCT reform eliminates the salary payments condition. Now, foreign enterprises will have JCT filing and remittance obligations if their taxable sales alone exceed JPY 10 million in the first six months of the previous fiscal year.

2. Changes to rules for companies newly commencing business in Japan

For foreign corporations newly conducting taxable sales in Japan, the company may have tax return filing obligations for the fiscal year in which it begins the sales, as well as the subsequent fiscal year, if the amount of statutory capital at the beginning of such years exceeds JPY 10 million. Previously, the focus for this rule had been on the company's date of incorporation, but now companies will also need to consider the rules based on when they actually start conducting JCT taxable business.

3. Changes to rules for controlling companies

Under the current rules, a newly established corporation that does not have a base period may have JCT return filing and remittance obligations if they are controlled by a company that conducts JCT taxable sales of JPY 500 million or more. The new rules will consider not only the JCT taxable sales of the controlling company but also its global revenue including non-taxable transactions such as interest income, dividend income, etc. In addition, the new rules applicable to foreign corporations, focusing on the timing when the taxable business commences, as mentioned above, are also considered in this context. For instance, if a foreign corporation has a minor volume of taxable sales for the fiscal year when it starts a JCT taxable business, it may not be treated as a JCT-exempt enterprise if the global revenue of its direct or indirect parent (or certain affiliates) exceeds JPY 5 billion for the base period.

4. Revision of the special input tax credit rules

Under previous rules, companies with JCT taxable sales of JPY 50 million or less for the base period could apply simplified or special input tax credit methods, allowing them to claim a percentage of their sales as JCT input tax credits. Under the new rules, foreign enterprises without a permanent establishment in Japan will no longer have this option.

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New Zealand

Remedial Amendments in the Taxation (Annual Rates for 2024-2024, Emergency Response, and Remedial Measures) Bill

This bill introduces a series of remedial changes pertaining to GST. These amendments include:

- Technical changes to address unforeseen issues relating to listing intermediaries and the platform economy rules.
- Changes to the GST grouping rules to better reflect their policy and intent.
- Rules allowing the Commissioner greater discretion in approving taxable period end dates where there are good commercial reasons for those changes.
- Removing the requirement to notify the commissioner in advance of applying B2B zero rating rules for financial services.

GST Treatment of Fees Paid in Relation to Managed Funds

The GST treatment of fees for managed funds has historically been complex and inconsistent, leading to varied practices within the industry. An operational agreement from 2001 saw fees to fund managers typically treated as 90% exempt and 10% taxable. In August 2022, the Government proposed making fund management services fully subject to GST at 15% to standardize practices, but withdrew after backlash over the potential $186 billion impact on savings by 2070.

Inland Revenue (IR) has now released a draft interpretation which sets out IR's view of the application of the current law. At a high-level, IR's draft views are that:

- Fees payable to a fund manager are GST exempt.
- In relation to services that the manager has outsourced to others.
  - Administrative services (including registry services, fund accounting and unit pricing) will be fully subject to GST.
- Investment management services will either be.
  - GST exempt, if the investment manager has authority to make and implement investment decisions.
  - Fully taxable, if the service is essentially advice, without the power to make and implement investment decisions.

The consultation for this interpretation statement closes 11 November 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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Australian Indirect Tax and the 2024 – 2025

The ATO has advised that the luxury car tax (LCT) thresholds for 2024-25 are as follows:

- Fuel efficient vehicles: $91,387 (2023-24: $89,332)
- Other vehicles: $80,567 (2023-24: $76,950)

Japan Tax Reform for Platformer Taxation

- Under the new platform taxation rules effective from 1 April 2025, large platform operators exceeding a certain threshold will be liable to pay JCT on behalf of foreign service providers for B2C-type electronically supplied services provided through their platforms. Platform operators subject to the new rules were required to submit a notification to the tax authorities by 30 September 2024. The list of qualified platform providers is expected to be published in December 2024.

Malaysian Remission of Penalty/Surcharge on Certain Indirect Taxes

- The RMCD issued a notification dated 26 August 2024 to inform that a remission incentive is being offered to business organisations for the remission of penalty/surcharge on Goods and Service Tax (GST), Tourism Tax (TTX), Departure Levy and Sales Tax and Service Tax (SST).
- All the following conditions must be fulfilled in order to qualify for the above remission incentive:
  1. The bill of demand (BOD) from RMCD is for taxable periods ended on or before 31 December 2023.
  2. The payment of the taxes, penalties and surcharges must be made within the period from 26 August 2024 to 31 December 2024.
  3. The remission for penalties and surcharges is calculated as below:

a. 100% remission of penalties/surcharges if the outstanding tax is fully paid within the period from 26 August 2024 to 31 December 2024.

b. 85% remission of penalties/surcharges if the tax has already been paid before 26 August 2024 and the balance of 15% penalties/surcharges is fully paid within the period from 26 August 2024 to 31 December 2024.

- The remission incentive is also applicable to business organisations which have obtained approval for payment to be made in instalments and fulfilled all the above conditions. However, no refund of taxes, penalties or surcharges will be allowed by RMCD if business organisations had made payments before 26 August 2024.

Thank you