

Indirect Tax News

KPMG Tax Services

April 2002

An Imminent Increase In GST Rate

Are You Prepared?

The Singapore Government implemented GST on 1 April 1994 as part of a restructuring of the overall tax system to shift towards lower direct taxes by introducing a broad based indirect tax on consumption.

At that time, the Singapore Government had announced that the GST rate of 3% would not be increased for at least 5 years and even then provided the government did not need more revenue. It was also announced that corporate and personal income taxes (direct tax) would reduce significantly to offset the additional revenue raised by the GST (indirect tax).

Since 1994, the Singapore economy has remained relatively healthy up till the turn of events arising from the September 11 incident in the US. Corporate and personal income tax rates have also reduced from 27% and a top marginal rate of 30% in Year of Assessment 1994, to 24.5% and a top marginal rate of 26% for Year of Assessment 2002. This is in line with the worldwide trend of falling corporate tax rates.

As direct tax rates continue to fall worldwide (with EU and OECD leading the way), it is likely that Singapore's direct tax rate will be reduced in order to remain competitive internationally. An increase in GST rate will make up for the revenue lost from lower direct taxes. Deputy Prime Minister Lee Hsien Loong signaled this in his speech in Parliament on 5 April 2002. We expect further announcements on 3 May when Mr Lee delivers the budget for fiscal year 2002/2003.

Corporate Tax Rates

	1 January 2001	1 January 2002
Australia	34%	30%
Canada	42.1%	38.6%
France	35.33%	34.33%
India	39.55%	35.7%
Ireland	20%	16%
Korea	30.8%	29.7%
Luxembourg	37.45%	30.38%
Switzerland	24.7%	24.5%

* extracted from KPMG's Corporate Tax Rates Survey - January 2002

Ask yourself

- Have you considered how you will account for GST during the transition period before the rate increases?
- Will your tax invoices be able to reflect the new rate?
- Have you informed your customers that the new rate of GST will be included in the price?

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With an increase in the GST rate, GST registered traders will have to work quickly to effect the change in their price display, point of sales and GST accounting systems. GST registered traders should review their present position in order to determine whether they will be able to cope with the change and will not be adversely affected by it. Further, GST registered traders should liaise with vendors of their accounting systems, point of sale systems and perhaps bar coding systems to ascertain the necessary amendments which must be made to effect the increase in rate and the amount of time the vendor would take to effect the amendments.

There are existing provisions in the GST Act that will take effect when an increase in GST rate occurs. To address concerns arising from the imminent increase in the rate, the following are possible issues for consideration.

- Pursuant to section 39 of the GST Act, only the date when goods are delivered/made available or services performed will trigger the time of supply⁽¹⁾ during the period after the announcement of the rate increase but before the new rate comes into effect. Output GST will have to be accounted for at the new rate on supplies of goods or services made on, or after, the effective date of rate increase. This means that payments received or tax invoices issued during the transition period will not trigger the time of supply.

The above rule is clearly an anti-tax avoidance measure, which prevents the time of supply from being brought forward to take advantage of the GST rate prior to the increase, by the issuance of a tax invoice or a receipt of payment.

(1) Under normal time of supply rules, a supply of goods or services is treated as taking place at the earliest of the following events:

- date when goods are delivered/made available or date when services are performed;
- date when tax invoice is issued;
- date when payment is received.

- Other issues to consider include whether tax invoices issued will be able to reflect the new rate and also whether credit notes issued after the rate increase will be able to reflect an adjustment to the GST amount based on the old rate.
- Having regard to the provisions of section 40⁽²⁾ of the GST Act, it would be appropriate for a GST registered trader to review his existing contracts to determine whether there is a need to renegotiate the terms. Subject to commercial and business constraints, it is important that a GST registered trader is not precluded from charging GST at the increased rate so that he will not be required to bear the cost of the increase in rate, if applicable. In addition, particular attention should be paid to contracts with overseas customers who are not GST registered, since such customers may be reluctant to pay GST at the increased rate as they will not be able to recover the GST charged.

Whilst section 40 confers a right to the supplier to adjust the agreed price in the contract, it was held in the case of *Tropical Properties & Trading Pte Ltd v. Suganung Tasani*, which was heard before the High Court, that the supplier must make an election whether to add the GST to the price of the goods or services supplied. In that case, a supplier had sought to add GST to the agreed price of a commercial property after the completion of the sale of property in June 1994. The option to purchase, which was granted and exercised in March 1994, did not mention GST. It was held that as the supplier had failed to inform the purchaser that they would be adding GST to the purchase price before the transaction was concluded, the supplier cannot be entitled to claim payment of GST from the defendant.

GST registered traders should therefore remember to promptly inform customers that the new rate of GST will be included in the price.

(2) If a contract for the supply of goods or services is entered into before the announcement of the rate increase, section 40 of the GST Act allows the supplier to add the increase in rate to the agreed price in the contract provided that:

- the goods or services are not supplied before the effective date of the rate change; and
- the contract does not expressly provide for the exclusion of any such change in the tax charged or the contract has already taken the change in tax into account.



Adoption of EU VAT Directive on Electronic Commerce

In our first issue of Indirect Tax News (July 2000), we had highlighted the announcement by the European Commission on a proposal for a Directive to modify the VAT treatment of electronically delivered services⁽³⁾ in June 2000. On 12 February 2002, the Council of Ministers gave its political agreement to the proposal for a Directive, with amendments through discussions with Member States.

The Directive is intended to put non-EU suppliers of electronically delivered services on a level playing field with EU suppliers. Without the directive, non-EU suppliers will be able to supply such services to non-taxable persons in the EU market without levying VAT, whilst EU suppliers will have to charge VAT on their supplies.

Under the Directive, the place of supply of the above services is treated as the place where the customer belongs instead of where the supplier belongs under normal VAT rules. This will be the customer's business or fixed place of establishment to which the service is supplied or, in the absence, the customer's usual place of residence. The effect of the change in the place of supply rules is that electronically delivered services will be subject to EU VAT when supplied for consumption within the EU whilst electronically delivered services which are supplied for consumption outside the EU will not be subject to EU VAT, regardless of whether it is supplied by an EU supplier or a non-EU supplier.

The Directive will apply to supplies from businesses to consumers (B2C) and not business to business (B2B) supplies because supplies made by non-EU suppliers to taxable persons (i.e. VAT-registered persons) will continue to be accounted for by the latter by way of a reverse charge.

Impact of Directive

The Directive requires that all EU member states enact legislation to effect the above and establish a special scheme by **1 July 2003**. The scheme is intended to be a special simplified registration scheme where it will be easier for non-EU suppliers of electronically delivered services to comply with their administrative obligations

as VAT-registered persons as compared to present rules for non-resident businesses. For example, registration and filing of VAT returns can be performed on-line.

Under the scheme, non-EU suppliers of electronically delivered services will have to register for VAT if the value of the services provided to consumers in the EU exceed 100,000 (approximately S\$160,000). Registration is optional if the supplies do not exceed the registration threshold of 100,000.

Non-EU suppliers can register in an EU member state of their choice. Once VAT registered, non-EU suppliers will have to determine where each customer is located and charge the corresponding VAT rate. EU suppliers will however continue to charge VAT based on the prevailing rate in their own member state.

Once non-EU suppliers are VAT registered they will, however, be able to recover the VAT (if any) incurred on their business purchases and expenses relating to the provision of the said services.

Further developments on this scheme will be published in subsequent issues of Indirect Tax News as and when they are made known.

(3) *The supplies which will be affected by the Directive are listed below:*

- *Radio and television broadcasting services*
- *Electronically supplied services as follows:*
 - *website supply, web hosting, distance maintenance of programmes and equipment;*
 - *supply of software and updating thereof;*
 - *supply of images, text and information and making databases available;*
 - *supply of music, films and games, including games of chance and gambling games and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events; and*
 - *supply of distance teaching.*



Valuation of Imports

It was reported in the media recently that Customs are conducting audits on parallel car importers. Based on the media reports, it is likely that the audits were triggered as a result of suspicions of under-declaration of import costs. This is reminiscent of similar audits carried out by Customs from 1997 to 2000 where Customs had recovered more than \$34m in import duties and GST as a result of under-valuation of car import prices.

Motor vehicles are subject to duty and GST upon importation into Singapore. Ad-valorem duty of 31% is levied on the Customs assessed open market value. Generally, the Customs assessed open market value is based on the "normal price", freight, insurance, commission, royalty, agency uplift (excluding genuine cash and quantity discounts), handling and all other charges incidental to the sale and delivery of the vehicle in Singapore to the buyer prior to duty point.

GST is levied at 3% on the CIF value (cost, insurance and freight) plus the duty payable⁽⁴⁾. If there is no price payable for the goods, or if the price paid is not the only consideration, the GST payable is determined based on the open market value of the goods plus other incidental costs like freight, insurance and duty.

Businesses should declare the correct value of imports and adopt the correct valuation model. In the event of a Customs audit and it is ascertained that the value of imports is under-declared, Customs will not only seek to recover the additional duty and GST payable and may also impose penalties.

(4) It is understood that Customs adopts the Brussels Definition of Value (BDV) method of assessing the open market value for motor cars. The BDV model is different from the GATT Customs Valuation Code (CVC). GST is computed based on the CVC model.



Indirect Tax Practice

KPMG Tax Services has a full time dedicated indirect tax team comprising professionals who have accumulated extensive experiences in the area of indirect taxes. Our services include:

- GST prudential reviews
- Preparation of customised procedures manual
- Customised in-house training for clients
- GST return preparation
- GST consultation, including interpretation of GST legislation, assistance in responding to queries from the IRAS, assistance in application for GST schemes like group registration
- Advisory on customs matters

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We endeavour to discuss current legal, regulatory, business development and tax-related issues. All information provided here is of a general nature.

No one should act upon it without appropriate professional advice.

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