A vibrant state of change

The AsiaPac digital indirect taxation story (2022)

pwc

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Introduction

The growing digital economy has caused an explosion in indirect taxes rules around the globe and this has in turn created both complexity and opportunity. The Asia Pacific (AsiaPac) region is no exception to this phenomenon. The PwC AsiaPac indirect taxes network is delighted to publish the second edition of the digital indirect taxes publication following on from the first publication in July 2020.

Very soon the number of countries with electronically supplied services (ESS) (or remote services) rules will exceed 100 and this trend is expected to continue. The AsiaPac region has experienced massive changes in this area, including the emergence of rules and reporting obligations for digital platforms involved in the gig and sharing economy.

Other than indirect taxes rules dealing with digital services, there has also been a rise in the introduction, or modification of existing low value imported goods (LVIG) rules in many countries; for example, New Zealand has (from 1 December 2019) followed the likes of Australia, Sweden and Switzerland, with Norway (from 1 April 2020) and the rest of Europe (in 2021) following closely behind. The AsiaPac region will also see more change in this area (for example, Singapore and Malaysia from 1 January 2023) and the comprehensive China VAT reform has introduced another fascinating dimension.

At a global level, even the non-VAT countries are reacting to the digital VAT / GST tsunami of change. The U.S. sales tax landscape has been massively transformed since the Supreme Court decision in *South Dakota v Wayfair, Inc* (585 U.S (2018)). There are now greater obligations placed on offshore sellers and platforms on sales of digital commodities – physical presence in the relevant state is no longer relevant for tax nexus purposes.

The OECD in its March 2022 publication "*VAT Digital Toolkit for Asia-Pacific*" stated that the "*e-commerce share of total global retail sales has been increasing steadily and has been reported to account for 18% of total sales in 2020 compared to 7.4% only five years earlier"(1.2.1.1; page:22). The OECD expects that this is only going to continue to increase, noting that "the volume of e-commerce sales in APAC is expected to nearly double by 2025 compared to 2020." (1.2.1.1; page:24)*

This growth will significantly change retail globally as the OECD has noted that "*reports estimate that the APAC region in 2020 represented over 60% of global e-commerce sales with a total value of over USD2.4 trillion of sales." (1.2.1.2; page: 24)*

The impact of the expansion of social media platforms and the COVID-19 pandemic have been identified as factors driving a move towards a focus on e-commerce, with the OECD commenting that "*as social media platforms have increasingly expanded their services into e-commerce to better meet consumer demands for essential goods and grocery through online channels, particularly during the COVID-19 pandemic, research expects a further increase in the global social commerce market by 28% year-on-year until 2028, then reaching USD3.3 trillion."(1.2.1.2; page: 26)*

In the 2020 OECD report *Tax and Fiscal Policy in Response to the Coronavirus Crisis: Strengthening Confidence and Resilience* (15 April 2020), it was observed that there is significant work to be done in the future in relation to the correct tax policy settings. Digital taxation will be a vital pillar in this regard. Greater uniformity and consensus in relation to international taxation regimes will be important as will the need to maintain smoothly functioning global supply chains. In the area of indirect taxes, the various digital (or e-commerce) rules for goods and services discussed in this publication will play an important role for years to come.

We will first discuss the country regimes with particular focus on practical insights. We will then cover emerging indirect taxes trends in relation to cryptocurrency, non-fungible tokens (NFTs) and digital platforms involved in the sharing economy. We trust you will find this publication interesting and topical.

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Executive summary

A vibrant state of change – an overview

To keep up with the explosion in e-commerce, the indirect taxes regimes in the AsiaPac region have not been standing still. In this special edition of digital indirect taxes insights, we will explore the rules in **16 AsiaPac countries** covering the basic scope of the rules as well as practical insights. As the theme of this publication suggests, the AsiaPac indirect taxes story is a story of vibrant change in relation to **digital services**. There is also a rise in new rules concerning **low value imported goods**, as well as an emerging trend in some countries dealing with obligations of digital platforms involved in the sharing economy.

We first published the AsiaPac indirect taxes digital story in 2020 and the trend has been one of continuing change. Whether the rules refer to remote services, digital services, electronic services or inbound intangibles, there is a growing theme to impose VAT or GST (or some other form of local tax) on foreign sellers or platforms of the digital services.

The early adopters of the digital services rules in 2015 were South Korea and Japan. From that point the number of countries with similar regimes expanded very quickly. In 2020, Singapore and Malaysia added to their indirect taxation regimes by implementing their own version of a consumption tax on digital services. Malaysia is a remarkable addition as it no longer has a fully fledged GST system, but it does deem it appropriate to impose a form of indirect tax on digital services. Vietnam followed suit on 1 July 2020, placing obligations on non-resident providers of digital services. Thailand also introduced new rules with effect from 1 September 2021 dealing with supplies of electronic services by non-residents to Thai end consumers. By way of comparison, China does not have a fully fledged indirect tax on digital (or electronic) services, but it does tax remote services and licensing by an overseas entity in a digital business. China also has an elaborate imported goods taxation regime.

Most recently, we have seen India introduce a tax (from 1 January 2022) on digital platforms involved with certain services such as food delivery, and Malaysia is expected to do the same (from 1 July 2022).

Every country decided to bring in a version of a tax on electronic services first and then took the LVIG transactions under study. The goods rules require more careful consideration as there are more complexities and procedures with goods transactions. The only two countries that have the complete set of both rules (i.e. covering digital services and LVIGs) are Australia and New Zealand. In this regard, Australia was the first to complete this “double” as it introduced the remote services rules in July 2017 and the LVIG rules in July 2018. New Zealand spaced the remote services rules (start date 1 October 2016) and the LVIG rules (start date 1 December 2019). The New Zealand approach allowed it to learn from the remote services experience and make necessary changes (in the form of more business systems concessions) for the LVIG rules. Notably, Malaysia and Singapore will join Australia and New Zealand as countries with rules dealing with both remote services and LVIGs from 1 January 2023.

In all countries, careful policy considerations were given to the design of the rules and the Revenue authorities ran, and continue to run, significant education campaigns. This has been a positive feature. The preferred OECD policy of an *offshore supplier* model has been adopted across the board covering underlying sellers, platforms, marketplaces and, in the case of goods, re-deliverers. Very limited exceptions exist where banks are required to withhold the applicable taxes.

In countries like Australia and New Zealand, the Australian Taxation Office (ATO) and Inland Revenue adopted a “light touch” approach in the early stages of the tax regimes. This enabled offshore sellers and platforms to become accustomed to the new rules and make the necessary system changes. Other countries have stated that they will be more strict on penalties (and in some cases market sanctions can be imposed) – the right balance will need to be struck to achieve the best outcomes and encourage offshore sellers to comply. Once the rules have been in place for several years, the audit activity by the Revenue authorities can be expected to increase. In Australia, the ATO has been using data matching technology and sourcing third party transactions to identify potential non-compliance. The use of technology by tax administrations will be more prominent in the future.

In Australia, the Australian Board of Taxation (the Board) recently completed a ‘*Review of GST on Low Value Imported Goods*’ (December 2021). It found that Australia’s LVIG regime is consistent with the OECD’s recommendations in relation to GST / VAT collection on LVIGs. The Board’s recommendations focused on clarifying definitions (such as for electronic distribution platforms) and administrative measures which may provide guidance on the LVIG GST obligations of different entities.

All countries have provided flexibility in relation to the collection and payment of the tax. Many countries also allow local agents to collect and pay the tax, which gives options to offshore sellers and platforms. Ease of compliance is an important consideration to the ongoing success of the rules.

From a business perspective, a lead in time of at least 12 months – from the time of announcement (or tabling the draft rules) to implementation date – is important due the systems changes and planning required for businesses to be ready.

Features of services and goods rules

In relation to the **digital (or electronic) services rules**, it would have been ideal to see more uniformity and this is a lesson for the future. Some country differences to note are:

a. In most cases the rules tax B2C transactions with varying degrees of information required to prove the customer type;

b. Some countries, most notably Malaysia, also tax B2B transactions;

c. Many countries apply the tax as a “pay only” regime in relation to digital services, but some countries could require offshore sellers to pay tax on their other activities in that country by virtue of the digital services tax obligations;

d. Not all countries have the ability to verify VAT/GST numbers and other alternatives have been put in place (such as use of business numbers) – where business are unsure the conservative way of proceeding has been to pay the tax;

e. Many countries have relaxed (or business friendly) rules in relation to invoices that need to be issued by foreign suppliers, but this is not always the case (for example, India);

f. The definition of remote / electronic services is broad but not every country adopts the same definition. Japan seems to have the most exclusions (for example, telecommunications services, software development and licensing of IP are not covered). By contrast, Malaysia has a broad definition and there is the potential for online banking (being a digital service) to be caught even though financial services are otherwise not taxed;

g. In some cases, the definition of digital services is still developing (for example, in relation to the Singapore position concerning distance learning and video streaming where real time trainers or performers are involved. The question of a human intervention factor with respect to digital services would however, not be relevant when the remote services rules commence from 1 January 2023).

h. In Vietnam banks need to distinguish between e-commerce payments and non-e-commerce payments;

i. Due to overlapping regimes for services imported by businesses, Malaysia has had to resolve double tax issues arising under the reverse charge and the digital services tax payable by foreign services providers. Malaysia also adopts different collection mechanisms depending on the type of tax being collected;

j. In relation to the sharing economy, some countries have decided to introduce a full liability model in relation to platforms and certain services (eg. India), but other countries are proceeding down the path of information sharing and reporting (eg. Australia). New Zealand is currently going through a consultation process in relation to a full GST liability model; and

k. The position in relation to cryptoassets and NFTs is still emerging in most countries. New Zealand has the most developed GST position – cryptoassets are excluded from the GST net altogether, NFTs are covered by the domestic rules and remote services rules, and brokerage and options over cryptocurrency are exempt.

Countries that are also introducing **e-invoicing** rules will need to consider how these rules apply to digital services sellers. India has provided an exemption for foreign sellers.

In relation to the **LVIG rules**, businesses found that more information was required to be provided at the time of customs clearance. The most significant difference between the Australian and New Zealand LVIG rules was that New Zealand introduced business systems concessions allowing business to pay GST (if easier from a systems perspective):

- On all goods (both low and high value) if the majority of the sales (based on a 75% test) are sales of low value goods; and
- On sales of low value goods to businesses if the overseas seller makes at least 50% sales to private consumers.

New Zealand also introduced limited safe harbour rules for marketplaces and redeliverers to help with compliance. The New Zealand model may be instructive for other countries, however, as the New Zealand rules are just over two years' old, more time is required to assess this properly.

Key messages

The indirect taxes digital picture in the AsiaPac region is both a vibrant and diverse one. Although there are many similarities with the rules in the countries examined, there are some key differences. Businesses need to take care in assessing their obligations and reviewing their processes in order to:

- Make sure that systems are able to identify B2C and B2B customers, as well as where the customer is located using a variety of proxies for this under the digital rules;
- Be able to distinguish between different service types – some of which may be subject to tax and others not; and
- Ascertain if they are the type of *digital platform* covered by the relevant country's tax rules.

Even if only services are being taxed in a certain country at this point in time, over time it's expected that many countries will introduce a version of the LVIG rules so sellers and platforms will need to be ready for this.

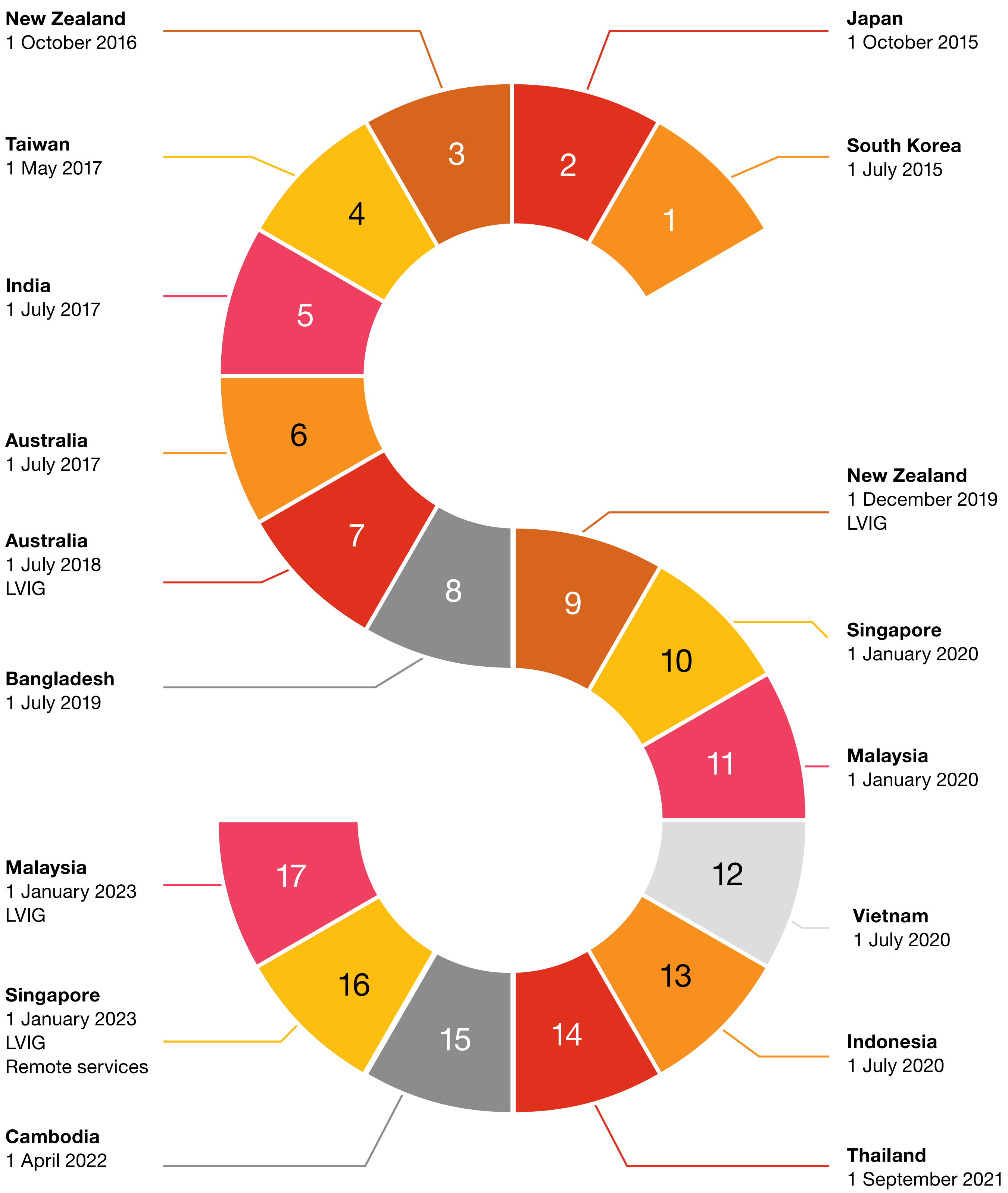
All businesses need to be prepared to review and increase prices in order to account for VAT/GST and duty costs (i.e. assess the margin impact) and review supply chain efficiencies.

The position in relation to cryptoassets and NFTs is still emerging in most countries. As noted above, New Zealand has the most developed GST position – cryptoassets are excluded from the GST net altogether, NFTs are covered by the domestic rules and remote services rules, and brokerage and options over cryptocurrency are exempt for GST purposes. PwC has covered the tax issues (including VAT / GST) associated with cryptoassets in a global report.

In the future, there is little doubt that technology will play a significant role for the Revenue authorities and businesses alike as the state of indirect taxes vibrancy continues. The ongoing challenge for regulators will be to make sure that any new rules (or changes to the existing rules) limit compliance burdens on businesses – this can in large part be achieved by greater consistency with the rules.

Each country's summary is based on the law as at 1 June 2022.

Introduction of digital services and LVIG rules across the AsiaPac region



LVIG = Low value imported goods

Australia

GST on inbound intangible supplies

Overview

With effect from 1 July 2017, the Australian GST provisions were amended to bring inbound intangible consumer supplies within the GST ambit.

Inbound intangible consumer supplies refer to supplies of anything other than goods or real property that are made to an Australian consumer (broadly, an Australian resident that is not registered for GST in Australia) by a non-resident wholly through an enterprise that it carries on outside Australia.

A non-resident making inbound intangible supplies is required to register and remit GST to the Australian Taxation Office (ATO) if its GST turnover (current or projected) exceeds the prescribed threshold of AUD75,000 (approximately USD65,000). However, if the non-resident makes such a supply through an 'electronic distribution platform' (EDP) (for example a marketplace) the obligation to register and remit GST is on the operator of the EDP (and not on the non-resident supplier).

If the non-resident makes a supply to a GST registered recipient, the obligation to remit GST (if any) is on the recipient and not the non-resident (or EDP) (there is only an obligation where the GST registered recipient cannot claim full input tax credits).

An overview of relevant key provisions applicable for inbound intangible consumer supplies is provided below:

Particulars	Description
Ambit	Applicable on all intangible supplies (for example products such as streaming or downloading movies, apps/softwares, games, e-books, services) made to Australian consumers by a non-resident.
Liability to remit GST	Non-resident supplier or if the supplies are made through an EDP, the EDP.
GST rate	10%
Requirement to register	The non-resident supplier or the EDP is required to register if its GST turnover (current or projected) exceeds AUD75,000 during a rolling 12 month period. There is an option to obtain a simplified GST registration.
Reporting requirements	Quarterly GST lodgements.
Tax invoice	There is no requirement to issue a tax invoice.

Practical insights

One of the key issues for most of the non-residents and EDPs has been how to determine whether a customer is an Australian consumer or not and accordingly, whether they are required to charge GST on the supplies. Determining applicability of GST involves obtaining necessary documentary information / evidence from customers, verifying Australian Business Number (ABN) / GST registration status to establish that the customer is not an Australian consumer. The GST law imposes strict obligations on the non-resident suppliers / EDPs in this regard. Therefore, it is critical for businesses to ensure that the current processes are aligned to these requirements and enable them to report correctly to the ATO.

The non-resident suppliers / EDPs also need to be mindful of the requirements under the Australian consumer law which requires them to display a GST-inclusive price to the customer. As a non-resident/ EDP may offer products to customers located in different countries through the same platform (for example a website or an application), they need to consider whether its current processes are compliant with this requirement. In this regard, the non-resident / EDP may also need to consider if there is a need to amend any standard terms and conditions for its customers.

During the first year after implementation of these provisions, the ATO approached compliance in a concessionary manner, wanting to encourage suppliers to implement compliant systems / processes. However, given these measures have been in place for some time, one can expect the ATO to adopt a stricter approach towards compliance. The ATO has stated that if necessary, it will use its data-matching technology and source third party transaction data to identify non-compliant suppliers. If the ATO believes a business is non-compliant, they will attempt to contact that business and may decide to conduct a risk review or audit to determine non-compliance. The ATO has written to many businesses and recommended action is taken in relation to registration and compliance. Serious action may result if non-compliance with the GST regime is found.

Given the above, it becomes critical that non-residents / EDPs ensure that their processes for determining applicability of GST on supplies, GST reporting and price disclosure practices are aligned to the requirements under the relevant GST provisions.

Low value imported goods

Overview

With effect from 1 July 2018, GST is payable on the supply of low value imported goods (LVIGs) that are purchased by Australian consumers. Prior to 1 July 2018, such supplies were not subject to GST unless the supplier of these goods was the importer of record.

Low value goods are goods (other than tobacco, tobacco products or alcoholic beverages) that have a customs value of AUD1,000 (approximately USD700) or less. If each of the goods supplied individually has a customs value of AUD1,000 or less, they will still be regarded as low value goods even if the total customs value of the transaction exceeds AUD1,000.

For GST purposes, the merchant, EDP or redeliverer may be liable for the GST on the supply of the low value goods.

An overview of relevant key provisions applicable for offshore supplies of low value goods is provided below:

Particulars	Description
Ambit	Supply of LVIGs (i.e. goods that have a customs value of AUD1,000 or less) that are purchased by Australian consumers and brought into Australia.
Liability to remit GST	Merchant, EDP or redeliverer.
GST rate	10%
Taxable value	Price payable by the recipient of the supply.
Requirement to register	The entity that is responsible for GST on offshore supplies (i.e. merchant, EDP or redeliverer) is required to register if its GST turnover (current or projected) exceeds AUD75,000 during a rolling 12 month period. Non-resident suppliers can opt for a simplified GST registration.
Reporting requirements	Quarterly GST lodgements.
Tax invoice	No requirement to issue a tax invoice but there is a requirement to issue a document showing the GST paid by the Australian consumer.

Practical insights

The rules noted above do not apply to the import of goods that have a customs value of more than AUD1,000, in which case the normal rules for taxable importations apply and GST is payable at the border. The differential treatment for supply of LVIGs and taxable importations makes it important for a supplier to be able to determine which rules will apply to a particular transaction (for example where there is a basket of goods which individually are less than AUD1,000 but together exceed). If a supplier believes that it doesn't supply LVIGs (because the goods will be shipped together and therefore will be treated as a taxable importation), the supplier has to evidence that it has taken reasonable steps to obtain information to determine this. Therefore, it is critical for businesses to ensure that the current processes are robust enough to meet these requirements.

Pursuant to implementation of the above provisions, as part of the enforcement strategy, vendors are now required to provide additional information at the time of customs clearance of the goods. Suppliers generally use third party service providers (such as couriers and freight forwarders) to facilitate customs clearance. It becomes imperative for suppliers to ensure that these service providers provide correct information on declarations made at the time of customs clearance of the goods and that this information is aligned with the manner in which GST is reported by the suppliers on those supplies.

Price disclosure requirements noted above in relation to inbound intangible supplies are equally applicable for offshore supply of LVIGs. Therefore, the suppliers of offshore LVIGs must disclose the GST-inclusive price to Australian consumers. The suppliers must evaluate whether its current processes are compliant with this requirement.

It is worth noting that the Australian Board of Taxation (the Board) recently completed a '*Review of GST on Low Value Imported Goods*' (December 2021). It found that Australia's LVIG regime is consistent with the OECD's recommendations in relation to value-added tax (VAT) collection on low value imported goods. The Board's recommendations appear to have centred on clarifying definitions (such as for EDPs) and administrative measures which may provide guidance on the LVIG GST obligations of different entities, particularly given the rising number of evolving business models in this space. The Government and relevant regulators will consider the Board's recommendations in due course.

Digital assets and cryptocurrency

Overview

Since 1 July 2017, digital currency has been considered a financial supply and therefore input taxed. If a business is not being carried on there are no GST consequences of buying, selling or using digital currency as payment. Digital currency is defined within the GST Act that has all of the following characteristics:

- Fully interchangeable with another unit of the same digital currency for the purpose of its use as payment;
- Can be provided as payment for any types of purchases;
- Generally available to the public free of any substantial restrictions;
- Not denominated in any country's currency;
- The value is not derived from or dependent on anything else; and
- Does not give an entitlement or privileges to receive something else.

Some examples of digital currencies include Bitcoin, Ethereum, Litecoin, Dash, Monero, ZCash, Ripple, YbCoin.

If a business is being carried on in relation to digital currency or the business accepts digital currency as payment, GST consequences may arise. Given digital currency is input taxed as a financial supply, GST is typically not paid on sales and input tax credits cannot be claimed for GST paid on purchases that contributed to those sales. Full input tax credits may however be available on purchases made in relation to sales of digital currency, if the business has not exceeded the financial acquisitions threshold. Reduced input tax credits of 75% may be available, on specific types of purchases made in the making of financial supplies, such as brokerage costs or transaction processing costs, if the financial acquisitions threshold is exceeded.

Sales of digital currency to non-residents are GST-free.

Non-Fungible Tokens, referred to as NFTs, are not considered a form of digital currency for Australian GST purposes.

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Bangladesh

The Value Added Tax and Supplementary Duty Act 2012 (VAT Act 2012) was amended and passed by the Parliament on 29 June 2019. The provisions under the VAT Act 2012 were effective from 1 July 2019 and apply to non-residents supplying specified services in Bangladesh.

As a general principle, a registered service recipient is liable to pay VAT under the reverse charge mechanism in relation to imported services.

However, supplies of certain specific services made by non–resident suppliers to unregistered (or private) customers give rise to VAT implications when the services are supplied in Bangladesh.

The VAT Act 2012 provides a list of services, when rendered by a non-resident to VAT unregistered persons, are considered as supplies made in Bangladesh. These services include:

- Services that are physically provided in Bangladesh by the service provider staying in Bangladesh at the time of supply;
- Services that are directly related to land located in Bangladesh;
- Services of radio or television broadcasting or telecasting received at an address in Bangladesh;
- Electronic services delivered to a person located in Bangladesh at the time of supply; and
- Telecommunication service initiated by a person located in Bangladesh at the time of supply other than a telecommunications supplier or a person who is a global-roaming person temporarily staying in Bangladesh.

For the purpose of VAT Act 2012, an "*Electronic service*" is defined to mean the following services when provided or delivered on or through a telecommunications network, a local or global information network, or similar means, namely:

- Websites, web-hosting or remote maintenance of programmes and equipment;
- Software and the updating thereof delivered remotely;
- Images, texts and information delivered;
- Access to databases;
- Self-education packages;
- Music, films and games; and
- Political, cultural, artistic, sporting, scientific and entertainment broadcasts and telecasts and events, including telecasts.

In terms of the above definition, services provided or delivered on or through a telecommunication network would be considered an 'electronic service'.

Since electronic services provided by a non-resident to an unregistered person would be considered as 'supplies made in Bangladesh', the non-resident would be liable to pay VAT in respect of the supplies made to the unregistered person in Bangladesh.

The non-residents would need to identify whether the services are provided to registered customers or otherwise. If non-residents are unable to obtain the VAT registration numbers of its Bangladesh based customers, it would be prudent to treat such customers as not registered for VAT purposes in Bangladesh. For such services, non-residents will need to appoint a VAT agent in Bangladesh to discharge VAT.

The VAT agent will carry out all the activities on behalf of the non-resident. The VAT registration would be in the name of the non-resident. The VAT agent is appointed by the non-resident person while rendering B2C supplies of electronic services and would be liable to deposit VAT with the Government on behalf of the non-resident.

Individuals such as a Chartered Accountant, Cost Accountant, VAT Consultant, lawyer, retired official of the VAT department, renowned advisory firms, Chartered Accountants firms and law firms can be appointed as VAT agents.

The National Board of Revenue (NBR) has introduced a new application form for VAT registration of non-residents and also introduced an online portal for such VAT registration. As a result, some large non-residents have already obtained VAT registration in Bangladesh for providing electronic service to B2C customers in Bangladesh and following monthly VAT compliance on a regular basis.

For completeness, we note that in relation to the import of services by an unregistered person which are not deemed to have been 'supplied in Bangladesh', the designated Bank would be liable to withhold VAT while making the payment to the non-resident supplier.

Registration threshold

A non-resident entity must register for VAT where the taxable turnover of its supplies exceeds BDT30 million (approximately USD345,000) or likely to exceed BDT30 million in the previous 12 months or in the 12 month period.

VAT is payable at a rate of 15%.

Compliance obligations

Once registered, a non-resident service provider is required to file a monthly VAT return by the 15th day of the following month. However, where the 15th day is a Government holiday then the due date would be extended to the next working day.

Digital assets and cryptocurrencies

There are no specific provisions relating to cryptocurrencies under Bangladesh VAT Act, 2012.

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Cambodia

Implementation of VAT on e-commerce

On 8 December 2021, the General Department of Taxation (GDT) issued Instruction No. 20522 GDT (Instruction) in light of sub-decree 65 and Prakas 542 focusing on the implementation of VAT on e-commerce activities.

Digital goods / services, electronic platform operators and e-commerce activities supplied by non-resident taxpayers who do not have a permanent establishment in Cambodia are subjected to VAT at a rate of 10% under sub-decree 65 and Prakas 542.

Electronic platform operators refer to non-resident taxpayers who provide services, receive payments and deliver digital goods / services to buyers via electronic platforms in the name of non-resident e-commerce suppliers.

Non-resident taxpayers providing e-commerce services to Cambodia were asked to register for simplified VAT before 1 April 2022. This includes non resident taxpayers who:

- provide supplies of digital goods / services or e-commerce activities from outside Cambodia to Cambodian end customers with annual turnover from KHR250 million (approximately USD62,500) or total expected turnover for three consecutive months ending in the current calendar year from KHR60 million (approximately USD15,000),
- have been providing supplies of digital goods / services with annual turnover from KHR250 million starting from 1 January 2021 to 31 December 2021.

Non-resident taxpayers are obliged to collect 10% VAT from Cambodian residents who are not registered under the self-declaration regime and submit VAT returns monthly to the GDT. This includes registered taxpayers who do not make direct payments to the non-resident suppliers through their respective accounts.

Customers who are registered in the self-declaration regime can collect the reverse charge at the rate of 10% through their monthly VAT returns to the GDT. Small taxpayers are exempt from the VAT reverse charge for five years starting from 8 September 2021. Penalties will be imposed on taxpayers who fail to register, update information or submit returns and pay VAT to the GDT.

E-commerce transactions or activities supplied in Cambodia by resident taxpayers remain unaffected by the instruction.

Digital assets and cryptocurrencies

There are currently no specific indirect tax laws or regulations that relate to cryptocurrencies in Cambodia.

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China

Remote Services / Digital Services

Tax treatment

China does not have specific VAT rules or a Digital Service Tax on transactions arising from the digital economy. The current VAT regime applies to the provision of remote services / licensing by an overseas entity in a digital business.

The provision of remote service / licensing by an overseas supplier to an entity within China is subject to VAT, unless the service / licensing is consumed / used completely outside China.

The agent or service recipient in China would have to withhold the VAT amount and then pay the VAT on behalf of the overseas supplier. If the service recipient is a general VAT payer, it may claim the VAT withheld and paid on the service fee / license fee as its own input credit (provided the purchase is related to taxable activities of the service recipient).

The VAT amount is calculated as follows:

- Withholding VAT

  = Total amount payable to the overseas supplier / (1+ Applicable VAT rate) x Applicable VAT rate

- The applicable VAT rate is 6% for most remote services that fall in the category of modern services and license fee that fall in the category of transfer of intangible assets.

Practical insights

- In practice, there are cases where the service recipient is an individual who may not be able to fulfil the withholding obligation. In such cases, technically speaking, the overseas service provider will be required to report VAT in China.
- For overseas suppliers providing services in relation to online promotion, there are still different views on whether it should be treated as technical service or advertisement service. In addition to VAT, the advertisement services would be subject to the Construction Fee for Culture Undertaking.

Low value imported goods

Tax Treatment

For imported goods, VAT is levied upon importation and collected by China Customs.[1] In general, the VAT payable on goods imported by taxpayers is calculated according to the Composite Assessable Value (including Custom Duty ("CD") and Consumption Tax ("CT"), if applicable) and the VAT rate as specified by the VAT regulations. Meanwhile, Import Tax, also known as Post Luggage Duty ("PLD") is levied on the goods purchased by individual consumers from the overseas suppliers and delivered to China by couriers.

The China tax authorities have issued a series of circulars in recent years, to reiterate and set forth the taxation principles in relation to cross border retail e-commerce for individual consumers in China. In 2016, Caiguanshui [2016] No.18 ("Circular 18") was issued to set forth the import tax and Customs Duty policies in relation to cross border retail e-commerce for individual consumers. In 2018, Caiguanshui [2018] No.49 ("Circular 49") was issued to further relax the policy in Circular 18. In brief, individual consumers that purchase goods via qualified cross-border e-commerce channels under certain quota are eligible for preferential tax treatment. Please refer to the summary below:

	Import Tax treatment under General Trading	Import Tax or PLD for goods delivered to Chinese Individuals	Import Tax Treatment for Qualified Cross-border E-commerce Channel
Quota and Criteria			• Value of a single purchase is below RMB 5,000 • An individual's annual import quota is RMB 26,000 • The goods must be end products for use by the individual customers and should not be for resale in the domestic market
Tax Treatment	• CD= Dutiable Value x CD rate • CT= (Dutiable Value + CD) / (1-CT rate) x CT rate[2] • VAT = (Dutiable Value + CD + CT) x VAT rate	• PLD = Fixed Assessment Value[3] x PLD rate from 13% to 50%	Transaction below the quota: • CD: waived • CT and VAT: levied with 30% discount Transaction above the quota:- • Treated as general trading

Practical insights

- The introduction of Circular 18 and Circular 49 is for the accurate declaration of cross-border e-commerce retailers and to build up a similar business environment for cross-border internet sales, domestic internet sales of imported goods and traditional sales channels. In relation to consumer products for personal use, it also provides preferential tax treatments for transactions under certain quota.
- Overseas cross-border e-commerce retailers / platforms are not required to establish a dedicated legal entity in special customs supervision zones. Instead, they can engage couriers and postal enterprises to submit data on the behalf of e-commerce enterprises to the customs authorities in order to complete clearance procedures. The couriers and postal enterprises take the responsibility for the authenticity of the information submitted. customs authorities in order to complete clearance procedures. The couriers and postal enterprises take the responsibility for the authenticity of the information submitted.

Digital assets and cryptocurrencies

China does not have specific VAT rules on cryptocurrency as cryptocurrency related activities are not allowed in China.

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[1] For most goods the standard VAT rate on import and domestic sale of goods is 13%. A reduced rate of 9% applies to supplies of certain goods such as food, edible vegetable oils, feeds, chemical fertilisers and others including heating, gas, books, newspapers.

[2] CT is only levied on certain goods. For some categories of CT-payable goods, the CT is calculated based on volume.

[3] If the actual value of the goods is lower than 50% of the assessment value or 100% higher than the assessment value, actual value applies upon proper evidence.

Fiji

Digital economy

Currently, there are no specific rules under the Value Added Tax (VAT) Act for taxing the digital economy. However, the Fiji Revenue and Customs Service has been making presentations and invited submissions on a proposed new VAT Bill (introduced in late 2019) which in its current form seeks to impose VAT on the supply of remote services by non-resident entities including those transacted via electronic / digital platforms.

The proposed law is still in draft form and has not yet been finalised or submitted to Parliament for consideration. This development represents a growing trend in the number of countries seeking to impose VAT on digital transactions with local consumers.

Digital assets and cryptocurrencies

There are not currently any specific indirect tax considerations that relate to cryptocurrencies in Fiji.

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India

As the digital economy experiences rapid growth in India, the Government of India introduced a tax on digital services in late 2016 by borrowing certain existing provisions from other jurisdictions along with some indigenous complications. Hence, addressing the tax challenges of the **digital service businesses** for foreign service providers across international borders has become even more indispensable.

Who do the rules apply to?

Foreign suppliers of services providing **specified services** to Government, local authorities or individuals or unregistered persons in India, who are receiving these services for any purpose other than commerce.

What are the specified services covered?

"Online information and database access retrieval" (OIDAR) service covers services:

- Whose delivery is mediated by technology over the internet or an electronic network; and
- The nature of the service renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology.

Is there a threshold limit for tax liability?

A threshold limit does not apply to these services. Foreign service providers register in India under the Simplified Registration Scheme with an option to appoint an agent for registration and compliance requirements.

Key compliance

Foreign service providers shall raise a tax invoice and charge GST at the rate of **18%** on the same. Separate monthly returns are prescribed and include payment of tax on a monthly basis within the prescribed due date.

Online platforms

Non-resident online platforms being intermediaries for such electronic services may be required to obtain registration and discharge GST liability on behalf of the actual foreign service providers subject to certain conditions.

Practical insights

Initiatives taken by Revenue

- With the introduction of tax obligations on digital services by foreign service providers, the Indian Government created awareness by releasing a flyer and an educational guide providing key guidelines for impacted supplies and the related tax compliance requirements. Having said this, addressing certain practical challenges has been a long journey and ambiguities still prevail.
- The Government realises that not every foreign supplier providing digital services to Indian customers is compliant with Indian GST obligations, primarily as this is voluntary compliance with limited powers to the Government to recover dues from foreign service providers.
- The authorities have been using extensive powers under the GST law as part of investigations carried out to detect non-compliant foreign service providers. As part of this, details from various Indian customers, intermediaries / platforms and Indian affiliates of foreign service providers are obtained to determine the quantum of liability involved.

Practical challenges

- Foreign service providers are under an obligation to pay tax to the Indian Government on supplies made to end consumers (customers who are not registered under India's GST law). On account of the practical challenge in identifying the tax status of the customers in India, whether the customer has a valid registration or not, it is typically seen that foreign service providers pay tax on a conservative basis, as the tax is otherwise not payable if the customer has a valid GST registration.
- For the purpose of filing GST returns, foreign service providers do not have access to the government portal through a foreign internet protocol (IP) address. This consequently leads to difficulties in filing GST returns and thus the need to have a compliance service provider in India to undertake this obligation becomes imperative.
- No specific exemptions are provided to foreign service providers on the invoicing requirements under the GST rules. Every supplier needs to insert details as prescribed under India's GST rules. This is important as non-compliance of these compliance requirements may attract penalties on digital service providers.
- Certain foreign banks are not covered in the list of authorised banks as provided by the Indian government, and accordingly payments need to be routed through authorised banks in India for GST payments.
- In case there is any service tax liability for the period from December 2016 to June 2017, a separate and specific process needs to be followed for registration and payment of such service tax liability related to these services.

E-invoicing under India's GST rules

- With the introduction of e-invoicing requirements under India's GST rules from October 2020, the law provides that these requirements are applicable to all registered persons upon meeting a particular threshold criteria; however a specific exemption is provided to foreign service providers (registered under India's GST legislation) who are engaged in the supply of OIDAR services. Hence, e-invoicing requirements do not apply to them.

While foreign service providers have a huge market in India for their services, the compliance requirements under India's GST law are onerous with penal consequences as well.

Digital assets and cryptocurrencies

The Indian Government's stance on levying GST on cryptos (and related services) is still unclear and the GST Council will be deliberating this in the near future. Also the Government's view on categorization of crypto as goods or services is also expected to be decided. There is an indication that cryptos may likely be taxed at the highest GST rate of 28%. Presently the crypto platforms are discharging GST on commission earned on trading of cryptos at the standard rate of 18%.

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Indonesia

E-commerce transactions

Sales of foreign intangible goods or services into Indonesia through e-commerce systems will be subject to VAT once the relevant law and regulations are passed.

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 supplier falls under this category they are required to collect VAT and return and report on these amounts to the Ministry of Finance at a rate of 10%.

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. The new policy will impose VAT on **service fees** provided by parties that facilitate digital transactions (i.e., service fees associated with putting funds/money into a digital wallet), rather than VAT on the total value.

Fintech is an activity using technology in a financial system which generates products, services, technology, and/or new business models that contribute 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;

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.
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 treatment

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.
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 MoF 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.
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 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 (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.

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Japan

Remote services / digital consumption taxes rules

* Consumption Tax (general overview)

Indirect tax type	Consumption Tax (“CT”)
Tax Rate	10%
Taxing the digital goods	Yes
Reverse charge	Yes
Can a foreign business register	Yes, subject to conditions
Can a foreign business recover VAT / GST if it is not registered	No
Filing frequency	Monthly, Quarterly, Annually
Filing due date	Two months after the end of the tax period
Payment due date	Same as the filing due date
Electronic filing	Yes

Taxation on digital services

Inbound digital services performed by an offshore service provider ("OSP") are subject to the CT. The digital service is defined as the provision of copyrighted articles (including licensing of the copyrighted articles) and other services via telecommunication lines. It includes the distribution of e-books, music, software, cloud services or advertisements.

Supplies outside the scope of digital services:

- Telecommunication carrier services (telecommunication, fax, data transmission, internet service);
- Software development and its delivery via the internet;
- Management and investment of assets located outside Japan (including internet banking) and reporting to customers via the internet;
- Information / data gathering or analysis (upon a specific request by a contracting customer) outside Japan and reporting to the contracted customers via the internet;
- Litigation in a foreign jurisdiction and its reporting to clients via internet; and
- Transfer / license of copyright.

Category of Digital Service Transaction

For OSP, the compliance obligations for Japanese consumption tax regime on digital services differ based on whether it is classified as a "digital service for business" or not.

<table>
<tr><th></th><th colspan="2">Non-business digital service</th><th colspan="2">Digital service for business</th></tr>
<tr><td>Scope of transaction</td><td colspan="2">Digital service other than business services, provided by an OSP</td><td colspan="2">Digital service, provided by OSP, whose recipient is usually limited to business customers by the nature of the service or the terms and conditions</td></tr>
<tr><td rowspan="3">Taxation method</td><td colspan="2">OSP is required to file and pay the tax</td><td colspan="2">Service recipient is generally liable to account for the tax under the reverse charge mechanism</td></tr>
<tr><td>OSP</td><td>Domestic service recipient</td><td>OSP</td><td>Domestic service recipient</td></tr>
<tr><td>• Liable for filing return and tax payment.
• OSP can apply for an ID number so that business customers can claim input tax credit</td><td>• Input tax credit is not allowed unless the service provider has an OSP ID number.</td><td>• Liable for notifying the recipient that the service is subject to the reverse charge mechanism</td><td>• For the time being taxpayers with a taxable sales ratio of 95% or more are not required to report in their CT returns any reverse charge transaction
• Taxpayers with a taxable sales ratio of less than 95% are required to report in their CT returns both the reverse-charged sales and corresponding taxable purchases</td></tr>
</table>

Special registration for OSP ID number

In order to obtain an OSP ID number, the foreign digital service providers must meet the following conditions:

- Maintain a PE in Japan through which the digital services are provided in Japan or nominate a tax representative;
- A tax agent is designated;
- there is no delinquency in tax payment; and
- (if relevant) more than one year has passed from the revocation of a prior registration.

Practical insights

- Determination of the transaction category, business service or non-business service, is confusing. Even if the actual service recipient is a business customer, the service can be classified as a non-business service by the nature of the services or terms and conditions of an underlying contract, triggering CT filing and payment obligations at the foreign digital service provider. The background of this unique regime is that there is no taxpayer numbering system in Japan and the OSP cannot verify if its customers are a taxable person or not.
- The base period rules also apply to OSP unless an OSP ID number is registered. Thus, an OSP whose taxable supplies during the base period (the period two years prior to the current year) are JPY10 million (approximately USD77,700) or less is generally exempt from filing a CT return and making CT payment (note exceptional rules may still be applied, especially in case of a newly incorporated business).
- With effect from 1 October 2023, a new qualified invoice regime will be introduced, under which a purchaser will be able to claim an input tax credit only if it maintains a qualified invoice issued by any suppliers including OSP.

Digital assets and cryptocurrencies

Sales and / or purchases of cryptocurrency should not be subject to CT according to the FAQ published by the National Tax Agency.

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Malaysia

General overview

Type of tax	Service tax
Tax Rate	6%
Commencement date	B2B: 1 January 2019 B2C: 1 January 2020
Type of services covered	Via reverse charge mechanism (B2B only): All imported taxable services. Taxable services are specifically prescribed. Common examples include professional services (e.g. consultancy, management, training and information technology) and advertising services. With effect from 1 January 2020 digital services are also prescribed as taxable. Via overseas vendors registration (B2B and B2C): digital services Exemptions exist to mitigate double taxation arising from the two mechanisms acting simultaneously.
B2B, B2C or both	Both
Registration Threshold	The registration threshold for foreign service providers providing digital services to Malaysian consumers (B2B and B2C) is MYR500,000 in a 12-month period. B2B: There is no minimum threshold for Malaysian businesses that are required to account and pay for service tax on imported taxable services.

Imported Taxable Services

The Malaysian service tax system seeks to tax specifically prescribed taxable services on a positive list. Unless a service is specifically prescribed as being taxable, service tax will not apply.

On 1 January 2019, the service tax framework was expanded to include a tax on "imported taxable services". In essence, this requires any Malaysian business who is the recipient of a service from outside Malaysia to assess whether that service is taxable and self account for service tax as appropriate. A return is filed on a monthly basis, unless the recipient is registered for service tax locally, in which case imported services can be filed in the normal service tax return due every two months.

It should be noted that, along with the introduction of foreign vendor registration (refer below), on 1 January 2020, digital services were prescribed as taxable services. This means that digital services would be subject to the imported services rules. Prior to this date, many digital services would already have been captured as imported taxable services under the category of "information technology" services.

Service Tax on Digital Services

Effective from 1 January 2020, Malaysia introduced a tax on digital services provided by foreign service providers to consumers in Malaysia. As such, any foreign service provider providing digital services to Malaysian consumers in excess of the registration threshold MYR500,000 (approximately USD120,000) in a 12-month period would have an obligation to register for service tax in Malaysia and charge 6% service tax in respect of those services.

"Digital services" are defined as services which are:

- Delivered or subscribed over the internet or other electronic network;
- Cannot be obtained without the use of information technology; and
- Delivery of the service is essentially automated.

"Foreign service provider" means any person who is outside Malaysia providing any digital service to a consumer and includes any person who is outside Malaysia operating an online platform on which digital services are provided on behalf of other persons.

A person will be a "consumer" where at least two of the following are in Malaysia:

- Place of residence
- Financial institution or company which provides the credit or debit facility used to make payment for the digital service
- Internet protocol ("IP") address or international mobile phone country code

It should be noted that the Malaysian definition of "consumer" does not distinguish between businesses and individuals. As such, foreign service providers ("FSPs") will need to register for and charge service tax even if they only provide digital services to businesses in Malaysia. Registered FSPs are required to file returns and pay the tax on a quarterly basis.

Practical insights

The Royal Malaysian Customs Department – "Customs" have taken various initiatives to ease the administrative burden on FSPs and to make the service tax on digital services more "business friendly". For instance:

- There is no specific foreign exchange rate prescribed. FSPs can adopt the same exchange rate which they have been using in their home country or any other preferred exchange rate in preparing their returns.
- Previously, FSPs must account for service tax on digital services on a payment basis. Effective 1 January 2021, FSPs can apply to the Customs to account for service tax on digital services on an invoice basis.

Having discussed the flexibility allowed by Customs, we highlight below some areas which further consideration and planning may be required by FSPs:

Having discussed the flexibility allowed by Customs, we highlight below some areas which further consideration and planning may be required by FSPs:

'Consumer' test

Importantly, the scope of Malaysian digital service tax covers both business-to-consumer (B2C) and business-to-business (B2B) transactions. For the purposes of assessing whether the registration threshold will be exceeded and for the registered FSPs to correctly charge tax on digital services provided to all individual and business consumers in Malaysia, the FSPs need to ensure their systems can capture the required information to determine if the 'consumer' test is met. The required information is:

- Residence status;
- Location of the financial institution or company which provides the debit or credit facility used to pay for the digital services;
- IP address; and
- International mobile phone country code.

In cases where it is not currently possible to directly capture any of the above information, FSPs may consider identifying a suitable proxy for the 'consumer' test and engage with Customs for a discussion to ensure Customs are satisfied with the alternative proxy proposed by the FSPs.

Invoicing requirements

Registered FSPs also need to ensure their systems are able to issue an invoice / receipt containing the prescribed particulars:

- Date;
- Registration number of FSPs;
- A description sufficient to identify the digital service provided; and
- The total amount excluding tax, rate of tax and tax chargeable shown separately.

Registered FSPs can make an application to Customs to exclude any of the prescribed particulars from the invoice / receipt. This approval is given at the discretion of the Director General of Customs.

Payment of service tax

The value of digital services and service tax amount shall be declared in Malaysian Ringgit ("MYR") in the digital service return (DST-02). Therefore, it is expected that Customs would require payment of service tax to be made in MYR.

To facilitate the service tax payment, FSPs without a Malaysian bank account and an existing agent / representative in Malaysia may consider engaging a third-party service provider to handle the service tax payment on their behalf. It is important to agree upfront with the third-party service provider on the payment process to ensure the service tax payment is made to Customs on a timely basis.

Being a relatively new scope of tax, there is still ambiguity in whether a service would fall within the scope of digital services. "Digital service" is defined under the legislation with reference to how it is delivered. Under the local legislation, services are defined as taxable by what they are. This leads to a potential conflict. For example, "Information technology ('IT') service" is one of the prescribed taxable services under the local legislation and is taxable for Malaysian businesses who provide or import such services. However, it is not specifically defined under the legislation and would generally be assessed based on the nature of the service. For instance, where software is downloaded from the internet, such a service by a foreign software developer could potentially fall within the scope of digital service.

However, where the software is manually installed by foreign software developer, such a service may not be a digital service as it is not delivered "digitally" to consumers. But it is still IT in nature. It is important to differentiate whether a service provided by a FSP is a digital service or IT service as it would affect the registration liability of the FSP.

A further issue arises from the definition of digital services with reference to the delivery method. Consider an online banking transaction, provided from a foreign bank to a Malaysian consumer. In substance it is a financial service, but is delivered digitally. While financial services are not taxable, digital services are. As such, the online banking transaction delivered into Malaysia would fall within the scope of service tax on digital services.

Mitigation of Double Taxation

As discussed above, the importation of digital services by Malaysian businesses would also be subject to imported services tax (effective 1 January 2019). However, to avoid this double taxation of the same service, an exemption has been provided to ensure that if the digital service tax is charged by the FSP, then the Malaysian business is exempted from self-accounting for service tax on the imported services. Nevertheless, Malaysian businesses acquiring digital services will need to be vigilant to ensure that if the FSP does not charge the service tax on the digital services, they will have to self-account for service tax on the imported taxable services.

Further exemptions have also been introduced and Customs have made several policy decisions that are aimed at reducing the cascading effect of service tax. However, these exemptions / refunds are subject to fulfilling various conditions and Malaysian businesses will need to put in place additional compliance measures before these exemptions / refunds can be applied.

Low value imported goods

Sales tax and / or import duty will be levied on goods imported into Malaysia, unless specifically exempted. Goods are specifically exempted based on their HS tariff code. However, a second exemption exists for low value goods ("LVG") imported into Malaysia using air courier service. In such cases, the importer will be exempt from paying the sales tax and import duty, provided:

- The goods are imported using air courier service through the following airports:
  - Kuala Lumpur International Airport, Selangor;
  - Sultan Abdul Aziz Shah Airport, Selangor (Subang Airport);
  - Penang International Airport, Penang;
  - Senai International Airport, Johor;
  - Kota Kinabalu International Airport, Sabah;
  - Kuching International Airport, Sarawak; or
  - Langkawi International Airport (only for import duty exemption).
- The total value of the imported goods does not exceed MYR500 per consignment; and
- Cigarettes, tobacco and intoxicating liquor are excluded from this exemption.

Practical insights

While the rules on digital services capture platform operators facilitating the sale of digital services into Malaysia, these rules do not capture goods at this time. However, the Government has indicated during the 2022 Budget Announcement in October 2021 that the exemption of sales tax on LVGs imported into Malaysia using air courier service will be abolished and sales tax will be imposed on such LVG that are sold online and imported using air courier service into Malaysia with effect from 1 January 2023. The Budget Speech further indicated that local and foreign sellers who sell such LVGs to Malaysian customers are required to register for and impose sales tax on the sale.

Digital assets and cryptocurrencies

Malaysia currently has a Sales Tax and Service Tax (SST) regime in place: Sales Tax applies to the manufacture and importation of taxable goods, and Service Tax applies to the provision of prescribed taxable services.

Neither law specifically covers the indirect tax treatment for cryptocurrencies at present. In respect of Sales Tax, as cryptocurrency is unlikely to be classified as goods, the Sales Tax law would not be applicable.

However, in the context of Service Tax, the provision of digital services is a prescribed taxable service and is subject to service tax as explained above. To date, it is not clear, and there has not been any guidance issued by the authorities on whether the provision of digital assets (such as digital currency, payment tokens, security tokens or utility tokens) would be considered to be the provision of a digital service or any other taxable service.

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New Zealand

Remote services rules

New Zealand introduced the remote services rules on 1 October 2016, requiring offshore sellers of digital services made to New Zealand end consumers to return GST on a quarterly basis.

Type of tax	Goods and services tax
Tax rate	15%
Commencement date	1 October 2016
Type of services covered	All services (digital and non-digital) supplied to New Zealand recipients by an offshore seller.
B2B, B2C, or both	B2C supplies only
Registration threshold	Revenue of NZD60,000 in any 12 month period
Tax on online platforms	Yes (unless the platform solely processes payments)

What is a remote service?

A remote service (i.e. New Zealand's equivalent of electronically supplied services (ESS)) is any service that, at the time of performance, has no necessary connection between the place where it is physically performed and the location of the recipient of the services.

The New Zealand rules are drafted broadly and are intended to cover both digital and non-digital services. Examples of services subject to the remote services rules include:

- Television and music streaming;
- Software services;
- Insurance;
- Consultancy and advisory services;
- Online gambling and betting;
- Advertising services; and
- Non-fungible tokens (NFTs).

The rules do not include "on-the-spot services", such as accommodation or concerts.

Who is a New Zealand recipient?

A recipient is a resident of New Zealand based on two pieces of non-contradictory information in support of this conclusion, e.g. billing address, bank details or IP address.

B2C v B2B supplies

The rules are intended to apply to "B2C" supplies made to New Zealand recipients. However, the rules presume all supplies are B2C and therefore subject to tax unless the seller has confirmation of the customer's GST registration status or New Zealand Business Number, i.e. a "B2B" sale. This is usually confirmed as part of the check-out or on-boarding process.

Registration threshold

An entity must register for GST where its supplies subject to New Zealand GST exceed, or are likely to exceed, NZD60,000 (approximately USD39,000) over a 12 month period.

Compliance obligations

Once registered, a remote services seller is required to file returns and account for GST quarterly to Inland Revenue.

GST rate

Registered offshore sellers must return GST at **15%** (3/23rds of the GST-inclusive amount paid by customers) on all B2C supplies to New Zealand consumers.

Concessions

The remote services rules allow an offshore seller to agree an alternate method with the Commissioner of Inland Revenue to confirm whether a supply is treated as being made to a registered person (B2B).

When determining the alternate approach, the Commissioner can consider:

- The nature of the supply (e.g. would it generally only be acquired by a registered person in the course of their taxable activity?);
- The value of the supply; and
- The terms and conditions relating to the supply (e.g. would it only be made available to a registered person in the course of their taxable activity?).

B2B supplies are not subject to GST but offshore sellers can opt to treat these supplies as subject to 0% GST for the purpose of registering for and recovering New Zealand GST incurred on expenses.

Insights

Since the remote services rules were introduced in October 2016, New Zealand has had over 600 registrations and the GST collected since implementation is in excess of NZD934. 1 million (approximately USD612 million), or approximately NZD200 million per annum. Inland Revenue considers the remote services rules to have been very successful.

Implementation

Inland Revenue placed a big focus on communicating the introduction of the remote services rules. Inland Revenue also conducted a significant global publicity campaign to spread news of the rules and inform businesses of the changes they would need to implement. This played a significant role in the successful roll out of the rules and the high number of voluntary registrations.

Inland Revenue opted to take a "light touch" approach to enforcement for the initial period after the rules were introduced (a more strict approach is being adopted now). This included granting a number of B2B concessions and recognising the time it took businesses to update and adapt their systems to become compliant with New Zealand GST without imposing penalties. We expect that audit activity will increase in the future.

Prevention of double taxation

New Zealand legislators also introduced rules to protect New Zealand suppliers of remote services to overseas customers from being subject to double taxation both in New Zealand and in the foreign jurisdiction where the supplies were consumed. The rules allow the New Zealand supplier to claim a GST deduction to the extent a supply has already been taxed in the foreign jurisdiction.

Ease of compliance

The remote services rules include a number of provisions designed to reduce the compliance burden on offshore sellers. These include:

- Allowing a New Zealand-based agent to carry out an offshore seller's tax compliance obligations, including filing returns and paying GST liabilities to Inland Revenue on the seller's behalf.
- Concessions in terms of how the remote services rules apply, including the ability for sellers to treat all remote services as B2B and therefore not subject to tax if certain criteria are met. Inland Revenue requires clear evidence to support whether supplies are B2B or B2C.
- The return system for offshore sellers is a simplified "pay only" registration system designed to minimise compliance costs where possible and minimise revenue risk.

Currency conversion

New Zealand also has a flexible approach towards the foreign currency exchange rates adopted by offshore sellers. Offshore sellers can select their prefered method from a number of options and must maintain this approach for the 2 years from when a method is adopted.

Registration status of consumers

Unlike a number of other jurisdictions, New Zealand does not have a publicly accessible register of GST-registered businesses. Instead, it is possible to search New Zealand Business Numbers (NZBNs). As discussed above, the NZBN is an alternative method of verifying a recipient's status for the purpose of treating a sale as B2B and therefore not subject to GST.

Low Value Imported Goods (LVIG)

The LVIG rules were introduced on 1 December 2019 and require sellers of imported goods valued at or under NZD1,000 to account for New Zealand GST.

Type of tax	Goods and services tax
Type of tax	Goods and services tax
Tax rate	15%
Commencement date	1 December 2019
Type of goods covered	Any imported goods supplied by an offshore seller valued at or under NZD1,000 supplied to New Zealand recipients.
B2B, B2C or both	B2C supplies only
Registration Threshold	Revenue of NZD60,000 in any 12 month period
Tax on online platforms	Yes (unless the platform solely processes payments)

What is a LVIG?

From 1 December 2019, a LVIG (referred to in the legislation as a "distantly taxable good") is an item of goods that is subject to New Zealand GST where:

- It is supplied by an offshore seller or via a marketplace or redeliverer; and
- It is delivered to a New Zealand address; and
- It is valued at or under NZD1,000.

Assessing application of NZ$1,000 threshold

When assessing whether a good is above or below the NZD1,000 threshold, international shipping and insurance costs should be **excluded** from the price paid.

Compliance obligations

Once registered, a LVIG seller is required to file quarterly returns with Inland Revenue.

If an entity was already registered prior to the introduction of the LVIG rules, then its existing filing frequency continues.

GST rate and calculation

Registered offshore sellers must return **15%** GST (or 3/23rds of the GST-inclusive amount paid by the customers) on all B2C supplies to New Zealand recipients.

When calculating GST payable on LVIG sales, the offshore seller must account for GST on the price paid by the customer, **including** international shipping and insurance costs.

B2C v B2B supplies

The rules are intended to only apply to "B2C" supplies made to New Zealand recipients. However, all supplies are presumed to be B2C and therefore subject to tax unless the seller has confirmation of the customer's GST registration status, i.e. a "B2B" sale. This confirmation can be provided as part of the customer check-out or on-boarding process.

Marketplaces

The LVIG rules provide that, where goods are sold through an electronic marketplace, the operator of the electronic marketplace and not the non-resident underlying supplier is required to register and account for New Zealand GST. This means that both non-resident and New Zealand resident electronic marketplaces can be subject to the LVIG rules.

The rules also provide an option for non-electronic marketplaces to register for and return GST on supplies made by their underlying non-resident sellers. However, this can only be done with agreement from the Commissioner of Inland Revenue.

Redeliverers

Under the LVIG rules, a "redeliverer" is an entity engaged to deliver or assist in the delivery of goods into New Zealand.

A redeliverer is required to register for and return New Zealand GST when, under an arrangement with the New Zealand based recipient, it does one or more of the following:

- Provides use of an address outside of New Zealand for the delivery of goods;
- Arranges or assists the use of an address outside New Zealand where goods are delivered;
- Purchases the goods outside New Zealand as an agent to the recipient; or
- Arranges or assists the purchase of goods outside New Zealand.

Documentation

The rules provide that offshore sellers of LVIGs are not required to issue tax invoices but they are required to provide a receipt. The receipt must include specific pieces of information, including the name and registration of the supplier and the price charged for the goods.

The supplier must also take reasonable steps to provide New Zealand Customs Service with sufficient documentation to confirm if GST has already been accounted for.

Concessions

New Zealand has introduced a number of unique concessions to ease the compliance burden.
These include:

1. Alternative method of determining B2B customer status
As with the remote services rules, an offshore seller may agree an alternate method with the Commissioner of Inland Revenue for confirming whether a LVIG supply is made to a GST registered person (B2B) (same criteria as with the remote services rules).

2. Election to charge GST on low-value B2B sales
Offshore sellers that mainly make B2C LVIG sales may elect to also charge 15% GST on B2B LVIG sales. The test is that the seller must have a "reasonable expectation" that at least 50% of their total LVIG sales value in the 12 months from the date of election will be made to B2C customers.

3. Election to charge GST on high-value B2C sales
Offshore sellers whose B2C sales are mainly of LVIGs can elect to charge 15% GST on all B2C sales, regardless of the sale value. The test is that the seller must have "reasonable grounds" to believe that at least 75% of their total value of B2C sales in the 12 months from the date of election will be of LVIGs (i.e. no more than NZ$1,000 in value).

4. Limited safe harbour for Electronic Marketplaces and redeliverers
Inland Revenue has introduced limited safe harbour rules to protect electronic marketplaces and redeliverers where they have applied the default rules for determining the estimated customs value of goods that they bring into New Zealand.

These safe harbour rules mean that a marketplace operator or redeliverer cannot be held liable for GST that should have been returned to Inland Revenue where it was underpaid as a result of relying on incorrect or misleading information provided by another party.

Insights

New Zealand introduced the LVIG rules on 1 December 2019, over three years after the introduction of the remote services rules. This meant that not only could New Zealand learn from the implementation of the remote services rules, but it could also adjust and develop its GST law based on matters important to global businesses and the LVIG rules in other jurisdictions.

To prepare for the introduction of the rules, Inland Revenue ran a comprehensive educational campaign to raise awareness and ensure that as many suppliers as possible had their systems updated prior to the 1 December 2019 start date. This included the release of a comprehensive Special Report on the rules, which provided clear examples and guidance on the application of the rules.

To date, New Zealand has had over 770 LVIG registrations and the GST collected since implementation is in excess of NZD231.1 million (approximately USD151 million). Inland Revenue considers the implementation of the rules has been very successful.

The New Zealand Government, Inland Revenue and the New Zealand Customs Service have worked together to ensure that the rules are relatively simple and easy to comply with. This has included the introduction of a number of concessions, flexibility on the method of currency conversion adopted by the offshore seller and policies that prevent double taxation.

Digital assets and cryptocurrencies

New Zealand is currently leading the way with tax changes concerning cryptoassets. Recent legislation enacted on 29 March 2022 focuses on the GST considerations of cryptoassets and the new rules are intended to reduce the longstanding uncertainty. The changes include:

- Cryptocurrency will be excluded as a taxable or exempt supply – this wide ranging change is innovative and will allow cryptocurrency transactions to be ignored for GST. Part of the reason for removing cryptocurrencies from the GST net was to reduce market distortions and enhance certainty.
- NFTs are covered by the standard GST rules and the remote services rules (if the consumer is a NZ resident in the case of the remote services rules).
- Brokerage and commission services in relation to cryptocurrency are GST-exempt.
- Options over cryptocurrency are also GST-exempt.

All of these changes have retrospective effect to **1 January 2009** (when Bitcoin was launched). In addition, GST on costs incurred as part of a cryptocurrency issue will be recoverable by a GST-registered business (retrospective to **1 April 2017**).

Digital platforms consultation

A Government discussion document, "*The role of digital platforms in the taxation of the gig and sharing economy*", was released in March 2022 discussing the following proposals:

- Implementing the information exchange and reporting framework developed by the Organisation for Economic Cooperation and Development (OECD) allowing tax administrations internationally to exchange information about sellers' activities and incomes earned on digital platforms.
- Requiring digital platforms to charge GST on all sales of services in New Zealand that are made through digital platforms.
- Whether there are any other changes to the tax rules that could be made to support sellers in the gig and sharing economy to comply with their tax obligations.

The proposals are aimed at digital platforms. If the proposals become law, digital platforms will need to report information to the tax authority where they are headquartered, and that information would then be exchanged between other tax authorities once a year. Digital platforms would also need to charge GST (at 15%) on all sales made through the platform being operated by them.

Submissions closed in April 2022 and the outcome of the consultation was not known at the time of publishing.

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Philippines

Digital economy

The Bureau of Internal Revenue (BIR) has been issuing tax rulings, revenue regulations and memorandum circulars clarifying the tax treatment of persons engaged in online transactions and e-commerce. To date, the main ones are as follows:

- Sale of products in digital or electronic format;
- Online business transactions;
- Persons engaged in business of land transportation; and
- Persons engaged in offshore gaming services.

The tax treatment provided in these issuances is quite general. Essentially, these businesses are taxed similarly to other industries. For example, in one memorandum circular, the BIR clarified that taxpayers engaged in online business transactions (such as online shopping / retailing, intermediary service, advertisement and auction) are on the same footing as physical stores. Hence, they are required to register the business, secure Authority to Print invoices / receipts, register and maintain books of accounts for use in business and issue registered invoice / receipts for each transaction.

Further, as part of its efforts to enhance compliance, the tax authority also issued regulations and flyers with concise guidelines for the registration, filing of tax returns and payment of taxes by online sellers. A task force was also created to create a database of online sellers of goods and services and to determine which of these sellers are registered (or not registered) with the BIR.

At the time of publication, there are two (2) Bills aimed at improving the regulation of the digital economy pending before the Philippine Congress. House Bill No. 6765 (or the 'Digital Economy Taxation Act of the Philippines'), was recently discussed jointly by both chambers of the Philippine Congress. It is proposed that persons liable for VAT will include those who sell or exchange goods or properties that are digital or electronic in nature, and those who supply services including those supplied electronically. Income from such transactions would be subject to 12% VAT, and the 'electronic commerce platform' (as defined) would deduct and withhold the 12% VAT from the seller.

In addition, pending before the Senate is Senate Bill 2489 (or the 'Internet Transaction Act') which proposed the creation of an e-Commerce Bureau that shall mandate entities engaged in electronic commerce to register in the Online Business Registry (OBR). The OBR shall give consumers access to information on e-marketplaces, e-retailers, online merchants, and other digital platforms engaged in the sale of goods, services and digital products for the purpose of verifying their existence and confirming their identity, among other purposes. The start date of the new rules will be determined as the draft law passes through the final stages.

Digital assets and cryptocurrencies

As for cryptocurrencies, there are no current laws or pending bills in existence on this topic, nor any clear guidance from the tax authority. On the other hand, the Securities and Exchange Commission (SEC) has issued guidance treating cryptocurrencies as securities, and also advised that violators to the registration and disclosure requirements – where the virtual currencies offered are in the nature of a security – would be reported to the tax authority so that the appropriate penalties and / or taxes can be assessed.

The Bangko Sentral ng Pilipinas (BSP) issued guidance treating cryptocurrency / virtual currency exchanges as similar to remittance and transfer companies, and applying the relevant regulations thereto. Also, cryptocurrencies and other digital assets are considered as property within the meaning of Anti-Money Laundering laws and regulations.

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Singapore

Imported digital / remote services rules

Type of tax	Goods and Services Tax ("GST")
Tax rate	7% (to be increased in two steps from 7% to 8% on 1 January 2023 and from 8% to 9% on 1 January 2024)
Commencement date	B2C: 1 January 2020 (digital services only) B2C: 1 January 2023 (remote services*) *Encompasses digital and non-digital services
Type of services covered	With effect from 1 January 2020: Any service supplied over the internet or other electronic network and the nature of which renders its supply essentially automated with minimal or no human intervention, and impossible without the use of information technology. With effect from 1 January 2023: Any services where, at the time of the performance of the service, there is no necessary connection between the physical location of the recipient and the place of physical performance (with certain exclusions).
Registration threshold	A two tier registration threshold is applicable. Global turnover and the value of digital / remote services made to non-GST registered customers in Singapore exceeding S$1million and S$100,000 respectively in a calendar year or are expected to exceed these thresholds in the next 12 months.

Digital services provided by overseas digital service providers and overseas electronic marketplace operators to non-GST registered persons in Singapore may be subject to GST at the rate of 7% with effect from 1 January 2020 under an Overseas Vendor Registration ("OVR") regime.

Specifically, the term "digital services" is defined as:

"any services supplied over the Internet or other electronic network and the nature of which renders its supply essentially automated with minimal or no human intervention, and impossible without the use of information technology."

Examples of services that will be taxed include downloadable digital content such as mobile applications, e-books, music, games and movies, subscription-based media, software programmes, and cloud services.

With the extension of the OVR regime from 1 January 2023, all B2C supplies of imported services (digital or non-digital) will be subject to GST if the services can be supplied and received remotely. These services are referred to as "remote services".

Specifically, the term "remote services" is defined as

"Any services where, at the time of the performance of the services, there is no necessary connection between the physical location of the recipient and the place of physical performance."

Services which are exempt or qualify for zero-rating are excluded from the definition of remote services to ensure parity in the GST treatment on such supplies (regardless of whether they are procured locally or from overseas suppliers). Examples of remote services include digital products (e.g. mobile games, downloadable software), professional services, educational services and online counselling, matchmaking and telemedicine services.

Overseas digital service / remote service providers and overseas electronic marketplace operators (such as app stores) will be liable for GST registration in Singapore if their global turnover and the value of digital / remote services made to non-GST registered customers in Singapore exceeds S$1million (approximately USD715,000) and S$100,000 (approximately USD71,500), respectively, in a calendar year or are expected to exceed these thresholds in the next 12 months.

Service providers registered under the OVR regime file simplified GST returns on a quarterly basis with payment due within 1 month from the end of each accounting period. OVR service providers are also not allowed to claim GST incurred on their expenses (this is a pay-only regime).

Practical insights

The inclusion of the human intervention factor in the definition of "digital services" presented some uncertainties in scenarios where the services are provided by real persons but supplied electronically via the internet. For example, it is unclear if the following scenarios would fall within the scope of digital services:

- provision of distance learning services where a portion of the lectures is conducted in real time by the trainers; and
- subscription fees from live video streaming involving performances by real persons where real-time interaction between the audience and the performer is possible in the form of "likes" and "comments" (in social media parlance).

When the remote services rules commence from 1 January 2023, the human intervention factor would no longer be relevant based on the manner in which the term "remote services" is defined.

The OVR rules require service providers of digital / remote services to treat the services as supplied to a non-GST registered customer and charge GST accordingly, unless the customer provides his GST registration number. Operationally, this means that service providers primarily selling to business customers would need to have processes in place to capture customer's GST registration details and status so that it can determine if GST needs to be charged at the outset. Service providers who are unable to determine the GST registration status of their customers may seek approval from the IRAS for alternative methods of determination.

The GST compliance of overseas electronic marketplace operators that are registered under the OVR regime will be even more complex. This is in part due to rules which deems the electronic marketplace operators as the "supplier" of the digital / remote services (on behalf of the underlying service provider) if certain conditions are satisfied and hereby placing the obligation to account for the GST on the marketplace operators. These overseas electronic marketplace operators will need to track the following transactions separately and apply different GST treatments:

- supplies of digital / remote services made by local suppliers through the electronic marketplace (GST, if applicable, to be accounted by the local suppliers)
- supplies of digital / remote services made by overseas suppliers through the electronic marketplace to non-GST registered consumers in Singapore (GST to be charged)
- supplies of digital / remote services made by overseas suppliers through the electronic marketplace to GST registered consumers in Singapore or to non-Singapore consumers (no GST to be charged)
- its own supplies of digital / remote services made to GST-registered consumers in Singapore and non-Singapore consumers (no GST to be charged)
- its own supplies of digital / remote services made to non-GST registered consumers in Singapore (GST to be charged)

In addition to the above, the GST treatment also differs between supply of remote services and supply of goods. Hence, the systems of the electronic marketplace operators must be robust to address these complexities.

A related operational issue arises when GST-registered customers fail to provide their GST registration details to the OVR service providers and hence are being incorrectly charged GST. Under the rules, such customers cannot recover the GST so charged as an input tax credit. Instead they have to seek a refund from the OVR service providers who in turn have to process the refund and make adjustments to their output tax liability, which increases compliance costs. This underscores the importance of collecting the GST registration details of the customers, especially if one customer base is primarily made up of businesses (instead of individuals).

An interesting point to note is that OVR service providers must charge and account for GST on all taxable supplies. In other words, such providers must also account for GST on a local supply of goods in Singapore and on services rendered through their business or fixed establishment in Singapore (if any). This is in addition to the GST collected on supplies of digital / remote services to non-GST registered customers in Singapore. What is more interesting is that this rule has indirectly extended the reach of the GST net as such service providers would not have been liable for GST registration under the normal GST rules if not for their supply of digital / remote services to non-GST registered customers. This is because businesses (offshore or otherwise) are only liable for GST registration if they make taxable supplies in Singapore in excess of S$1 million and have to charge GST on all taxable supplies under the normal GST rules – OVR service providers are subject to same liability at a much lower registration threshold of S$100,000.

Low Value Imported Goods

As at the date of this publication, there is import relief on postal imports of non-dutiable goods with a value of not more than S$400 (approximately USD285), where no import GST is payable to Singapore Customs. Categories of goods which are dutiable in Singapore are intoxicating liquors, tobacco products, motor vehicles and petroleum products and biodiesel blends.

With effect from 1 January 2023, the Singapore GST regime will be extended to levy GST on B2C low value imported goods (LVIG) imported via air or post that are valued S$400 or less. The overseas vendor registration (OVR) regime implemented on 1 January 2020 will be extended to cover LVIGs.

Type of tax	Goods and Services Tax ("GST")
Tax rate	7% (to be increased in two steps from 7% to 8% on 1 January 2023 and from 8% to 9% on 1 January 2024)
Commencement date	1 January 2023
Type of goods covered	LVIG are goods which at the point of sale: • are not dutiable goods, or are dutiable goods, but payment of the customs duty or excise duty chargeable on the goods is waived under section 11 of the Customs Act; • are not exempt from GST; • are located outside Singapore and are to be delivered to Singapore via air or post; and • have a value not exceeding the GST import relief threshold of S$400
B2B, B2C or both	B2C supplies only
Registration Threshold	A two tier registration threshold is applicable. Global turnover and the value of digital services made to non-GST registered customers in Singapore exceeding S$1million and S$100,000 respectively in a calendar year or are expected to exceed these thresholds in the next 12 months.
Tax on online platforms?	Yes – Overseas and local operators of an electronic marketplace supplying LVIG delivered from overseas to Singapore, on behalf of local and overseas suppliers, through the marketplace may be required to register for GST in Singapore and account for the GST under certain conditions.

Who may be impacted by this change (non exhaustive)

- Overseas and local supplier making sales of LVIGs delivered from overseas to customers in Singapore;
- Overseas and local operator of an electronic marketplace supplying LVIGs delivered from overseas to Singapore, on behalf of local and overseas suppliers, through the marketplace; and
- Overseas and local redeliverer delivering or facilitating the delivery of LVIG from overseas to Singapore, by providing or facilitating the purchase or the use of an address outside Singapore.

Different values to be considered

- OVR vendors are required to use the sales value of the goods (which excludes insurance and freight costs), to determine whether the goods fall within the definition of LVIG (unless they elect otherwise).
- However, GST is chargeable on the value of supply of LVIGs, which includes insurance and freight costs, where applicable.
- Where multiple goods are shipped as single consignment, the goods should be disaggregated and valued separately as separate items in determining whether each item falls within the definition of LVIG (unless otherwise elected).

GST registration requirements

- A two-tier registration threshold applies under the extended OVR regime.
- An overseas vendor would be liable for GST registration if the following thresholds are exceeded in a calendar year or are expected to be exceeded in any 12-month period:
  – SGD1 million in global revenue; and
  – SGD100,000 in remote services and LVIG relating to B2C supplies in Singapore.
- The registration rules are applied on a retrospective and prospective basis, and transitional rules apply.
- The current pay-only regime with simplified registration and reporting requirements will apply to the extended OVR.

GST implications for B2B customer

- GST is not chargeable by the OVR vendor to a Singapore GST registered customer. The Singapore GST registered customer should provide a GST registration number to the OVR vendor when buying LVG from the OVR vendor.
- The Singapore GST registered customer will need to assess reverse charge liability (if any).

Practical insights

Given the wide reach of the new rules, businesses (including marketplaces and redeliverers) providing goods and services to Singapore non-GST registered customers should consider if they would be affected by the new rules.

Areas to look into as part of the business' assessment and preparation process would include:

- Assessing if supplies fall within the definition of remote services or LVIG;
- Assessing if the marketplace or redeliverer rules apply;
- Determining GST registration liability;
- Updating processes and systems:
  – Implement processes to differentiate B2B from B2C and differentiate LVIG from non-LVG
  – Ensure sufficient information captured for remote services and / or LVIG reporting requirements
- Ensuring GST is charged on the correct value for LVIG;
- Assessing transitional rules – transactions straddling 1 January 2023 are subject to a different set of reporting rules; and
- Seeking IRAS clarification / concession where applicable.

Considering that there could be complexities to operationalise the rules, affected businesses should get ready early and allow ample lead time for the systems and process changes required to fulfil their registration and compliance obligations.

Digital assets and cryptocurrencies

Prior to 1 January 2020, supplies of digital tokens / virtual currencies / cryptocurrencies were treated as a taxable supply of service and subject to GST at either the standard rate of 7% or zero-rated. With effect from 1 January 2020, supplies of "digital payment tokens" will no longer be subject to GST. Specifically:

i. The use of digital payment tokens as payment of goods and services will no longer give rise to a supply of those tokens (i.e. no longer treated as a barter trade); and

ii. A supply of digital payment tokens in exchange for fiat currency or other digital payment tokens, and the provision of any loan, advance or credit of digital payment tokens will be exempt from GST.

The GST treatment for digital tokens / virtual currencies / cryptocurrencies that do not qualify as "digital payment tokens" remain unchanged. Based on the definition set out the GST Act, a digital payment token is a digital representation of value that has all the following characteristics:

a. It is expressed as a unit;

b. It is designed to be fungible;

c. It is not denominated in any currency, and is not pegged by its issuer to any currency

d. It can be transferred, stored or traded electronically;

e. It is, or is intended to be, a medium of exchange accepted by the public, or a section of the public, without any substantial restrictions on its use as consideration.

The following are not considered as a digital payment token for GST purposes:

- Money;
- Anything which, if supplied, would be an exempt supply of financial services; and
- Anything which provides an entitlement to receive or to direct the supply of goods or services from a specific person and ceases to function as a medium of exchange after the entitlement has been used.

Based on guidance from the Inland Revenue Authority of Singapore (IRAS), examples of digital payment tokens are Bitcoins, Ether, Litecoin, Dash, Monero, Ripple and Zcash.

Practical insights

Given the large number of cryptocurrencies available in the market, businesses who are trading in cryptocurrencies would have to ensure that the cryptocurrencies which it is transacting in is a digital payment token or otherwise in order to apply the appropriate GST treatment. Specifically, it is not clear if the IRAS expects businesses to substantiate that the cryptocurrency in question is intended to be used as a medium of exchange (i.e. condition (e) above) and if so, what are the relevant evidence or indicators. There is limited guidance from the IRAS at this point in time.

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South Korea

Goods

There is import relief for goods of non-dutiable goods valued at no more than USD150 (also referred to as low value imports), where no import VAT is payable to the Korean Customs.

Services

Since 1 July 2015, imported B2C digital services have been subject to VAT in Korea.

Scope

According to the Simplified Business Registration regime under Korean VAT law, digital services mean selling digital content such as games, electronic documents, music, videos, software, apps, advertisement, cloud computing and intermediary services which are supplied via mobile telecommunication terminal devices and computers. For this purpose, this does not apply to digital services that are used for business registered customers (for its VAT-taxable or VAT-exempt businesses).

Affected businesses

The Simplified Business Registration regime affects an overseas supplier making sales of digital services to individual customers in Korea. A local or overseas operator of an electronic open market may be regarded as the supplier of the services made by the suppliers through these open markets.

Rate

VAT is levied at 10% unless a zero-rating provision applies.

Registration

Under the Simplified Business Registration regime, any overseas vendors who are making B2C sales of digital services to Korea are liable to be registered.

Returns

There are two return periods each (1 January to 30 June and 1 July to 31 December). However, preliminary VAT returns are required for the periods 1 January to 31 March and 1 July to 30 September.

Periods

Every registered person must file a VAT return on a quarterly basis. The return must be electronically submitted to the National Tax Service by the 25th day after the end of each quarter.

Payment

The payment due with the return must be made no later than the 25th day after the end of each of the quarters.

Refunds

Input VAT can be claimed to offset output VAT (any excess can be refunded).

Content of forms

The quarterly VAT return under the Simplified Business Registration regime shall include the value of supplies and the output VAT, and the value of purchases and the input VAT, if any.

Documentation requirements

Under the new requirement, foreign business operators are required to keep transaction details for five(5) years and, if requested by the tax authorities, submit such details within 60 days from the date it receives the request. The required transaction details include the type of services, supply price / value added tax, date of service provision, service recipient (and whether the recipient's business registered, ie, Korean VAT registration number). This will apply to the electronic services supplied on or after July 1, 2022.

Penalties

The exemption of non-compliance penalties on ESS VAT for foreign business operators has been abolished since January 1, 2021. Therefore, for ESS supply after January 1, 2021, penalties on non-reporting (20% of unreported tax amount), under-reporting (10% of under-reported tax amount) and late payment (2.5/10,000 per day, 2.2/10,000 from February 15, 2022) will be imposed regardless of whether relevant VAT is collected from individual customers.

Digital assets and cryptocurrencies

There is no clear provision for VAT treatment on virtual assets under the Korean tax law, but Ministry of Economy and Finance (MOEF) has issued a tax ruling, interpreting that a supply of virtual assets is not regarded as a VAT-taxable supply of goods (MOEF VAT department -145, 2021.03.02)

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Taiwan

Digital economy

Goods

VAT is imposed on import of goods and is collected by Taiwan customs. Under certain prescribed limitations, imported goods (excluding alcohol, tobacco and agricultural goods) with custom value not exceeding NTD2,000 (approximately USD65) may be exempted from VAT.

Services

Taiwan has formally implemented a VAT mechanism for foreign companies that provide cross-border sales of B2C services since 1 May 2017.

Scope

Foreign e-service providers that have no fixed place of business in Taiwan who provide e-services to domestic individuals (B2C), and whose annual revenues exceed the NTD480,000 (approximately USD16,000) threshold will be required to register for VAT purposes, file VAT returns, and pay relevant VAT in Taiwan. Electronic services are defined as following:

1. The services used are downloaded via the Internet and saved to computers or mobile devices for use.
2. The services are used online without being downloaded and saved onto any devices.
3. Other services used are supplied through the Internet or other electronic tools.

Affected businesses

Foreign companies providing cross-border B2C electronic services in Taiwan will be impacted by the VAT regulations.

Rate

VAT is levied at 5% on all supplies.

Registration

The cross border electronic service providers whose total annual sales derived from services provided to Taiwan individuals that exceeds NTD480,000 in the previous year or current year should register for VAT purposes in Taiwan.

Returns

VAT returns shall be submitted on a bi-monthly basis via the tax authority's web portal. The deadline is by the 15th day after the end of each period (e.g. by March 15 for the period of January-February).

Periods

VAT returns need to be filed bi-monthly.

Payment

Tax payment needs to be made prior to the filing of the tax return.

Refunds

Input VAT incurred by a foreign taxpayer may be creditable against its if the input VAT incurred is related to its business operation.

Content of forms

The VAT return to be filed is a simplified form where only the value of supplies made, the applicable VAT, and applicable input VAT is required to be reported.

Penalties

The current penalty regime does apply to overseas suppliers with cross-border sales of B2C services.

Digital assets and cryptocurrencies

There is no clear provision for VAT treatment on virtual assets under the Taiwan tax law.

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Thailand

Electronically supplied services

From 1 September 2021, non-resident electronic service providers and electronic platform operators are subject to VAT at 7% for electronic services provided to non-VAT registrants in Thailand.

Non-resident suppliers will be required to prepare an output VAT report with details of the transactions attached to the report according to the items and contents in the form attached to the Notification of the Director-General of the Revenue Department on VAT No. 239.

VAT is payable on the revenue received by:

a. overseas digital service providers; and

b. operators of electronic platforms, on the services provided to Thai consumers who are non-VAT registrants.

On 7 July 2021, the Revenue Department released the first edition of the "Guide on VAT on Electronic Services Provided to Non-VAT Registrants in Thailand by Non-resident Business Persons." This guideline is intended to explain in more detail the application of the digital services tax law, and to address the compliance procedures to be undertaken by non-resident suppliers. This guideline is available on the Revenue Department's website as linked here.

The Revenue Department also recently introduced a database called "VAT for Electronic Service" (VES). This replaces the Simplified VAT System for E-Service (SVE).

The key takeaways from the recent development are summarised below:

Topic	Key issues
Scope	Non-resident electronic service providers and electronic platform operators, who receive income of more than Baht 1.8 million per year from providing electronic services to non-VAT registered customers in Thailand, must register for VAT, file VAT returns and pay VAT by calculating output tax (without deducting input tax). These taxpayers are not required to issue tax invoices or prepare input tax reports.
Key elements	The guideline gives more insight into the following: • The definition of 'electronic services': the guideline provides a non-exhaustive list of services which are included (e.g. mobile applications, online advertising) and excluded (e.g. telecommunication services, money transfer services) from the definition. Distance teaching via pre-recorded media is treated as an electronic service. However, a live teaching course is excluded from the definition of electronic services. • Location determination: The rules for determining whether a service is 'used in Thailand' are clarified. The service should be treated as used in Thailand if the customer information indicates that the customer is in Thailand. The non-resident service provider should determine the location of the customer based on one of the following items of customer information. 1. Payment information 2. Residence information 3. Access information If the above information is not consistent, the taxpayer should obtain at least two pieces of non-conflicting evidence of where the customer is located or the service is used.

Topic	Key issues
	• Determining the VAT registration status of customer: By default, non-resident electronic service providers and electronic platforms can treat the customer as a non-VAT registrant (and must charge VAT). If VAT registration information is provided by the customer, the non-resident service provider is not required to completely verify the customer's VAT registration. The guideline indicates that the non-resident service provider may request and rely on a Tax ID number provided by the recipient of the service. The non-resident service provider can also visit the Revenue Department's website to verify the validity of the customer's VAT registration and tax identification number. • The provision of services through an electronic platform: An electronic platform operator is required to pay VAT on behalf of non-resident service providers who provide e-services through a platform with all of the following processes. 1. Offering services 2. Receiving payment 3. Delivering services
VAT registration	If the non-resident service provider or non-resident electronic platform operator has revenue exceeding Baht 1.8 million (approximately USD52,400) in an accounting period (for a corporation) or a calendar year (for an individual), it should register for VAT within 30 days from the day on which the revenue exceeds Baht 1.8 million. For corporations, income should be calculated from the first day of the accounting period that ends after 1 September 2021. For individuals, income should be calculated from 1 January 2021. If the income exceeds Baht 1.8 million before 1 September 2021, the VAT registration should be completed by 1 September 2021. All registration documents must be submitted to the Revenue Department through VES on the Revenue Department's website.
VAT point, VAT filing and VAT payment	The VAT liability from the provision of electronic services to customers in Thailand will arise when the service fee is paid either fully or partially. If payment is made using a credit card, the VAT liability arises when proof of the credit card usage is issued. More details are also provided on the exchange rate for converting foreign currency into Thai Baht, VAT filing through the form called "P.P.30.9", the VAT filing due date (i.e. the 23rd day of the following month) and the VAT payment channels via VES.
Output tax report	The non-resident VAT operator must retain the output tax report for at least five years. This is similar to other VAT operators in Thailand.
VAT refund	VAT operators have the right to request a VAT refund if there is an overpayment of VAT. However, the details of the VAT refund process have not yet been disclosed.
Compliance and enforcement	The Revenue Department's Large Tax Administration (LTO) is responsible for supervising and auditing non-resident electronic service providers and electronic platform operators. If the non-resident VAT electronic service providers fail to comply with the law, they will be subject to the same civil and criminal penalties as VAT operators in Thailand.

Digital assets and cryptocurrencies

Cryptocurrencies and digital tokens are classified as intangible goods under the VAT law and are subject to VAT. In 2018, the Thai Revenue Department announced that it was intending to waive VAT on transactions of cryptocurrencies and digital assets, in order to facilitate the operation of exchanges and the raising of funds using initial coin offerings. However, to date no regulation has been issued to provide the exemption.

In 2021, a regulation was issued requiring providers of electronic services to register for an pay VAT in Thailand on B2C transactions. The regulation came into effect on 1 September 2021. The regulation may impact non-resident exchanges, traders and dealers charging consumers in Thailand for services (e.g. broker fees).

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Vietnam

Digital economy

The estimated value of Vietnam's digital economy in 2021, according to the Deputy Prime Minister in one public event, is approximately USD 21 billion.[4] Vietnam aims to raise the contribution of the digital economy to 20% of the national GDP by 2025 and 30% of the GDP by 2030 and become the second largest digital economy in ASEAN.[5]

Although at this stage Vietnam still does not have a separate taxation regime for the digital economy, the Vietnam Government, taking into consideration the recommendations of the OECD and the United Nations on the digital economy, has developed a set of rules and a roadmap for tax legislation dedicated to the digital economy.[6]

Notably, in 2019 Vietnam introduced a new tax administration law which includes a taxing mechanism for foreign organisations and individuals doing business or deriving income in Vietnam from e-commerce activities or digital platforms ("e-commerce vendors"). This law came into effect on 1 July 2020 and requires e-commerce vendors, even without having a permanent establishment in Vietnam, to file tax in Vietnam, either directly or via an authorised entity. To enforce the tax collection, the new law and the subordinate legislation also require commercial banks, payment intermediaries to withhold and pay taxes on behalf of e-commerce vendors upon the order of the Vietnam General Department of Taxation, and the State Bank of Vietnam (SBV), as the management body of national banking operations, to establish a nationwide payment system to facilitate the tax collection.

These rules are another effort of the Government to close the gaps in the legislation which had unintentionally not captured a number of e-commerce transactions (notably B2C and C2C transactions) from the tax system for a long time.

Following the introduction of the new tax administration regulations, on 21 March 2022, the General Department of Taxation introduced the e-portal dedicated to the e-commerce vendors to register and file tax in Vietnam.[7] Any e-commerce vendor can find guidance on tax registration, filing and payments in Vietnamese and English in the portal.

Another notable point in the roadmap of Vietnam policymakers is the potential introduction of digital service tax in Vietnam by 2024 and a new clause in Vietnam DTAs to deal with the income derived from the digital business.[8]

[4] https://plo.vn/nen-kinh-te-so-cua-viet-nam-dat-21-ti-usd-post675833.html

[5] https://baochinhphu.vn/nen-kinh-te-so-viet-nam-dang-tang-truong-hang-dau-khu-vuc-102303765.htm

[6] Decision 2072/QĐ-TTg dated 10 December 2021 and Decision 662/QĐ-BTC dated 6 May 2022 of the Prime Minister; Decision 2146/QĐ-BTC dated 12 November 2021 of the Ministry of Finance.

[7] https://baochinhphu.vn/tong-cuc-thue-huong-dan-nha-cung-cap-o-nuoc-ngoai-nop-thue-qua-mang-internet-102220402163102385.htm

[8] Decision 2146/QĐ-BTC dated 12 November 2021 of the Ministry of Finance.

Low value imported goods

Vietnam does not have a separate taxation regime for low value imported goods (LVIGs). At this stage, there are certain tax exemptions for certain low value imported goods (in form of gifts, carry-on luggage) under the law on customs duty and its implementing regulations.

Upon the increased quantum of imported goods from / via e-commerce platforms, the General Department of Customs following the instruction of the Ministry of Finance (MoF) has drafted a new decree on customs management of cross-border e-commerce activities.

The Prime Minister, on 26 February 2021, approved in principle this new Decree and delegated the MoF to gather comments from relevant ministries and government departments to finalise this Decree.[9] The MoF, upon a recent public announcement, shared that the new Decree is pending for the Government's final review and will be published soon.[10]

The latest draft version of the new decree proposes a certain threshold of low value imported goods via e-commerce channels to be exempted from import duties.[11]

Digital assets and cryptocurrencies

Cryptocurrency is not yet legally recognised as a payment instrument in Vietnam. Thus, there are no tax regulations concerning cryptocurrency. Below are some developments so far for reference.

The Prime Minister issued Directive No. 10/CT-TTg dated 11 April 2018 (Directive No. 10) requiring the SBV, the MoF together with other competent authorities to develop a policy and issue a regulatory framework governing crypto currencies.

Following Directive No. 10, the SBV has issued Directive No. 02/CT-NHNN (Directive No. 02) on measures to enhance the control of transactions in relation to virtual currencies. Accordingly, the State Bank Governor requires the SBV's head office and its provincial branches, credit institutions, and other organisations providing payment intermediary services to apply measures to control and handle transactions in relation to virtual currencies. Directive No. 02 specifically indicates that credit institutions and payment intermediary service providers are not allowed to provide payment services, perform card transactions, provide credit via cards, support processing, payment, money transfer, clearing and settlement, currency conversion, payment transactions, cross-border money transfer relating to virtual currencies for customers because of potential risks of money laundering, terrorist financing, fraud and tax evasion.

On 15 June 2021, the Government issued Decision 942 which stipulates the strategy on development of the e-government toward digital government in the period from 2021-2025. In this decision, it is proposed that the research, development and trial use of cryptocurrency based on blockchain technology will be conducted by the SBV for the period 2021-2023. Thus, there may be more development on this topic in the near future.

In Decision 2146 dated 12 November 2021, it is proposed that the MoF would cooperate with the Ministry of Justice and the SBV to build a legal framework to control virtual currency in accordance with international practice to mitigate tax evasion and money laundering but the timeline is not yet determined.

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[9] Resolution 24/NQ-CP dated 26 February 2021

[10] https://cand.com.vn/Kinh-te/thuc-day-hoat-dong-xuat-nhap-khau-qua-thuong-mai-dien-tu-i651392/

[11] https://mof.gov.vn/webcenter/portal/btcvn/pages_r/cd/du-thao-van-ban/dtvb-chi-tiet-gop-y-du-thao?id=16152

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