BAKER & MCKENZIE

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BAKER & MCKENZIE

The Intersection of BEPS and Indirect Taxes

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Overview

Discussion Topics

- **Part I: BEPS and Indirect Taxes**
  - Is it really smooth sailing for indirect taxes and industries impacted?
- **Part II: Key Developments**
  - Country updates
- **Part III: Impact to the Business**
  - Concluding thoughts on what businesses you need to do

Part I:
BEPS and Indirect Taxes

The Digital Economy

- Ability of companies to have a significant digital presence in a country without a physical presence
- Difficulty of determining where value creation occurs, given the digital economy's reliance on intangibles
- According to the OECD, the digital economy does not generate unique BEPS issues, but its key features exacerbate BEPS risks.
- For VAT/GST purposes, the digital economy creates challenges for the collection of VAT/GST, particularly where goods, services and intangibles are acquired by private consumers or VAT/GST exempt taxable persons, from suppliers abroad.

Digital Economy and Digital Developments; <u>The internet of things:</u> the ability to connect any device or object over time to a network of networks.

…Digital Economy and Digital Developments

Virtual Currencies

VAT / GST qualification?

Streaming of movies?

How do you determine where the service is "consumed" ? What proxy will be used to determine location of the "customer" (e.g. IP address, bank details?)

Sharing Economy (P2P)

- How to tax and how to comply with compliance issues?
- VAT / GST consequences P2P networks and transactions?

Integration of internet into medical services

- Composite transactions?

(e.g. supply of medical device with an add-on of electronic services?)

E-Books and E-commerce supplies

- Role of the neutrality principle with domestic suppliers?

Electronic Commerce

- E-commerce defined as “the sale or puchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders” (OECD, 2011)
- Three main models:
  - Business-to-business (“**B2B**”) transactions
  - Business-to-consumer (“**B2C**”) transactions
  - Consumer-to-consumer (“**C2C**”) transactions

Part II:
Key Developments

Recent Developments

Date	Event
18 December 2014	OECD releases draft guidelines on the “place of taxation for B2C supplies of Services and Intangibles”, where it recommended the adoption of the “Destination Principle”.
1 January 2015	EU implements VAT changes for B2C e-commerce transactions.
1 October 2015	Japan’s consumption tax is amended to apply to certain inbound e-commerce supplies.
5 October 2015	OECD releases final report on “Addressing the Tax Challenges of the Digital Economy”.

OECD
BETTER POLICIES FOR BETTER LIVES

Recent Developments (cont'd)

Date	Event
6 November 2015	OECD publishes its consolidated "International VAT/GST Guidelines", where it recommended the adoption of the "Destination Principle".
24 March 2016	China issues rules effective on 8 April 2016 to levy VAT and consumption tax (if applicable) to cross-border e-commerce supplies of tangible goods, with per transaction threshold of RMB 2000 or annual threshold of RMB 20,000. Replaces the so-called "postal tax" that was previously applied to B2C supply of goods.
3-5 May 2016	Australia: Amendment to legislation passed and received royal assent. Subjects cross-border digital e-commerce supplies to GST (B2C only). Effective from 1 July 2017. Australia also announces the removal of the low value import threshold for goods (e.g. goods sold by non-resident e-tailers to consumers will be subject to GST). Effective from 1 July 2017.
10 May 2016	New Zealand: Passes GST changes taxing B2C cross-border digital e-commerce supplies by non-residents. Effective from 1 October 2016.

Indirect Taxes in the Asia-Pacific Region

Country	Indirect tax	Rate	Specific rules targeting e-commerce?	Other comments
Australia	GST	10%	Yes – from 1 July 2017	Legislation targeting intangible e-commerce supplies has been passed. Changes have also been proposed to impose GST on all consumer goods sold into Australia irrespective of value.
China	VAT	3%, 6%, 11%, 17%	Yes, from 8 April 2016 (for tangible goods)	China also has Consumption Tax on luxury goods. China is expected to create rules to tax cross-border B2C transactions in digital goods and services within 1-2 years.
Hong Kong	-	-	-	
Indonesia	VAT	10%	No	Note that new OTT regulations proposed mean that OTT suppliers may need to establish a local presence to make supplies to Indonesian consumers.
Japan	Consumption Tax	8% (expected to increase to 10% wef 1 April 2017)	Yes	Japanese CT is collected via the subtraction method (rather than the invoice-credit method)
Malaysia	GST	6%	No	
Myanmar	Commercial Tax	5%-100% (goods) 5% (services)	No	

Indirect Taxes in the Asia-Pacific Region (cont'd)

Country	Indirect tax	Rate	Specific rules targeting e-commerce?	Other comments
New Zealand	GST	15%	Yes – from 1 October 2016	Legislation targeting intangible e-commerce supplies has been passed.
Philippines	VAT	12%	No	
Singapore	GST	7%	No	
Taiwan	Business tax (consists of VAT and GBRT)	5% (VAT) 0.1%-25% (GBRT)	No	Proposal to change VAT rules to tax cross-border digital services under discussion at MOF level.
Thailand	VAT	7%	No	
Vietnam	VAT	5%, 10%	No	VAT assessed on payments to offshore entities for purchase of services is collected through withholding mechanism when the customers are business entities or business individuals.

Netherlands/EU

BEPS and VAT

VAT on Cross-Border Transactions

- The destination principle has been widely accepted for applying VAT to international trade
- VAT systems are experiencing difficulties with determining where services are being consumed. Common approaches of jurisdictions are:
  - services are taxable in the jurisdiction where the customer resides; and
  - services are taxable in the jurisdiction where the supplier is established.
- Countries aim to implement a destination based approach for both B2B and B2C

VAT Challenges of the Digital Economy

- Collection of VAT in the digital economy is a major VAT challenge.
- The OECD elaborated on two types of issues in this regard:
  - **Importation of low value goods:** Suppliers moving to offshore jurisdiction to make use of low value import exemption implemented by jurisdictions, resulting in a decrease in VAT revenue and unfair competition to domestic retailers
  - **Remote B2C digital supplies:** Suppliers unwillingness to register in the country of residence of the customer (destination) of the service, leading to a limited means of enforcing compliance by a non-established (resident) company for the relevant jurisdiction and resulting in a decrease in VAT revenue and unfair competition to domestic suppliers

The OECD Suggestions to VAT Challenges of the Digital Economy

- Regarding the collection of VAT, ESS guidance can be found in the international VAT/GST guidelines published by the OECD
- The Guidelines were developed as a future global standard to address issues of double taxation and unintended non-taxation resulting from inconsistencies in the application of VAT to international trade
- The scope of the Guidelines is not limited to the trade of digital products and covers trade in services and intangibles more generally
- The Guidelines present a separate solution for business-to-business trade (B2B) and business-to-consumer (B2C) trade, recognizing that VAT systems often employ different mechanisms to collect the tax for these categories of transactions
- Regarding collection of VAT for B2C ESS, the guidelines state that at the present time, the most effective and efficient approach to ensure the appropriate collection of VAT on cross-border B2C supplies is to require the non-resident supplier to register and account for VAT in the jurisdiction of taxation (simplified compliance requirements are suggested by the OECD)

The OECD Suggestions to VAT Challenges of the Digital Economy (cont'd)

- Guidelines regarding the collection of VAT on imports of low value of goods are **not** available yet.
- The OECD did publish a report assessing the options for governments to consider ways to effectively collect VAT in case of cross-border supplies (it does not provide guidelines or recommendations). In this report the OECD elaborates on 4 models:
  1. traditional collecting model: VAT is assessed at the border for each imported low value good individually
  2. purchaser collecting model: VAT is self-assessed by the purchaser
  3. vendor collecting model: non-resident vendors to charge, collect and remit the VAT in the country of importation
  4. intermediary collection model: VAT on imports of low value goods would be collected and remitted by intermediaries on behalf of non-resident vendors

ESS Around the Globe

Taxation of ESS

- How can I minimize my taxes?
- How can I minimize my VAT compliance obligations?

"Electronic Commerce"

Distinction:

- Indirect E-commerce: goods / services are ordered on-line (e.g. Internet), <u>actual delivery off-line</u>
- Direct E-commerce (i.e. Electronically Supplied Services or "ESS"): "virtual" goods / services are supplied in digitized form (e.g. music, software, books, etc.) <u>actual delivery online</u>

Countries Already Dealing with B2C ESS VAT Implications

- More and more countries are implementing specific VAT regulations dealing with B2C ESS VAT implications
- Regulations do however differ in scope, *e.g.* applicable for B2B and/or B2C and the type of services

B2C ESS VAT Regulation Around the Globe

#	Country / Continent	Status Regulation	Scope (B2C/B2B)	Definition Electronically Supplied Services ("ESS")	VAT / GST Rate
1	**Albania**	January 1, 2015	B2C supplies	Services which are delivered over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology	20%
2	**Australia**	July 1, 2017 (expected)	B2C supplies	TBD	10%
3	**Bahamas**	January 1, 2015	B2C and B2B supplies	Telecommunications services or electronic commerce by a person domiciled outside the Bahamas for use, enjoyment, benefit or advantage of persons within the Bahamas	7,50%
4	**Canada**	TBD	TBD	TBD	5% + additional provincial tax (max. 10%)

...B2C ESS VAT Regulation Around the Globe

#	Country / Continent	Status Regulation	Scope (B2C/B2B)	Definition Electronically Supplied Services ("ESS")	VAT / GST Rate
5	EU	January 1, 2015 (for EU based service suppliers) Non-EU based service providers as of 1 July 2003 (for B2C ESS)	B2C supplies	Services which are delivered over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology	Depends on the EU Member State
6	Ghana	TBD (legislation already exists)	B2C supplies	Business transactions that take place through the electronic transmission of data over communications networks like the internet	15%
7	Iceland	November, 2011	B2C supplies	Services that are normally provided in return for payment, from a distance, by electronic means, at the request of the recipient of the service. Please note that tax legislation is only available in Icelandic	24%
8	India		TBD	TBD	TBD

...B2C ESS VAT Regulation Around the Globe

#	Country / Continent	Status Regulation	Scope (B2C/B2B)	Definition Electronically Supplied Services ("ESS")	VAT / GST Rate
9	**Israel**	April 2, 2015 (draft Regulation)	B2C supplies	A foreign company that operates a website providing advertising or intermediary services to Israeli aimed at the Israeli market will be required to register for VAT, and its income from Israeli customers may be subject to VAT payments	17%
10	**Japan**	October 1, 2015	B2C supplies	Services via electric or telecommunication networks, such as the electronic delivery of e-books, music, internet advertisements; licensing of the use of copyrighted works	8%
11	**Kenya**	September 2, 2013	B2C supplies	Services which are provided or delivered on or through a telecommunications network. Kenya has introduced a limitative list of services that count as ESS. No further definition has been provided	16%
12	**Korea (South)**	July 1, 2015	B2C and B2B supplies	The supply of: (1) game, audio, video files, electronic documents or software, or similar items that are processed by optical or electronic means and produced or modified in the form of codes, letters, audio, and video, and any similar items; and (2) the upgrade of such electronic service	10%

...B2C ESS VAT Regulation Around the Globe

#	Country / Continent	Status Regulation	Scope (B2C/B2B)	Definition Electronically Supplied Services ("ESS")	VAT / GST Rate
13	**New Zealand**	October 1, 2016	B2C supplies		15%
14	**Norway**	July 1, 2011	B2C supplies	Services capable of delivery from a remote location which are supplied over the internet or other electronic network and which cannot be obtained without the use of information technology, and where delivery of the services is essentially automated	25%
15	**Russia**	January 1, 2017	TBD	TBD	TBD
16	**Tanzania**	TBD	B2C supplies	TBD	TBD
17	**Turkey**	TBD	B2C supplies	TBD	18%

...B2C ESS VAT Regulation Around the Globe

#	Country / Continent	Status Regulation	Scope (B2C/B2B)	Definition Electronically Supplied Services ("ESS")	VAT / GST Rate
18	**South Africa**	July 1, 2014	B2C and B2B supplies	Educational services; Games and games of chance; Internet-based auction services; The supply of e-books, audio visual content, still images and music; Subscription services to any blog, journal, magazine, newspaper, games, internet-based auction service, periodical publication, social networking service, webcast, webinar, website, web application and web series	14%
19	**Switzerland**	January 1, 2010	B2C and B2B supplies	Swiss legislation did not introduce any general definition of ESS	8%

ESS and EU VAT

What are Electronically Supplied Services?

– What is TBE? **(1) Telecommunications**; **(2) Broadcasting** ; and **(3) Electronic services** (Arts. 6a, 6b, 7 and Annex I of Regulation 282/11 – Non-Exhaustive Positive List)

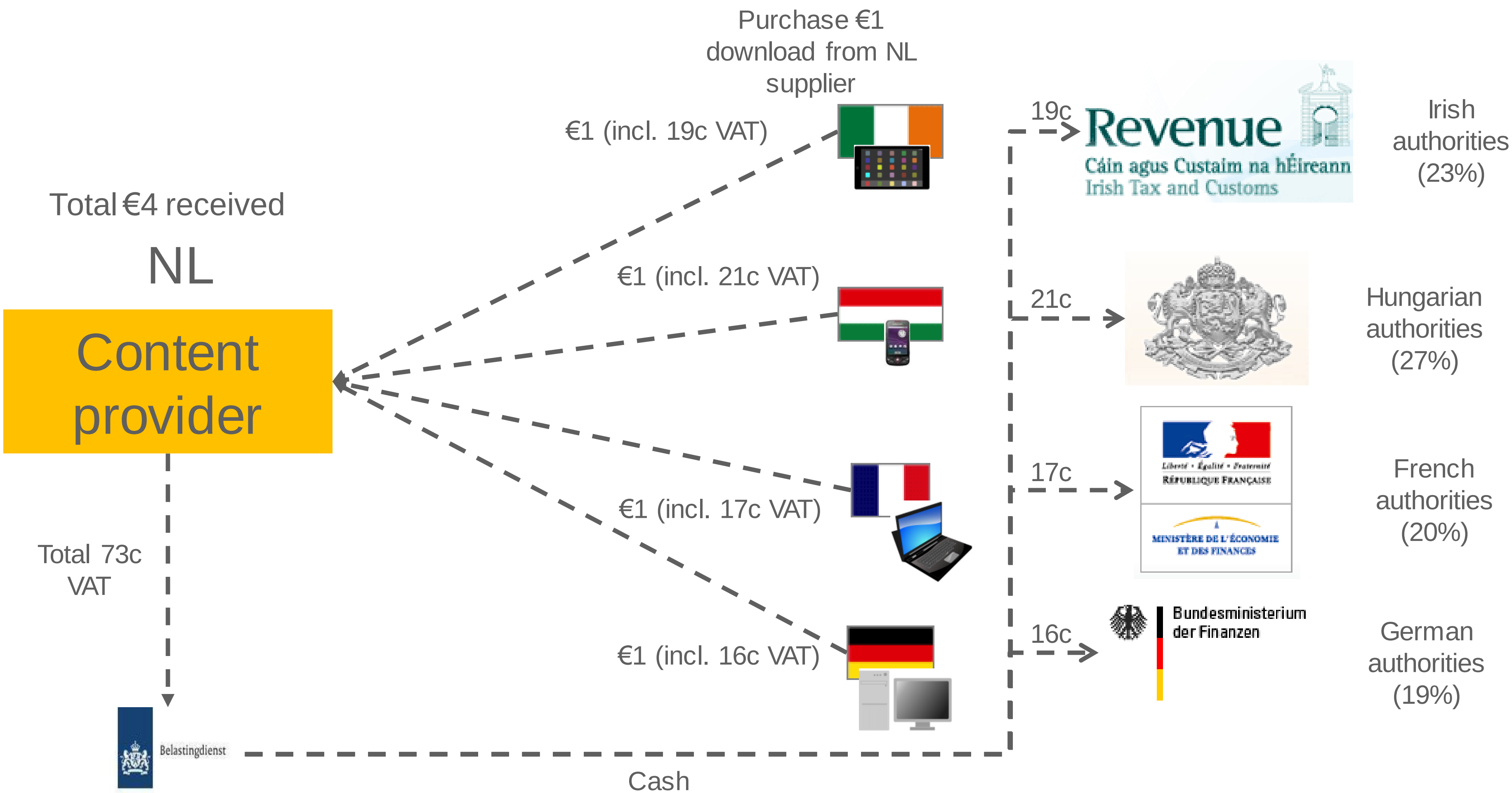
(1) Telecommunications - Fixed and mobile phone; VoIP; fax; internet access; private network connections; etc…

(2) Broadcasting - Radio and TV programs distributed on radio, TV or internet network; etc…

(3) Electronic - Supplies delivered at internet or an electronic network, essentially automated and that involve minimal human intervention, such as:

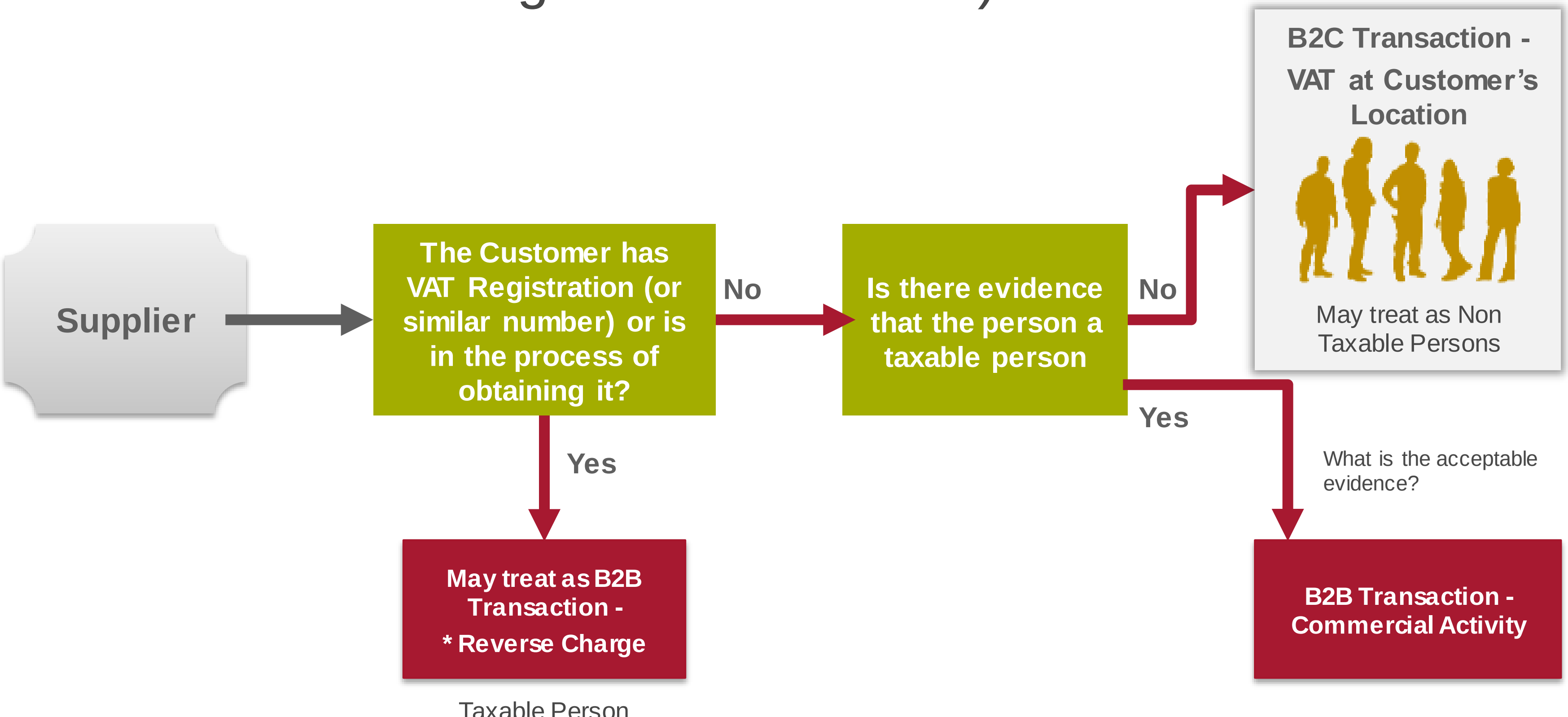
- Website supply, web-hosting, distance maintenance of programs and equipment;
- Supply of software and updating thereof;
- Supply of images, text and information and making available of databases;
- Supply of music, ringtones, jingles, films and games;
- Online Data warehousing;
- Online supply of on-demand disk space;
- Digitalized content of books and other electronic publications;
- Subscription to Online newspaper and journal;
- Online information generated automatically;
- Banner ads; and
- Automated distance teaching.

Illustration



Evidency Customer Status (Capacity)

– Taxable or Non-Taxable Person Identification (Arts. 18 and 19 of EU Regulation 282/2011)



* Unless evidence to the contrary

Location of Customer

Supply to Non-Taxable Persons

- **Non-Taxable Person (Recipient)** (Art. 19 EU Regulation 282/11): “Person, who receives service exclusively for private use, including use by his staff”
- **Place of Taxable Transaction** (Art. 58 VAT Directive in force from January 2015)
  - Permanent Address: Address entered in the population or similar register or the address informed to tax authorities, unless if there are evidences that it does not reflect reality (Art. 12 of EU Regulation 282/11)
  - Usual Residence: Where that natural person usually lives as a result of personal and occupational ties, preferring the personal ties if there is any doubt (art. 13 of EU Regulation 282/11)
  - Person established/permanent address in more than one country: For non-taxable legal person, the place where the central functions are carried out, and for natural person, the place where he usually resides (Art. 24 of EU Regulation 282/11)
- **Place of Taxable Transaction** (Arts. 20 and 23 of EU Regulation 282/11)
  - Definition based on factual information provided by the customer
  - Verification by normal commercial security measures, such as identity and payment checks documents
  - Reliability x Liability?

Location of Customer (cont'd)

Non-Taxable Person (B2C) - Place of Taxable Transaction (Arts. 24a and 24b of EU Regulation 282/2011)

- Presumptions
  - Rebuttable on the basis of three non-contradictory evidences; rebuttal is optional
- Certain Specific Presumptions: for permanent address or usual residence [customer physical presence needed]:
  - Telephone Box or Telephone Kiosk
  - Wi-Fi Hot Spot (Pre-paid services that can be used everywhere are not covered by this presumption)
  - Internet Café
  - Restaurant
  - Hotel Lobby
  - If the supply is provided on-board of a ship, aircraft or train carrying a passenger, the location will be the country of the departure of the passenger, if the transport is carried within the Community

Location of Customer (cont'd)

Non-Taxable Person - Place of Taxable Transaction (Arts. 24b.d, 24e and 24f of EU Regulation 282/2011)

- General Presumption - Two items of non-contradictory evidence (non-exhaustive list):
- Billing Address of the Customer (electronic address and PO Box not sufficient [Planzer])
- IP Address of the device or any method of geolocation;
- Bank Details (location of the bank account or customer's billing address held by the Bank);
- Mobile Country Code of the SIM Card used by the Customer;
- Location of the fixed landline;
  - Other commercially relevant information (e.g.: unique payment mechanism; consumer trading history; gift card point of sale; customer self-certification; Documentation of third-party payment service providers; etc.)
- Verifications made by third parties does not relieve the supplier of responsibility in case of misuse or abuse
- The Explanatory Notes of the EU Commission provides that "the tax administration will be able to contest the supplier's assessment only in the case there are indications of misuse or abuse by the latter"

Explanatory Notes ESS 2015

(3 April 2014)

- Who is responsible for paying VAT? Who is the supplier to the final consumer?
- Intermediary (Art 9A Regulation):
  - Marketplace for electronically supplied services
  - Content owner, aggregator, portal, app store
  - Electronic services through a network, interface or portal (e.g.) are deemed to be supplied to and subsequently sold by intermediary (i.e. commissionaire)

Explanatory Notes ESS 2015 (cont'd)

(3 April 2014)

- Supplier of ESS owes EU VAT
- Intermediary presumed to be a reseller and owe VAT (rebuttable presumption)
- Presumption can be rebutted:
  - If service provider is explicitly indicated as the ESS supplier, which means: a sufficiently clear invoice/receipt/bill, <u>and</u> no authorization of charge to the customer, <u>and</u> no authorization of the supply of content, <u>and</u> no setting of T&C's of the supply and this must reflect both the contractual arrangements and economic reality
- Not payment processor or internet provider

Indicators as to When a Party is Taking Part in the Supply of ESS

- Indicators as to when a party is taking part in the supply of ESS
- Owning or managing the technical platform over which the services are delivered;
- Being responsible for the actual delivery
- Being responsible for collecting payment unless the only involvement of the taxable person is the processing of payment
- Controlling or exerting influence over the pricing
- Being the one legally required to issue a VAT invoice, receipt or bill to the end user in respect of the supply
- Providing customer care or support in relation to queries about or problems with the service itself
- Exerting control or influence over the presentation and format of the virtual market place (such as app stores or websites) such that the brand and identity of the taxable person are significantly more prominent than those of other persons involved in the supply
- Having legal obligations or liabilities in relation to the service provided
- Owning the customer data related to the supply in question
- Being in a position to credit a sale without the supplier's permission or prior approval in cases where the supply was not properly received

Australia

Australia – GST low value threshold…current

Goods sold online = < AUD $1,000

Offshore co
(Not GST-registered)

Offshore

Australia

No GST

No customs duty

No requirement for Offshore co to register for GST

Australian customer

But not for long…..

Gerry Harvey dismisses talk GST too costly to collect on overseas purchases

July 22, 2015

Catie Low

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"If there is a problem with the competitiveness of Australian retail w
less competitive."

GST-free shopping 'totally unfair': Gerry Harvey

November 26, 2013 Comments 267 Read later

Georgia Wilkins

Business reporter

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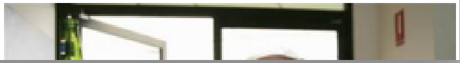
Australia's leaders agree to end GST-free online goods

By Allie Coyne
Jul 23 2015

Gerry Harvey may finally get his way.



Australia first to take action on low value goods…..

New Zealand next to follow suit?

Australia’s Response

– Remove threshold entirely
– GST at 10% on **all** goods irrespective of value
– Offshore vendor registration & collection model
– 1 July 2017

Other GST Changes … B2C Intangibles

A supply of “**anything other than goods or real property**” to an **Australian consumer**

Streaming (music, movies

Software

Games

Services

Start Date: 1 July 2017

Impact on Foreign Suppliers

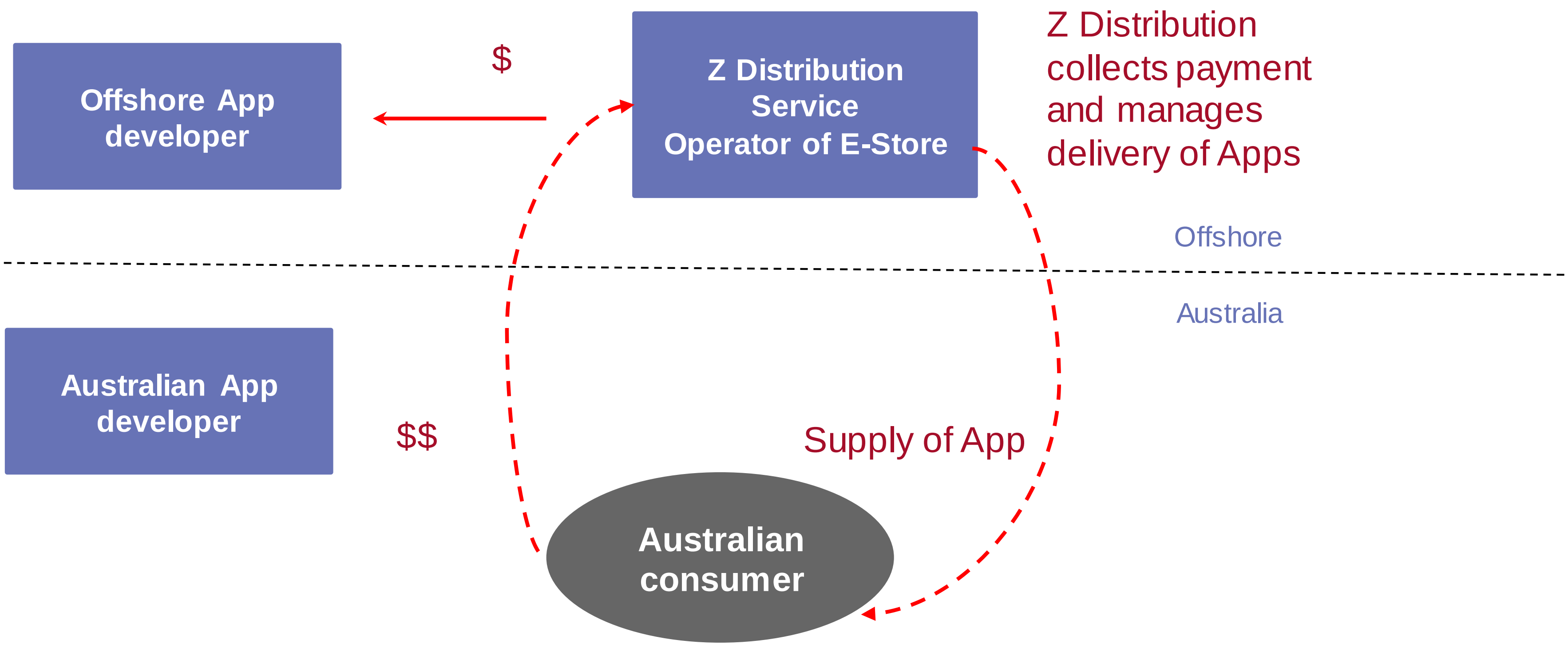
- Foreign company to register for GST and remit GST to ATO (reporting and disclosure obligation)

- Must take reasonable steps to identify an “Australian consumer”

- No tax invoices required

- Marketplace rules

Operator of Marketplace Liable



What about Australian App developer making sale through E-Store?

Japan

Collection of JCT on Low Value Imports

- Japanese Consumption Tax (“JCT”) is imposed at a flat 8% on goods to be imported
- *De Minimis* exemption applies for goods with value of JPY 10,000 or less
  - Exemption does not apply to goods that "have an impact on industries in Japan", thus the import of leather goods, knit goods, shoes, etc. are subject to JCT
- Blanket import JCT exemption also exists for certain categories of items

Cross-Border Supply of Goods and Services

- No JCT registration *per se*; if you have taxable transactions, you must file a return and pay the tax
  - "Small business exception" does exist – If a taxpayer does not have JPY 10M in taxable sales in the fiscal year two years before the current fiscal year (the "base period"), it does not need to file returns and pay JCT to the government
  - New corporations have no base period, thus can take advantage of the exception
  - Large corpations and their subs not eligible
- B2B and B2C transactions treated in the same way

Cross-Border Supply of Digital Services

- New rules applicable to provision of digital services by offshore companies to Japanese users came into effect on 1 October 2015
  - B2B sales treated differently from B2C sales
- B2B transactions:
  - Reverse charge system – Japan's first
  - Notice requirements
- B2C transactions:
  - Collection of JCT
  - Tax filing requirements

Cross-Border Supply of Digital Services (cont'd)

- Base periods – Are you a taxpayer or not?
  - Question to consider: Did you have taxable sales in Japan previously, before the law even came into effect (????)
- Registration requirements for business consumers of B2C services
  - Business customers eligible for an input credit if the foreign company has registered as a foreign service provider
    - No negative tax ramifications to registering
  - The list is 64 companies long and growing

Cross-Border Supply of Digital Services (cont'd)

– Issues:
  - Not enough time for taxpayers to prepare for the new rules
  - How to distinguish between B2B and B2C transactions?
  - Single transaction, or multiple sub-transactions?
  - Which party is actually paying for the service?
  - Which is a better strategy – treat service as B2C, and allow an input credit, or treat transaction as B2B?
  - Real life headaches – paying the tax in Japan cannot be done without the assistance of a local tax representative

Taiwan

Collection of VAT on Low Value Imports

- Currently importation parcels with value lower than NTD3,000 are free from importation VAT
- VAT is collected at border by the customs office
- Many buyers split purchases to take advantage of the NTD 3,000 threshold

…Collection of VAT on Low Value Imports

– Law has been revised to target frequent buyers abusing the NTD3,000 threshold
– Frequent buyers defined as two times in a month or six times within six months

Cross-Border Supplies of Services and Intangibles

- VAT is imposed based on the destination principle
- Business buyers in the VAT regime do not have to pay the VAT due whereas other buyers shall report and pay the VAT due

Specific Rules for Digital Supplies

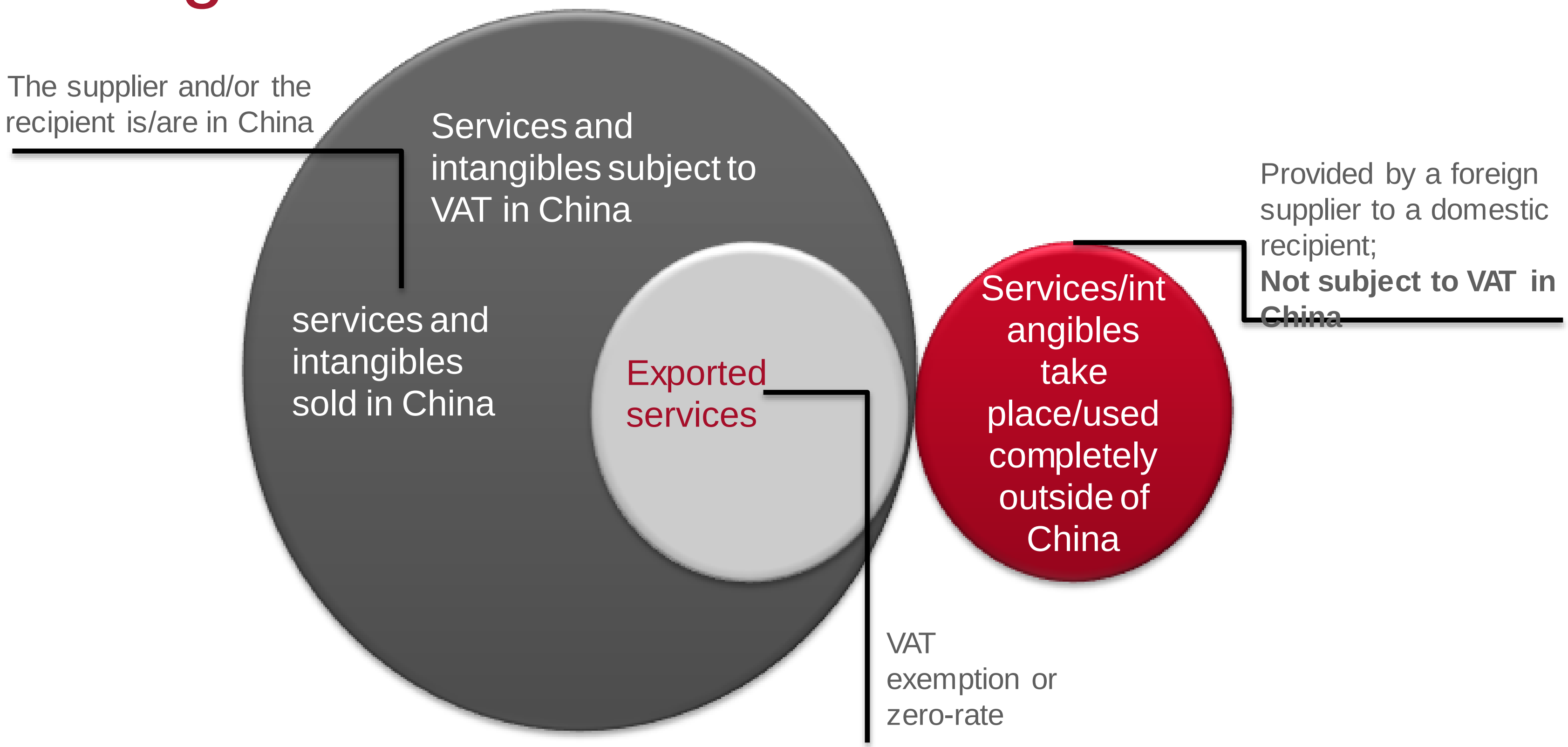
- Taiwan will soon introduce extra-territorial VAT regime for electronically supplied services provided by foreign sellers under B2C
- Foreign sellers will be required to register, collect and pay the VAT to Taiwan tax office
- B2B transactions will remain the same under current reverse charge mechanism

China

Collection of VAT on Low Value Imports

- VAT exemption or reduction for low value imports
  - General exemption for VAT otherwise payable below RMB50
  - A 30% discount for import VAT on a qualified cross-border B2C ecommerce transaction if the value is less than RMB 2,000 per transaction or RMB 20,000 per year
- Collection model
  - Generally, self-declaration by the purchaser upon importation followed by assessment and tax collection by the Customs
  - Withholding mechanism for cross-border B2C ecommerce transactions

Cross-Border Supplies of Services and Intangibles



– Foreign supplier not required to register and account for VAT
– VAT imposed via withholding by Chinese buyer

VAT Treatment of Digital Supplies

- Cross-border online sale of digital content
  - In principal, should be treated as “importation of goods” or “sale of goods” and subject to VAT at 17% or 13%
  - Tax authorities may categorize the sale as a “license of copyrighted material” and apply VAT at 6%
  - On-line software sales
    - 17% or 6%?
  - E-commerce services
    - 6% or not subject to VAT?

VAT Treatment of Digital Supplies (cont'd)

- B2B vs. B2C
  - Technically, no difference
  - Practically, the characterization and VAT collection will differ
    - A most recent news about VAT on "business assistance services" provided by a foreign agency for a business travel outside China (B2B)
    - The SAT's attitude to B2C e-commerce services

South Korea

Collection of VAT on Low-Value Imports

- VAT exemption is allowed for imported goods as well as domestically supplied goods and services
  - But no numeric threshold on VAT exemption rule
- Various importation of duty-free goods are VAT-exempt
  - Unprocessed foodstuffs including agricultural, livestock, fishery and forest products used for foods;
  - Books, newspapers, and magazines;
  - Goods imported for scientific, educational, or cultural use by a scientific research institute, an educational institute, etc.

Collection of VAT on Low-Value Imports (cont'd)

– Goods donated from a foreign country to a religious, charitable, relief, or any other public benefit organization;
– Low-priced and duty-free goods which are received by residents as gifts;
– Goods imported as a result of moving, immigration, or inheritance;
– Personal belongings, separately delivered goods, and mailed parcels of Travelers;
– Goods imported as commodity samples or advertising materials.

Cross-Border Supplies of Services and Intangibles – General Rules

- Reverse charge mechanism intrinsically targeting the cross-border inbound transaction covers transaction involving "services" and/or "rights"
- The obligation of the reverse charge mechanism shall be borne by not only business consumers but also individual consumers (in practice, by business consumers only)
- The VAT taxable business does not have the obligation of reverse charge while VAT exempt business has
- Non-resident suppliers are generally not required to register and account for VAT in case of either B2B or B2C transactions

Cross-Border Supplies of Services and Intangibles – Specific Rules for Digital Supplies

– Any foreign suppliers who provide electronic services (such as App, software, video, music, etc.) to Korean consumers have the obligation to file a Simplified VAT Registration

– Foreign companies that provide electronic services in connection with the business of Korean companies (B2B transactions) are excluded from the scope of taxable supply of electronic services in the case of direct supply to consumers

– Where electronic services are provided through a third party (i.e., intermediary platform companies), B2B transactions become taxable supply

Cross-Border Supplies of Services and Intangibles – Specific Rules for Digital Supplies (cont'd)

– Foreign service providers are required to apply for a Simplified VAT Registration to Korea's NTS within 20 days from their business commencement date and file their related VAT returns every three months

– Foreign service providers who intend to file a Simplified VAT Registration can remotely connect to the National Tax Information and Communication Network ("NTICN"), and file with National Tax Service by keying basic information in NTICN

Singapore

Singapore and the Digital Economy

- No specific action taken in response to BEPS Action 1 on the digital economy
- No specific legislation targeting cross-border digital supplies, but the IRAS has provided administrative guidance on how it interprets the general tax rules in an e-commerce context
- Based on publicly available information, there are no plans or proposals to introduce specific rules for digital supplies in Singapore

Collection of GST on Low-Value Imports

- Goods imported into Singapore are generally subject to import GST at the rate of 7%
  - Import GST must be paid at the time of importation before goods are removed from customs control
- Import relief applies to goods imported by post or by air (some exceptions apply) to a value not exceeding $400, subject to conditions

Collection of GST on Low-Value Imports (cont'd)

Overseas Suppliers

Overseas goods moved from overseas into Singapore customs territory:
- Import GST will be charged at the rate of 7%, unless import relief applies
- Import relief applies to, *inter alia*, goods imported by air or post to a value not exceeding **$400**, subject to conditions

Overseas

Singapore

Local Supplier

Local Customer

Taxable supply of goods made in Singapore by a GST-registered person in the course or furtherance of any business carried on by him:
- GST charged at the rate of 7%.

Cross-border Supplies of Services and Intangibles

– For outbound services, Singapore's GST regime largely follows the destination principle. Zero-rating will apply for services that qualify as an "international service"

– For inbound services, the destination principle is not followed. Singapore does not apply a reverse charge on services made from outside Singapore

– No specific requirement for foreign operators making supplies to Singapore customers to register for GST. However, foreign operators may fall within the scope of the general requirements if they have a fixed or business establishment in Singapore

Cross-Border Supplies of Services and Intangibles (cont'd)

Overseas Customer

Overseas Supplier

Overseas

Singapore

Outbound services:

- Where supply qualifies as an "international service", GST is zero-rated and no GST is actually charged

Taxable supply of services made in Singapore by a GST-registered person in the course or furtherance of any business carried on by him:

- GST charged at the rate of 7%

Inbound services:

- Where supply is made outside Singapore, no GST will be charged
- Where a supply of services is made depends on where the supplier "belongs"
- Singapore does not apply a reverse charge

Local Supplier

Local Customer

Cross-Border Supplies of Services and Intangibles (cont'd)

- IRAS has provide administrative guidance on how it would interpret the general tax rules in an e-commerce context. In particular:
  - a sale of digitised goods such as music and software over the internet to an individual consumer or a business entity will be regarded as a supply of services; and
  - the sale of standard (off-the-shelf) computer software is a supply of goods if delivered in the form of a physical product, e.g., a CD-rom, hence the importation of such goods will be subject to import GST, unless import relief applies

Malaysia

Low Value Imports

- The sale of digital content that is delivered via a physical medium (i.e., shrink-wrapped software) is regarded as a sale of goods for Malaysian GST purposes, so the sale of such digital content by a foreign supplier to a Malaysian supplier by mail/courier may be subject to importation GST at a rate of 6%
- Goods imported into Malaysia via air courier are relieved from importation GST provided that the value of the goods does not exceed RM 500

Cross Border Supplies of Services / Intangibles

- Imported services are subject to GST on a reverse-charge mechanism, if:-
  - services consumed in Malaysia; and
  - applies to B2B transactions only.
- Exported services are zero-rated, if:-
  - the service does not relate to promulgation of an advertisement;
  - the service directly benefits a person who belongs outside Malaysia when the service is performed;
  - the service is not directly in connection with a land situated in Malaysia; and
  - the service is not directly in connection with goods which are in Malaysia at the time the service is performed.

No Specific Rules for Digital Supplies

– Guidelines on E-Commerce Services issued by the Malaysian Customs on the application of the standard GST rules to e-commerce transactions
– No special rules specifically targeted at digital e-commerce transactions
– No indication thus far of any plans by Customs to adopt the Action 1 recommendations
– No increase in the GST rate in the latest Budget 2017 announced on 21 October 2016

Malaysia: New Online Business Tax?

- Ministry of Finance recently announced intention to tax "online businesses"
- No formal guidelines or draft regulations published yet, and it is not clear if this targets Malaysian or non-resident businesses
- Current focus seems to be on direct taxes for Malaysian businesses selling goods online

Part III:
Impact to the Business

Is your business making supplies that are caught under extra-territorial indirect tax regimes?

Consider:

- Effective dates
- Registration / reporting thresholds
- VAT / GST Rates
- Covered services
  - B2C vs. B2B
- Other issues
  - Transition rules
  - Compliance issues: supplier responsibility to check versus relying on customer declarations and invoicing
  - Use of platform companies

Even if your business is not in the targeted industries, you still cannot ignore the BEPS impact to indirect taxes…

- Changes in international tax norms will lead to different tax results which ultimately will cause changes to indirect tax positions
  - E.g., lower PE thresholds mean that businesses may have PEs in multiple jurisdictions, each with a local indirect tax registration and compliance obligation
  - E.g., changes to TP methodologies will create “knock-on” effects in indirect tax charging, claiming and reporting positions as well as customs declarations (for goods)

Especially where businesses are…

- Shifting business functions
- Changing supply chains or business models
- Supplying digital services

Concluding Thoughts

- BEPS does not change key indirect tax goals generally:
  - Tax on consumption; i.e., businesses should not bear the cost
  - Destination principle
  - Tax neutrality
- But to achieve these goals, consider:
  - changes to structure to avoid disruption to the business; and
  - there will be more hurdles / issues to cross and compliance costs will increase

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The Intersection of BEPS and Indirect Taxes

Chair: Yvonne Beh, Kuala Lumpur

Simone Bridges, Sydney
Dennis Lee, Taiwan
Kyung Geun Lee, Yulchon LLC, South Korea
Eugene Lim, Singapore
Jan Snel, Amsterdam
Howard Weitzman, Tokyo
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