GST on E-Commerce

Knowing The Rules And Issues Arising From E-Commerce

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A decade ago, purchasing groceries online was hardly ever heard of. Today, it has become mainstream and it is not limited to only groceries – consumers are shopping online for everything and this trend of online shopping is here to stay.

Before the COVID-19 pandemic struck, e-commerce was already growing rapidly. The pandemic truly turbocharged this growth as COVID-19 restrictions drove even more consumers online and converted a good chunk of offline shoppers to online shoppers. E-commerce looks set to further proliferate, with Southeast Asia's e-commerce gross merchandise value expected to nearly double to US$254 billion in five years, from US$132 billion forecast in 2021[1].

Sharing his insights on what the e-commerce boom would entail from an indirect tax perspective was Accredited Tax Advisor (GST) Richard Mackender, Indirect Tax Leader, Deloitte Singapore and South-east Asia, in a webinar organised by the Singapore Chartered Tax Professionals. "With tax authorities, particularly in the Asia-Pacific region, introducing unilateral measures to tax e-commerce, it is vital that businesses stay on top of their tax obligations in the countries they are exposed to," he highlighted.

TAX CHALLENGES IN THE DIGITAL ECONOMY

The booming digital economy has created challenges for GST/VAT regimes worldwide.
An ongoing challenge that tax authorities face is defining the scope of what should be taxable and keeping up with the ever-changing technology, such that their indirect tax legislations and definitions are capable of capturing the new aspects arising from the technology. Another challenge faced by tax authorities is simply ensuring that suppliers are aware of their tax obligations and are complying with them.

FRAMEWORK FOR TAXING THE DIGITAL ECONOMY

To address such tax challenges arising from the digital economy, the Organisation for Economic Co-operation and Development (OECD) has published a series of guidance papers on how countries can redesign their tax regimes in relation to e-commerce transactions. Essentially, the OECD laid out the basic principle that tax for cross-border transactions should ultimately be levied in the jurisdiction where the final consumption occurs. Singapore has also adopted, in some ways, the OECD's recommendations in taxing the digital economy.

[1] Prisca Ang. (31 Aug 2021). E-commerce sales in Singapore forecast to hit $13.4 billion by 2026. *The Straits Times*. https://www.straitstimes.com

B2B SERVICES

The OECD endorses that the place of taxation for business-to-business (B2B) service transactions is where the customer is located. For such services, the reverse charge mechanism, where the service recipient (instead of the service provider) is liable to account for any GST to the local administration, is recommended, as it removes the need for offshore suppliers to register and account for GST in the various countries that they may sell into.

B2C SERVICES

For business-to-consumer (B2C) service transactions, the OECD advocates that the place of taxation is where the services are physically performed (for example, hairdressing services). For remote/other supplies which are not consumed on the spot (for example, e-services), the place of taxation should be where the customer has his usual residence. If the supply of services is directly connected with an immovable property (for example, a building), the place of taxation should be where the immovable property is located.

For such offshore B2C services, the OECD recommends the use of a simplified registration and compliance regime, where the foreign supplier registers and accounts for GST in the jurisdiction where the consumer resides.

SINGAPORE'S APPROACH IN TAXING THE DIGITAL ECONOMY

Broadly, the same GST rules apply for supplies of goods or services made in Singapore regardless of whether they were made via the Internet or an electronic network (including electronic marketplaces) or through traditional means.

SUPPLY OF CROSS-BORDER GOODS

Where a local GST-registered business supplies goods over the Internet or an electronic network, the supply attracts GST if the goods are delivered locally to customers in Singapore. This is unless the goods are exported (with relevant export documentation retained) and zero rating (where GST is charged at 0%) applies.

Goods imported into Singapore are also subjected to GST (if not under any tax suspension schemes), except for LVGs. LVGs refer to goods that are supplied via post or air, not being dutiable goods or where duty is waived, and with a value of less than S$400.

This is set to change from 1 January 2023 when the overseas vendor registration (OVR) regime is extended to tax B2C supplies of LVG. An overseas supplier of LVGs via air or post to customers in Singapore would then be required to charge and account for GST on the value of LVG goods supplied to non-GST registered customers in Singapore, if it is required to be GST-registered in Singapore under the OVR regime.

SUPPLY OF CROSS-BORDER SERVICES

A supply of services, including digital services, supplied over the Internet or an electronic network by a local GST-registered supplier to customers in Singapore would attract GST, unless they qualify for zero rating as international services under Section 21(3) of the GST Act (for example, the sale of air tickets).

OVR REGIME

Since 1 January 2020, under the OVR regime, any supplier belonging outside Singapore that has an annual global turnover exceeding S$1 million and making supplies of digital services to customers in Singapore exceeding S$100,000 is required to register, charge and account for GST. Registration is also required if the overseas 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 digital services made through its platform, on behalf of overseas suppliers, and be required to register, charge and account for GST on these supplies.

The scope of digital services includes supplies of digital products, subscription-based and licensed content, as well as support services via electronic means, but excludes cross-border telecommunications, advertising on intangible media circulated wholly outside Singapore, and professional services even if delivered electronically.

Effective 1 January 2023, the OVR regime will be expanded to include remote non-digital services on top of digital services. Non-digital services are services not within the definition of digital services that can be supplied and received remotely.

With the expanded scope, a provider of remote non-digital services (such as professional services and personal services) must also account for GST on the services provided to customers in Singapore, if it is required to be GST-registered in Singapore under the OVR regime.

REVERSE CHARGE MECHANISM

Since 1 January 2020, a GST-registered business that is subject to reverse charge ("RC business") is required to account for GST on the value of his imported services as if he were the supplier, to the extent the imported services fall within the scope of reverse charge. The business would then claim the corresponding GST as input tax, subject to normal input tax recovery rules.

An RC business is either a GST-registered partially exempt business that is not entitled to full input tax credit or a GST-registered charity or voluntary welfare organisation that receives non-business receipts.

PRACTICAL ISSUES FACED ON ELECTRONIC SUPPLIED SERVICES AND HOW TO MANAGE THEM

DETERMINING WHETHER A SUPPLY IS A B2B SUPPLY OR B2C SUPPLY

Under the OVR regime, overseas suppliers are required to treat the services as supplied to a non-GST registered customer and charge and account for GST on their supplies. This is unless the customer provides his GST registration number. Operationally, this would mean that overseas suppliers must have the necessary processes in place to capture their customer's GST registration details and status in order to determine whether a supply is a B2B supply or B2C supply, and accordingly, whether GST needs to be charged at the outset.

DETERMINING BELONGING STATUS OF CUSTOMERS

A key issue for overseas suppliers is determining whether a customer belongs in Singapore and accordingly, whether they are required to charge GST on the supplies of services. Overseas suppliers must therefore examine indicators to determine if a customer belongs in Singapore. Generally, a business belongs in Singapore if it has a business establishment or fixed establishment in Singapore, while an individual would belong in Singapore if his usual place of residence is in Singapore.

As such, overseas suppliers should ensure their systems can capture information that indicates the belonging status of the customer (for example, residential address or IP address), by ensuring that customers declare their belonging status during the order or checkout process.

DETERMINING REGISTRATION REQUIREMENT

Overseas suppliers would have to consider their liability to register for GST on their supply of B2C digital services (including supply of non-digital services and LVGs starting from 1 January 2023) in the countries in which sales of such services were made. A good first step would be to identify and segregate customers that belong in each country and evaluate whether digital services provided to these customers fall within the definition of digital services defined by the local tax authority.

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

WHAT'S NEXT?

With the impending imposition of GST on LVG and B2C supplies of non-digital services, it is imperative that businesses start to get ready and put in place the necessary processes and systems to comply with any new rules.

Overseas suppliers would need to review their treatment of their supplies of goods and services to Singapore B2C customers, while suppliers of remote services and goods need to be ready to register, charge and collect GST. Finally, businesses must keep a close watch on the tax developments in the markets they sell to.

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