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# GST And The Digital Economy

*Rising To The Tax Challenges of E-commerce*

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Orchard Road, once a renowned shopping mecca in Asia, is today a far cry from its heyday, its gradual decline coinciding with the growing influence of e-commerce.

Then came the Covid-19 pandemic.

Singapore's famed shopping strip is now dotted with empty stores. The fast-growing digital economy, on the other hand, has further burgeoned. With consumers staying away from the malls amid this global pandemic, more and more brick-and-mortar stores are pivoting towards the digital economy and rethinking their operations, hoping that they are not too late in joining the digital revolution.

As more consumers ditch shopping malls for virtual shopping carts, what does this mean from a tax perspective? In particular, what are the goods and services tax (GST) implications and considerations that businesses should take note of?

"In Asia Pacific, countries have been introducing electronic supplies of services rules for several years. However, as there is no supranational GST law in this region, unlike the European Union (EU), countries in Asia Pacific have consequently applied their respective GST law in a less consistent way," shared Accredited Tax Advisor (GST) Richard Mackender, Indirect Tax Service Line Leader, Deloitte Asia Pacific, Singapore and South East Asia, in a webinar organised by the Singapore Chartered Tax Professionals. "It is therefore imperative for businesses to keep abreast of tax developments on the digital economy in the countries that they are exposed to," added Richard, on the virtual platform.

## *Tax Challenges Arising From The Digital Economy*

The digital economy poses many challenges to traditional tax rules as many of these rules were drafted before the advent of the Internet.

To address such tax challenges arising from the digital economy, the Organisation for Economic Co-operation and Development (OECD) has published a number of papers in an attempt to provide guidance on how best countries can reshape their tax systems. The OECD advocates the use of the "destination principle" as the basic position, such that tax is ultimately levied only in the jurisdiction where the final consumption occurs.

### B2B SERVICES

To reduce the administrative burden and complexity for offshore suppliers, the reverse charge mechanism, which removes the need for offshore suppliers to register and account for GST in the numerous countries that they may sell into, is recommended for business-to-business (B2B) service transactions. Under the reverse charge mechanism, the service recipient (instead of the service provider) is liable to account for any GST due to its local tax administration.

## B2C SERVICES

For business-to-consumer (B2C) service transactions, the OECD distinguished two general rules to determine the place of taxation – one for on-the-spot supplies and another for other supplies. For on-the-spot supplies, the place of supply is generally where the services are physically performed in the presence of both the person performing the supply and the person consuming it (for example, haircuts performed at hair salons).

For other supplies which are not consumed on-the-spot (for example, consultancy or accountancy services), the place of supply should be where the customer has its usual residence; the service provider and the customer need not be at the same time and place where the service is provided. If the supply of services is directly connected with an immovable property (such as a building), the place of supply should be where the immovable property is located.

For offshore B2C services, the OECD advocates the use of a simplified registration and compliance regime, such that the non-resident supplier registers and accounts for GST in the jurisdiction where the consumer resides.

# *Indirect Tax Rules On Electronic Supplies Of Services In Singapore And The Region*

To keep pace with the significant growth in e-commerce, countries in Asia Pacific are introducing measures to tax electronic supplies of services, albeit in a less consistent way than in the EU. We will look into some of these measures below.

## SINGAPORE

Since 1 January 2020, Singapore has imposed 7% GST on B2B imported services and B2C imported digital services by way of a reverse charge and an overseas vendor registration regime respectively.

Under the reverse charge mechanism, a GST-registered person who belongs in Singapore and receives services from outside Singapore must account for GST on the value of its imported services as if it were the supplier of those services, unless the recipient is fully taxable or such services are excluded from the scope of reverse charge.

Under the overseas vendor registration regime, overseas suppliers with annual global turnover exceeding S$1 million and making supplies of digital services (including digital products, subscription-based and licensed content, as well as support services via electronic means) to customers in Singapore exceeding S$100,000 are required to register, charge and account for GST. Registration is also required if the foreign supplier expects that the above thresholds will be exceeded in the next 12 months. Under certain conditions, a local or overseas operator of electronic marketplaces may also be regarded as the supplier of the services made by the suppliers through these marketplaces.

To minimise the extraterritorial compliance burden, the overseas suppliers and overseas electronic marketplace operators are to be registered under a pay-only regime with simplified registration and reporting requirements.

### AUSTRALIA

Australia levies 10% GST on the sales of imported services and digital products to Australian consumers. Overseas businesses are required to register for GST, charge GST on sales of imported services and digital products, and lodge returns to the Australian Taxation Office, if the value of their sales made to Australian consumers is A$75,000 or more in a 12-month period. Simplified GST registration is available for non-resident businesses.

### MALAYSIA

Since 1 January 2020, registered foreign service providers providing digital services to consumers in Malaysia are required to charge 6% service tax on such digital services. Registration is mandatory for foreign providers of digital services with annual turnover from digital services provided to Malaysian consumers of at least RM500,000.

### SOUTH KOREA

Non-resident providers of digital services (such as Internet games, music, cloud computing and shared economy services) are required to charge 10% value-added tax (VAT) on their sales to Korean consumers. Foreign suppliers that provide electronic services via information communication networks are required to apply for simplified registration of the business with the National Tax Service. There is no threshold limitation on registration requirements.

## *Practical Tips On Managing B2C Electronic Supplied Services*

While the administrative burden of B2B service transactions is mostly shouldered by local service recipients via the reverse charge mechanism, foreign suppliers of B2C digital services are often required to "fend for themselves" in the overseas jurisdictions. Below are some practical tips for foreign suppliers in managing their B2C electronic supplied services.

### DETERMINE REGISTRATION REQUIREMENT

Businesses involved in cross-border sales of B2C digital services need to determine whether they are obliged to register in the countries in which sales of digital services are made. A good starting point would be to identify and segregate customers that belong in each country and analyse whether digital services provided to these customers fall within the definition of digital services defined by the local tax authority.

Where digital services are supplied via electronic marketplaces – at least for Singapore – businesses should segregate such supplies as digital services supplied through the marketplaces (as the supplier) are excluded when determining GST registration liability.

It is not always easy to determine the registration requirements and procedures in particular countries, especially since the rules are not consistent across different countries and are subject to updates and local interpretations. Where necessary, businesses should consider getting specific local advice in each market to ensure compliance.

Once a potential GST liability in a given country has been identified, businesses must establish whether their levels of sales exceed the registration thresholds, and where exceeded, prepare the relevant documentation for registration.

Businesses should also ensure that proper processes and systems are set up to capture the local GST collected, and to keep track of the obligations and filing due dates in each tax jurisdiction.

## DETERMINE TRANSITIONAL SUPPLIES OF DIGITAL SERVICES

Businesses should take steps to identify all B2C digital services supplied to non-GST registered customers belonging in the affected country that would straddle the effective services date. For discrete supplies of digital services, businesses should determine whether payment has been made or is still outstanding, and for continuous supplies, the portion of services to be performed on and after the effective services date.

To mitigate cashflow issues, businesses should calculate the value of digital services subject to GST (based on the criteria defined in the rules) and prepare early the necessary budget for payment in the first GST return to be filed. Businesses should also ensure that documents and listings are complete in case of an audit by tax authorities.

With tax authorities worldwide updating their respective tax regimes (at times in a haphazard manner) to keep pace with the burgeoning digital economy, it is imperative for businesses to keep abreast of tax developments in countries that they are exposed to and accordingly, put in place the necessary processes and systems to comply with any new rules.

The future of e-commerce is undoubtedly exciting and a brave new world for businesses. It remains to be seen whether taxation on the digital economy will become too exciting for some.

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