2-2019

Proposed reforms to Singapore Goods and Services Taxation in the digital economy

Hern Kuan LIU
Tan Peng Chin LLC

Vincent OOI
Singapore Management University, vincentooi@smu.edu.sg

taxnotes® international
Volume 93, Number 5 ■ February 4, 2019

Proposed Reforms to Singapore's Goods and Services Tax for the Digital Age

by Liu Hern Kuan and Vincent Ooi

Reprinted from *Tax Notes International*, February 4, 2019, p. 521

Proposed Reforms to Singapore's Goods and Services Tax For the Digital Age

by Liu Hern Kuan and Vincent Ooi

Liu Hern Kuan

Vincent Ooi

Liu Hern Kuan is head of tax with Tan Peng Chin LLC, and Vincent Ooi is a lecturer with the School of Law, Singapore Management University.

This research is supported by the National Research Foundation, Prime Minister's Office, Singapore, under its Emerging Area Research Project Funding Initiative.

The authors gratefully acknowledge the support of the Centre for Artificial Intelligence and Data Governance, School of Law, Singapore Management University, and they would like to thank Gan Ee Kiat, Vincent Wong, Glendon Goh, Arina Rashid, and Chermian Lim for their excellent research assistance.

In this article, the authors highlight gaps in Singapore's goods and services tax system and discuss several proposals aimed at eliminating those gaps and making the GST a more effective tool for raising revenue in the digital economy.

With the rapid development of the digital economy and the increasing importance of the goods and services tax as a source of revenue, Singapore's government has proposed several reforms to improve revenue collection and more efficiently access its tax base. The reforms focus on activating the dormant reverse charge mechanism, which would allow Singapore to collect GST on supplies of services imported by businesses; creating an overseas vendor registration regime to catch digital products imported by individuals; and clarifying the place of supply rules for supplies of digital products. The proposed reforms should help eliminate gaps in Singapore's GST regime and allow Singapore to better utilize the GST's potential as a revenue collection tool.

I. Introduction

Singapore's GST is a VAT — similar to those in the United Kingdom, Australia, and New Zealand — levied on supplies of goods and services. It was first introduced in Singapore in 1993, starting at the relatively low rate of 3 percent and gradually rising to today's rate of 7 percent. In the Singapore Budget 2018, the government announced that the GST rate would rise to 9 percent sometime between 2021 and 2025. This increase in rate over time mirrors the increasing importance of GST as a revenue stream: It accounted for 11.2 percent of all tax revenue collected in fiscal year 1994-1995,[1] a figure that almost doubled to 22 percent in fiscal year 2017-2018.[2]

Alongside the planned increase in the GST rate, the government also announced a tightening of the existing GST framework to better capture revenue. When Singapore first introduced GST, the digital economy was in its infancy. Twenty-five years later, with the rapid advances in and

[1]Inland Revenue Authority of Singapore (IRAS), Annual Report (1995), at 17.

[2]IRAS, Annual Report 2017-2018 (2018), at 16.

adoption of digital technology in e-commerce, the system is starting to look increasingly outdated. Singapore is not alone in the realization that it needs to modernize its GST revenue collection system. As noted by the OECD in the action 1 final report of its base erosion and profit-shifting project in 2015:

> The spread of the digital economy also poses challenges for international taxation. The digital economy is characterised by an unparalleled reliance on intangibles, the massive use of data (notably personal data), the widespread adoption of multi-sided business models capturing value from externalities generated by free products, and the difficulty of determining the jurisdiction in which value creation occurs. This raises fundamental questions as to how enterprises in the digital economy add value and make their profits, and how the digital economy relates to the concepts of source and residence or the characterisation of income for tax purposes.

A. Background to the Reforms

Singapore's GST system includes several examples of low-hanging fruit — that is, several opportunities to tighten its framework and improve revenue collection.

First, while local supplies of goods and services and imported goods are subject to GST, the general provision in section 7 of the Goods and Services Tax Act (Cap 117A, 2005 Rev Ed) does not capture imported services. Technically, a service cannot be imported in the same manner as a physical good. However, this article uses the term "imported services" to describe the case when a supplier performs a service in one country for the benefit of a person in another country. Although section 14(1) of the GST Act contains a reverse charge mechanism to catch supplies of imported services, the rule has been dormant since Singapore introduced the GST.

Second, the GST has generally considered products of a digital nature to be services rather than goods, even products like e-books that laypeople would describe as goods. When overseas firms supply digital products, tax authorities consider the transaction to be a supply of imported services. Therefore, the general provision in section 7 of the GST Act does not capture these supplies.

Third, before the reform, it was unclear whether Singapore could levy GST on supplies of digital services. This problem stemmed primarily from the place of supply requirement in section 13(4) of the GST Act.

Section II will look at each of these issues in greater detail. Recognizing these opportunities to improve and modernize the GST, Singapore's government has proposed several reforms. Section III summarizes some of these proposals. Separately, the Inland Revenue Authority of Singapore (IRAS) has reiterated the applicable GST treatment of the importation of physical goods over an electronic medium. Section III will also discuss this guidance.

B. Background of E-Commerce

E-commerce generally encompasses both the trade in digital products and the use of online platforms to facilitate the trade of physical products. Notably, however, IRAS does distinguish between the sale of computer software that is delivered in the form of a physical product (for example, a CD) and the sale of computer software that is delivered electronically (for example, downloaded by the customer using the internet). IRAS treats the former as a supply of goods and the latter as a supply of services (more specifically, digital services). The use of online platforms to facilitate the trade of physical products is also considered to be a supply of services.

II. Opportunities for Reform

A. Levying GST on Imported Services

Section 7 of the GST Act provides that Singapore shall charge GST on (1) the supply of goods and services in Singapore; and (2) the importation of goods into Singapore. As noted above, there is no explicit provision stipulating that Singapore will charge GST on the importation of services. However, section 14(1) of the GST Act creates a reverse charge mechanism that treats the importation of services as a GST-chargeable supply of services in specific situations. Generally, GST applies to services that a party from a country other than Singapore supplies and that a party from Singapore receives for any business purpose.

The reverse charge mechanism prevents unfair competition that disadvantages local suppliers. Without the reverse charge mechanism, a GST-registered person who is not entitled to full input tax credit could avoid GST on its inputs by obtaining services from overseas suppliers. The reduction in business costs makes imported services more attractive and competitive than locally sourced services.[3]

As noted in the OECD's action 1 report:

> The exemption [of VAT/GST] for low value imports results in decreased VAT revenues and the possibility of unfair competitive pressures on domestic retailers who are generally required, depending for instance on their size, to charge VAT on their sales to domestic consumers. As a consequence, the concern is not only this immediate loss of revenue and competitive pressures on domestic suppliers, but also the incentive that is created for domestic suppliers to locate or relocate to an offshore jurisdiction in order to sell their low value goods free of VAT. It should also be noted that such relocations by domestic businesses would have added negative impacts on domestic employment and direct tax revenue.

Under section 14(4) of the GST Act, the finance minister may, *inter alia*, make regulations to prescribe the services to which the reverse charge would apply under section 14(1) of the GST Act. No such regulation is in force. Therefore, the importation of services is not subject to GST.

B. Levying GST on Digital Products

As discussed above, Singapore has generally considered digital products to be services rather than goods. As such, digital products supplied by foreign firms have been characterized as imported services and the general provision in section 7 of the GST Act does not apply.

Singapore's reverse charge mechanism is not yet active, but even if it was activated the reverse charge would not apply to digital products that foreign entities supply to individual consumers in Singapore. The reverse charge mechanism would only apply when a person who belongs in Singapore "for the purposes of any business carried on by him" receives covered services. Thus, when individual consumers import services (including digital services) they would not owe GST.

This state of affairs would be incongruous with the policy underpinning GST. Since the government intends for GST to be a tax on consumption levied on the final consumer,[4] failing to tax the individual consumer on the consumption of services from a foreign entity means that the GST is not being applied to a large segment of consumption, particularly in the digital economy. The fact that individual consumers are not required to register for GST exacerbates the issue because it means that — even if GST did tax this type of consumption — the IRAS cannot audit individual consumers.

With the remarkable growth of the digital economy, digital services have rapidly increased in importance. Without a proper mechanism to tax the importation of digital services into Singapore, local service providers may be competitively disadvantaged vis-à-vis foreign providers when it comes to taking advantage of the opportunities afforded by the development of the digital economy. It also means that there is an untapped opportunity to capture potential tax revenue.

C. Can GST Be Levied on Digital Supplies?

There is some uncertainty as to whether GST can be levied on supplies of digital services under the existing law. Section 8(1) of the GST Act provides that GST shall be charged:

> on any supply of goods or services made in Singapore where it is a taxable supply

[3] Tan Shao Tong, "Chapter 15: GST on Import of Goods and Services," in *Goods and Services Tax — Law and Practice* 530 (2015).

[4] *See* Finance Minister Richard Hu, 1989 Budget Statement to Parliament (Mar. 3, 1989).

> made by a taxable person in the course or furtherance of any business carried on by him.

The question regarding supplies of digital services stems primarily from the GST's place of supply requirement — that is, the requirement that goods and services must be supplied in Singapore.

In accordance with section 13(4)(a), the GST Act will consider a supply to be made "in Singapore if the supplier belongs in Singapore."

Under section 15(3), the GST Act treats a supplier as belonging in Singapore if:

- he has a business establishment or another fixed establishment in Singapore, and he has no such establishment elsewhere;
- he has no such establishment anywhere, but his usual place of residence is in Singapore; or
- he has establishments in Singapore and elsewhere, but the establishment that is most directly concerned with the supply is in Singapore.

Koh Soo How observes that when it comes to the supply of digital services, the place of supply requirement "loses its clarity . . . as there may simply be no physical presence."[5] Indeed, as he explains, it is difficult to say with certainty that a supplier of a digital product belongs in any particular jurisdiction because the supplier can operate and conduct business across borders through the internet.

The "belonging status" of a customer is also important for ascertaining the appropriate GST treatment — namely, whether the digital service is an international service and therefore zero rated. Koh explains that:

> The belonging status of the customer is . . . difficult to ascertain as businesses may not be able to rely on the usual indicators such as the physical residence address to determine the GST treatment.

Accordingly, Singapore should adopt a set of normative and deeming provisions to resolve the uncertainty regarding both the place of supply requirement and the belonging status of customers in the context of e-commerce. This move would clarify the application of Singapore's GST to e-commerce transactions.

III. Singapore's Proposed GST Reforms

Recognizing these opportunities, Singapore's government has advanced several proposed GST reforms, including the introduction of a bifurcated regime for taxing imported services. Starting January 1, 2020, the proposal would activate the reverse charge system for services imported by GST-registered (or registrable) businesses; for services imported by non-GST-registered consumers, including individuals, a vendor registration regime would apply. IRAS clarified some of the uncertainties regarding the use of an electronic medium for supplying goods and services by issuing normative guidelines to help GST-registered suppliers in Singapore determine the place of supply and resolve the related question of whether a customer belongs in Singapore.

Together, these proposals would take advantage of the opportunities discussed above. Generally, imported services would be subject to GST, ensuring fair competition between local and overseas service providers. This should boost the demand for locally sourced services while it also widens the GST tax net.

Further, to ensure a long-term sustainable tax base, the government has proposed raising the prevailing GST rate by 2 percentage points, taking it from 7 percent to 9 percent. The government also clarified that for imports and supplies of physical goods that the parties arrange over the internet, the medium through which the transaction occurs should not alter the GST treatment of the transaction. Therefore, under the new rules, import GST would apply when dutiable physical goods ordered over the internet arrive in Singapore. Likewise, as long as the supply is made in Singapore — that is, the goods are delivered locally or exported — GST-registered businesses that supply physical goods over the internet would charge GST at the same rate that would apply if they supplied the goods in a traditional manner.

[5] Koh, "Chapter 6: Classification of Supplies," in *Goods and Services Tax – Law and Practice* 175 (2015).

A. Imported Services and the Reverse Charge

1. Overview: The Reverse Charge Mechanism

Under the existing regime, a taxable person does not need to pay GST on imported services that it consumes for the purposes of making taxable supplies, but must pay GST on the consumption of services provided by local persons. If the taxable person could claim full input tax credit for the GST paid on local services, it would likely be indifferent as to the choice between local service providers and overseas ones. Ultimately, that taxable party would not pay any net GST on services — whether imported or local — that it consumes for the purpose of making taxable supplies. However, when a taxable person cannot claim full input tax credit, then the net GST paid makes it more expensive to procure services from local providers compared with overseas providers.[6]

This loss of competitiveness can be remedied by a reverse charge system that requires all taxable persons who cannot claim full input tax credit on services (RC businesses) to pay and account for GST as if they supplied the imported services to themselves in Singapore.[7] However, as noted in Section II.A above, the reverse charge mechanism under section 14 of the GST Act has not been activated by subsidiary legislation prescribing the type of services to which it would apply. As part of the Singapore Budget 2018, the minister for finance announced that as of January 1, 2020, GST would apply to imported services in business-to-business transactions using a reverse charge mechanism. In connection with this announcement, IRAS released a draft reverse charge guide providing guidance regarding the scope and application of the new reverse charge framework.

2. Applicability of the Reverse Charge

As paragraph 1.3 states, the draft reverse charge guide would apply to:

(i) GST-registered persons who procure services from overseas suppliers and are either not entitled to full input tax credit or belong to GST groups that are not entitled to full input tax credit; and

(ii) Non-GST registered persons who procure services from overseas suppliers exceeding [SGD 1 million (approximately $740,000)] in a 12-month period and would not be entitled to full input tax credit even if GST-registered.

3. Defining Imported Services

Section 14(1)(a) of the GST Act explains that the reverse charge mechanism applies to imported services. In practice, however, it may be difficult to ascertain whether a service provider "belongs in a country other than Singapore" for the purpose of determining whether the services qualify as imported — especially when digital services are concerned.

Paragraph 5.8.1 of the draft reverse charge guide would direct an RC business to rely on the overseas supplier's invoice to account for output tax and claim input tax under the reverse charge framework. Further, paragraph 5.8.2 would require an RC business to retain records for all reverse charge transactions that it reports in its GST returns, any corresponding input tax claims it makes on the reverse charge transactions, and evidence of payments to overseas suppliers.

4. Scope of Reverse Charge Framework

The draft reverse charge guide states that if the reverse charge framework is activated, RC businesses would need to use it to account for GST on all imported services, with some exceptions set out in paragraphs 4.2.1 and 4.3.1.

Paragraph 4.2.2 provides that an RC business would be able to elect to account for GST on all imported services in its GST return — including services that are specifically excluded from the reverse charge framework. However, once a business made such an election, it would need to consistently account for GST on all imported services for a year beginning with the accounting period corresponding to the GST return in which it made that election.

5. Operation of the Reverse Charge

Under the proposed system, if an imported service falls within the scope of the reverse charge system, an RC business would essentially charge GST on that service to itself by accounting for it as

[6] IRAS, "E-Tax Guide (Draft) — GST: Taxing Imported Services by Way of Reverse Charge" (Feb. 20, 2018) (draft reverse charge guide).

[7] *Id.* at para. 4.1.3.

output GST in its GST return. Whether the RC business could claim the corresponding input GST would depend on the ordinary input tax recovery rules. Generally, an RC business could claim input tax for imported services under the reverse charge system if those services were attributable to supplies made in the course of (or in furtherance of) the entity's business. For example, if the RC business used the imported services to make exempt supplies, then the RC business would be liable for output tax on the imported services but unable to claim the corresponding input tax.

The ultimate result of the reverse charge mechanism would be that RC businesses would pay the same amount of GST on imported services as they would have paid for services that a local GST-registered business provided.

B. The Overseas Vendor Registration Regime

1. Overview

In the Singapore Budget 2018, the minister for finance also announced that Singapore will apply GST to imported digital services in business-to-consumer transactions using an overseas vendor registration regime (OVRR) starting January 1, 2020. As with the reverse charge mechanism, IRAS released a draft OVRR guide to provide guidance regarding the scope and application of the new regime.[8]

Paragraphs 3.4 and 5.2 indicate that for the purposes of the OVRR, digital services would be broadly defined as:

> 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.

This definition includes supplies of downloadable digital content (such as mobile applications, e-books, and movies) and subscription-based media (such as magazines and streaming services like Netflix). It also encompasses support services performed using electronic means to arrange or facilitate transactions that may not be digital in nature, including business models involving the so-called sharing economy (such as Uber and Airbnb); digital marketplaces (such as eBay, Lazada, and Carousell); and other services involving commissions, listing fees, or service charges. Other examples in paragraph 5.3 of the draft OVRR guide include software programs (such as downloading software, drivers, website filters, and firewalls) and electronic data management (for example, website hosting, online data warehousing, file sharing, and cloud storage services).

2. Taxable Person

As noted above, section 8(1) of the GST Act specifies that Singapore will charge GST on any taxable supply made in Singapore "by a taxable person in the course or furtherance of any business carried on by him." Accordingly, a key element necessary for GST to be chargeable on supplies of digital services — like supplies of other services — to Singapore consumers is that the provider must be a "taxable person."

Section 8(2) of the GST Act adds that a taxable person, for purposes of the GST Act, is any person that is either GST registered or required to be GST registered under the provisions of the GST Act. A taxable person can also include a company. At present, because the GST Act lacks extraterritoriality, overseas vendors — that is, overseas suppliers that belong outside Singapore and have no business establishment, fixed establishment, or usual place of residence in Singapore — are not required to register for GST.

However, as paragraph 7.1.4 of the draft OVRR guide states, IRAS has proposed that overseas vendors with an actual or expected global turnover for the calendar year that exceeds SGD 1 million and that supply or expect to supply digital services to non-GST-registered customers in Singapore in excess of SGD 100,000 per year be required to register, charge, and account for GST — thus bringing these vendors under the definition of taxable person under the GST Act.

Thus, if Singapore enacts the OVRR and finalizes the IRAS guidance, overseas vendors with a global turnover greater than SGD 1 million would need to put in place processes to ascertain

[8] IRAS, "E-Tax Guide (Draft) — GST: Taxing Imported Services by Way of an Overseas Vendor Registration Regime" (Feb. 20, 2018) (draft OVRR guide).

whether they need to register for GST in Singapore. In particular, these processes should allow them to determine:

- which of their actual or expected customers belong in Singapore;
- whether those customers are GST registered; and
- the aggregate value of the actual or expected supplies made to nonregistered customers that belong in Singapore.

a. First Requirement: Whether Customers Belong in Singapore. Detailing the first requirement, paragraph 4.2.1 of IRAS's draft e-commerce guide[9] explains that a corporate customer belongs in Singapore if it fits into any of the following three groups:

- it has a business establishment or some fixed establishment in Singapore and does not have such an establishment anywhere else;
- it has no business or fixed establishment in any country, but it is legally constituted in Singapore (for example, a company incorporated in Singapore); or
- while it has business or fixed establishments both in Singapore and outside Singapore, the establishment in Singapore is where the customer most directly uses or will use the services.

Paragraph 4.2.4 adds that an individual customer would be treated as belonging in Singapore if his usual place of residence is in Singapore. The IRAS website[10] explains that this requirement is met if the customer resides in Singapore for a settled purpose (for example, education or employment) and his stay in Singapore has some degree of continuity, aside from temporary or occasional absences, and it forms part of the regular and habitual pattern of the customer's life.

For OVRR purposes, as set out in paragraphs 8.5, 8.6, and 8.7 of the draft OVRR guide, IRAS would allow an overseas vendor to use an administrative concession to determine the customers' belonging status. Concessionary treatment focuses on three proxy categories:

- *Payment Proxy*: The vendor can determine the customer's belonging status from payment information. Examples include credit card information and bank account details.
- *Residence Proxy*: The vendor can determine the customer's belonging status from the addresses that the customer provides. This could include a billing address and home address.
- *Access Proxy*: The vendor can determine the customer's belonging status by identifying the location from which the customer accesses the digital service that the supplier provides. Examples include the mobile country code of the SIM card, the IP address, or the location of the fixed landline through which the service is supplied.

This rule would entitle an overseas vendor to treat its customers as belonging to Singapore if the vendor maintained two pieces of nonconflicting evidence of the belonging status. One piece of this evidence should come from the payment proxy category and the other piece of evidence should come from either the residence or access proxy. As long as the vendor maintained the two pieces of nonconflicting evidence, it would not matter if other pieces of evidence contradicted the belonging status. Thus, retaining both the customer's credit card information and his bank account details (both payment proxies) would be insufficient to prove the customer belongs in Singapore, but retaining the customer's credit card information (a payment proxy) and home address in Singapore (a residence proxy) would suffice.

If exceptional business circumstances prevent a business from adopting the concessionary treatment described above, paragraph 8.9 of the draft OVRR guide would allow the vendor to seek written approval from the GST comptroller to use an alternative method to determine the belonging status of the customer.

Overseas vendors should also be aware of the Singapore Personal Data Protection Act 2012 (No. 26 of 2012), which has implications for the collection of customers' personal data, including for the purposes of determining belonging status.

[9] IRAS, "E-Tax Guide (Draft) — GST: Guide for E-Commerce (Fourth Edition)" (Feb. 13, 2018), at para. 4.2.1. (draft e-commerce guide).

[10] IRAS, "Provision of Service to Overseas Customer" (accessed Jan. 11, 2019).

Section 13 of that act prohibits the collection, use, or disclosure of an individual's personal data unless that individual has given his consent or collection is required or authorized under that act or "any other written law."

b. Second Requirement: Whether Customers Are GST Registered. Paragraph 9.2 of the draft OVRR guide would generally require overseas vendors of digital services to treat those services as if the customer is non-GST registered and, accordingly, charge and account for GST, unless the customer provides a GST registration number. This rule implies that overseas vendors should have a mechanism in place to allow the customer to input a GST registration number at or before the point of sale of the digital services.

IRAS would allow an overseas vendor of digital services to rely on the GST registration number that a customer provides as proof of GST registration. Thus, in accordance with paragraph 9.3 of the draft OVRR guide, if a customer provided a GST registration number, then the overseas vendor would not need to charge and account for GST on the supplies as long as the vendor maintained the customer information in its sales documentation for audit purposes. A supplier who by reason of exceptional business circumstances cannot determine the GST registration status of its customers would be able to seek written approval from the comptroller of GST to use other methods of determination.

c. Third Requirement: Determining the Aggregate Value of Supplies Made to Non-GST-Registered Customers. Vendors can supply goods and services (including digital services) to a customer under two common scenarios: using a direct contracting model or through an intermediary. In either scenario, Singapore would treat the digital services as supplies made by the supplier for GST purposes.

3. Electronic Marketplaces

The draft OVRR guide would define an electronic marketplace in paragraph 3.5 as:

> a medium that:
>
> (i) allows the suppliers to make supplies available to customers; and
>
> (ii) is operated by electronic means. This includes marketplaces operated via a website, internet portal, gateway, distribution platform or any other types of electronic interface, but excludes payment processors or internet service providers.

Typically, the law does not treat goods and services that flow through the electronic marketplace as if they were supplied by the electronic marketplace, with the exception of sales management services when the marketplace charges commissions or service fees. However, under paragraph 6.3.1 of the draft OVRR guide, Singapore would treat supplies made through the electronic marketplace as supplies made by that marketplace for GST purposes if any of the following conditions were met:

- The marketplace authorizes the charge to the purchaser.
- The marketplace authorizes delivery of the supply to the recipient.
- The electronic marketplace establishes the terms and conditions for the transaction. For example, this condition can be met when the marketplace has control or influence over the price of the supply, is responsible for customer care or support, or owns customer data related to the supply.
- The documentation that the purchaser receives identifies the electronic marketplace — not the supplier of the goods or services — as the party that makes the supply.
- The marketplace and supplier contractually agree that the marketplace will be liable for GST in Singapore.

As noted in Section III.B.2 above, in accordance with paragraph 7.1.4 of the draft OVRR guide, an electronic marketplace (local or overseas) would be liable to register, charge, and account for GST if its actual or expected global turnover for the calendar year exceeded SGD 1 million and it supplied (deemed or otherwise) or expected to supply digital services to non-GST-registered customers in Singapore exceeding SGD 100,000 in value during that calendar year. This requirement would use a per-entity basis, not a consolidated basis.[11] In *BLL v. Comptroller of Goods*

[11] *See* Joanna Yap, "Chapter 21: Registration and Deregistration," in *Goods and Services Tax – Law and Practice* 606 (2015).

and Services Tax, [2013] SGGST 1, at [10], the GST Board of Review observed that since a partnership is not a separate legal entity, the partners and not the business must register. Thus, it follows that since a subsidiary company is a separate legal entity, it is the company and not its owners that should register.

Accordingly, an electronic marketplace could incorporate a wholly owned subsidiary for the sole purpose of making supplies in Singapore. If the subsidiary's global turnover remained below the threshold of SGD 1 million, it might be able to ignore the GST registration requirement. Importantly, while a full evaluation is beyond the scope of this article, the company should pay close attention to the antiavoidance provision in schedule 1, paragraph 2 of the GST Act, which addresses the fragmentation of businesses to avoid GST registration. Regardless, in most cases, this move would probably be impractical from a financial standpoint because a non-GST-registered electronic marketplace would not be able to claim input GST credits for GST paid to the actual supplier, thus putting it in a worse position than if it had registered for GST.

There are, however, some cases when an overseas actual supplier might want to avoid GST registration under the proposed new regime by incorporating a Singapore subsidiary, such as if:

- it expects the total turnover from customers in Singapore to be well below SGD 1 million; and
- the inputs that the company uses for the services it provides to customers in Singapore are not subject to GST — for example, if the inputs are only from overseas sources — so that the benefits of not having to charge GST in Singapore outweigh the inability to claim input tax.

a. GST Administration for Electronic Marketplaces. For a supply transaction made by a GST-registered supplier (actual supplier) to a non-GST-registered customer through a GST-registered electronic marketplace, paragraph 6.4.1 of the draft OVRR guide would require the electronic marketplace to charge and account for GST on the value of that transaction if the rules deem the supply to be made by the electronic marketplace — that is, if any of the aforementioned conditions apply. Paragraph 6.4.2 would also require a GST-registered actual supplier to charge and account for GST in its own GST returns, regardless of whether the electronic marketplace charged and accounted for GST on the supply transaction.

Paragraph 6.5 of the draft OVRR guide sets out several rules to facilitate compliance with the GST obligations under the proposed system. It would allow a GST-registered electronic marketplace to elect to charge and account for GST on all supply transactions made through it. This would create the risk that the marketplace might pay GST on supplies made by non-GST-registered (that is, overseas) suppliers. As such, the transaction would be treated as two separate and consecutive transactions:

- a supply that the actual supplier makes to the marketplace operator; and
- a supply that the marketplace operator makes to the end-consumer.

For the first transaction, the actual supplier would be required to charge and account for GST on the supply to the electronic marketplace, based on the value of the supply to the end-consumer. The standard GST rate would apply if the electronic marketplace operator is local, and the GST would be zero rated if the electronic marketplace operator is overseas. The actual supplier could still claim input GST credits on that supply in its GST returns.

The marketplace operator could claim the GST paid to the actual supplier as part of the first transaction as input GST credits for the second transaction. It must then charge GST on the value of the supply to the end-consumer. In accordance with paragraph 4.2.5 of the draft e-commerce guide, the marketplace must charge GST at the standard rate if the end-consumer is local. The transaction would be zero rated if the end-consumer does not belong in Singapore.

Ultimately, despite the two transactions, the availability of GST input credits helps ensure that GST is only paid once. Nevertheless, the risk of double accounting for GST remains, such as when the actual supplier has adjusted its price to include any GST charged and the electronic marketplace charges GST again. The result is that the end-consumer would pay GST twice on the same transaction and do so at a compounded rate.

IRAS's guidance assigns the duty of mitigating this residual risk of double accounting for GST to the electronic marketplace. As paragraph 6.5.6 suggests, the electronic marketplace operator could inform the suppliers that the marketplace will be charging and accounting for GST on the digital services made through the marketplace; thus, the actual suppliers would not unintentionally include the GST in the list price of the goods or services to be supplied to the end-consumer. Alternatively, the marketplace could maintain contractual agreements with the actual suppliers to reflect the updated GST obligations.

C. Enforcement

As noted above, the proposed changes to Singapore's reverse charge mechanism should catch situations involving business-to-business supplies, while those involving the OVRR should catch business-to-customer transactions.

The reverse charge proposal does not create any new enforcement issues since the GST liability lies with the locally based GST-registered business, which would need to account for GST on the services as if it were the supplier.

On the other hand, under the OVRR proposals, suppliers belonging outside Singapore — not the locally based customers — would be liable to register, charge, and account for GST. While paragraph 14.1 of the draft OVRR guide indicates that overseas vendors registered under the OVRR would be subject to the same penalty and compliance regime as domestic GST-registered persons, the fact that they are based overseas may create enforcement issues for IRAS when it attempts to ensure that the overseas vendors do indeed comply with their obligations.

In practice, IRAS may have some difficulty obtaining the necessary information that would allow it to compute the tax liability of the overseas vendor without some cooperation from the overseas vendor. Singapore's double tax agreements generally only cover income tax, not GST. Singapore's exchange of information arrangement with Bermuda covers GST, but that appears to be the only agreement that does. As for collecting tax revenue, the traditional approach to private international law would prohibit the collection of tax on behalf of a foreign tax authority.[12] Overseas vendors may, however, have an incentive to comply with Singapore's GST regulations since IRAS can seize their Singapore-based assets to satisfy any penalties for noncompliance.

IV. Conclusion

The proposed reforms should help IRAS catch parts of the revenue base that previously slipped through the cracks of the GST framework. Given Singapore's increasing dependence on GST as a source of tax revenue and the proposed increases in the GST rate, taking advantage of existing opportunities to boost the tax base is a sensible decision. The reforms as analyzed in this article would update and broaden the GST taxation net to include new forms of consumption made possible by the rise of the digital economy. In particular, imports of goods and services would be subject to a more comprehensive administrative and enforcement regime for GST that takes into consideration the ambiguities — including issues of identity, residence, and enforceability — created by the border-transcending capabilities of e-commerce. The proposed reforms would allow Singapore's GST regime to better serve its function as a revenue collection tool for the nation. ■

[12] *Government of India v. Taylor*, [1955] AC 491.