

Authors Boost Clarity

Indirect Taxation in the Digital Economy

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Lawyer and author Irving Aw examined the issues surrounding the current domestic treatment of e-commerce transactions for Singapore GST and recent international developments.

Advancement in internet technology and the availability of electronic payment facilities have led to an increase in online transactions involving both physical and digitised goods particularly for business-to-consumer (B2C) transactions.

It was against this backdrop that the Singapore Institute of Accredited Tax Professionals (SIATP) recently organised a Authors Boost Clarity session to bring greater clarity to the indirect tax issues of today.

Facilitated by Irving Aw, a lawyer who specialises in domestic and cross-border tax issues and tax dispute resolution, the session highlighted the Goods and Services Tax (GST) issues relating to e-commerce and international developments affecting this area of tax.

Purchases from overseas suppliers

The wide acceptance and adoption of online shopping has resulted in tax neutrality concerns. Under current GST rules, a traditional domestic supply of physical goods by a local GST-registered supplier is taxable at the standard rate (except for the supply of goods that are meant for export, which is a zero-rated supply). On the other hand, consumers purchasing physical goods (with the exception of tobacco and liquor) from overseas enjoy a relief on import GST for goods imported by air or post into Singapore, as long as the value of the supply does not exceed SGD400.

From a tax perspective, it would therefore be more beneficial for a consumer who intends to make a purchase whose value does not exceed SGD400 (as well as purchases that can be split into multiple transactions, each of which does not exceed SGD400) to do so from an overseas supplier online than from a local GST-registered supplier. This places local GST-registered suppliers making local supplies at a competitive disadvantage, and the problem is compounded by the fact that online shopping is fast gaining popularity, made possible by improvements in and lower entry barriers to technology.

Goods/Services Dichotomy

The change in consumption behaviour from traditional media formats to digital media also presents additional concerns. Since GST is chargeable only on supplies made in Singapore, it is important to

determine whether a supply is treated as a supply of goods or a supply of services as the place of supply rules for GST purposes differ for both types of supplies.

However, the mode of delivery for certain consumer items, such as music, books and software, can have an effect on the classification of a supply. Digitised products, such as digital downloads of music, books and software, are considered to be a supply of services, whereas the supply of such contents in a physical form (such as a CD or a paperback book) is generally considered to be a supply of goods. Virtual currencies and items purchased in online games are also considered to be a supply of services.

This again raises tax neutrality concerns. For a local supplier, a supply of digitised goods will only be zero-rated if it qualifies as a supply of international services under section 21(3) of the GST Act. This in turn depends on the belonging status of the recipient. The belonging status of an individual is generally determined by his place of residency.

The rules are slightly more complicated for companies. For companies with a business or fixed establishment in one country, the company is deemed to belong to that country. For companies with no business or fixed establishment in any country, the company belongs in its country of incorporation. Where the company has business or fixed establishments in more than one country, the company belongs to the country with the establishment most directly concerned with the supply of service.

In other words, a supply of digitised goods by a local supplier to a local consumer will attract GST at 7%. On the other hand, a supply of digitised goods by an overseas supplier to a local consumer will not be subject to any GST as the reverse charge regime is effectively suspended in Singapore. This again puts an overseas supplier in a better position than a local supplier in respect of supplies of digitised goods to local consumers.

International Developments

Increase in international trade has created an impetus to address uncertainty and risks of double taxation that arise from inconsistent application of indirect taxes to international trade. Moreover, as governments rely ever more heavily on indirect taxation as a source of revenue, there is political will to clamp down on unintended non-taxation. There has therefore been a number of developments on the international front in respect of consumption taxes.

The Organisation for Economic Co-operation and Development (OECD)'s Committee of Fiscal Affairs (CFA) is developing a set of International VAT/GST Guidelines (the Guidelines) to address such indirect taxation concerns relating to international trade, with an emphasis on trade in services and intangibles. The Guidelines are based on two core principles: (a) VAT/GST is a tax that should be neutral for businesses and passed on to the final consumer (that is, the neutrality principle), and (b) internationally-traded services and intangibles should be subject to VAT in their jurisdiction of consumption (that is, the destination principle).

In its latest draft of the Guidelines published in April 2014, CFA sets out the main rule that VAT/GST for internationally-traded services and intangibles should be collected in the jurisdiction where business use is deemed to occur, but also recognises that complications may arise when the consumer is in multiple locations.

CFA has considered a number of plausible alternatives to address such a situation. It also considered the possibility of specific rules (for example, relying on the supplier's location) instead of the main rule, but the use of such specific rules should be minimised and where used, should be supported by clear criteria. These rules should be evaluated using principles of neutrality, efficiency of compliance and administration, certainty and simplicity, effectiveness and fairness.

Two issues in relation to cross-border B2C supplies have also been considered by OECD as part of its Base Erosion and Profit Shifting (BEPS) Action Plan 1. The first relates to exemptions under domestic VAT/GST laws for imports of low-value goods. The issue is one of revenue leakage and competitive distortion against the administrative and compliance cost of collecting GST on low-value goods. In this regard, OECD recommends that tax administrators consider improving the efficiency of processing low-value imports and collecting VAT/GST, especially by requiring non-resident vendors of low-value parcels

to charge, collect and remit tax on imports of goods in the importing jurisdiction, coupled with simplified registration and compliance mechanism for suppliers.

The second issue relates to remote digital supplies to consumers. OECD recommends that non-resident suppliers should register and account for VAT/GST on supplies in the jurisdiction of the consumer. This can be facilitated by a simplified registration regime and online threshold. While recognising that there would be challenges in enforcing such collection, OECD considers that there is potential for international cooperation in this regard, for example, through the OECD Convention on Mutual Administrative Assistance in Tax Matters.

It is noted that jurisdictions such as the European Union and South Africa have already changed their indirect tax laws to be more in line with international standards.

The winds of change are set to continue.

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About SIATP's Authors Boost Clarity series

SIATP's Authors Boost Clarity (ABC) series is designed for accredited tax professionals to gain insights directly from the profession's thought leaders. By collaborating with key publishers, SIATP offers participants at each ABC session the opportunity to seek clarity and gain deeper insights from authors on tax topics they have authored. Over time, the ABC series contributes in boosting the overall tax standards in Singapore.

About Mr Irving Aw



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Dual qualified to practise in both New York and Singapore, Irving specialises in domestic and cross-border tax issues and tax dispute resolution. Prior to joining private practice, he was Principal Legal Officer with the Inland Revenue Authority of Singapore (IRAS), where he regularly advised IRAS on legal and tax policy matters and represented IRAS in tax appeals.

He then joined a top international firm where he advised clients on Singapore and cross-border tax issues, and represented clients in the areas of mergers and acquisitions and joint ventures and in the structuring and launching of private equity and hedge funds.

Irving obtained his LL.B. (Hons) from the London School of Economics and Political Science under the IRAS Undergraduate Scholarship where he was awarded the Hughes Parry Prize.

This technical event commentary is written by SIATP's Assistant Director, Joanna Wong.