30 November 2021

ASIFMA's Submission to Monetary Authority of Singapore on Singapore GST Overseas Vendor Registration

The Inland Revenue Authority of Singapore ("IRAS"), like many other tax authorities, has been successful in implementing the overseas vendor registration ("OVR") rules in respect of digital supplies. Singapore is somewhat unique in that its OVR rules will apply to financial and banking products – these do not apply in other countries like the UK or Australia due to their exemption provisions carving these out of taxation. We appreciate that it is highly unlikely that Singapore would change its current list of exemptions in the Fourth Schedule to the GST Act (as this would also impact domestic supplies), but the absence of addressing these issues in the OVR provisions means Singapore's rules will have a far wider scope than any other country in the world. It is this challenging position that we wanted to respectfully draw your attention to.

To this extent, ASIFMA[1] has a copy of the attached submission made by The Association of Banks in Singapore ("ABS") on 31 August 2021 to the Monetary Authority of Singapore ("MAS") on this subject matter. We would like to express our support of the points made by ABS in its submission and would like to add the following practical considerations.

Briefly, under the expanded OVR regime, all foreign financial institutions (that is client-facing entities of all financial institutions anywhere in the world outside Singapore), will be required to:

1. Identify whether any of their clients "belong to Singapore" under the Singapore GST rules and are registered for GST in Singapore, and maintain this information current (point 2 of the ABS submission),
2. For the clients that belong to Singapore and are not registered for GST, identify each service provided to each of such client, and then determine whether the service would have been subject to GST if they were provided in Singapore (point 1 of the ABS submission),
3. If the services that would be subject to GST exceed SGD100,000 annually, the foreign client-facing entity of the financial institution ("FI") will be required to register for GST in Singapore and pay GST on such services to the IRAS, and submit periodic returns to the IRAS, and

[1] ASIFMA is an independent, regional trade association comprising a diverse range of over 150 leading financial institutions from both the buy and sell side, including banks, asset managers, professional services firms, and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, competitive, and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

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4. Facilitate GST reviews and audits by the IRAS, which may include the provision of information to the IRAS in respect of the FI's compliance with the OVR rules (point 3 of the ABS submission).

Below we highlight some practical difficulties with compliance with these requirements by FIs. We foresee these being issues not only faced by taxpayers at first instance but also elements will be difficult for government agencies like the IRAS to assess the level of taxpayer compliance with the OVR rules:

The Singapore OVR rules require FIs to implement / amend global processes and controls at multiple levels as follows. We have listed below significant challenges and practical issues:

1. Identify clients that "belong in Singapore" for Singapore GST purposes. Operational support teams outside of Singapore will not be familiar with the "belonging" aspect. By contrast Canada introduced cross border registration requirements for digital products and services but there is a variety of practical considerations for the application of the taxes e.g., banking / payment information, IP addresses, residential addresses. Australia broadly applies having an Australian Business Number ("ABN") in addition to GST aspects.
2. If IRAS allows a proxy approach to identify Singapore belonging status (leveraging common reporting standard ("CRS") or other internal data), it will still require creating a bespoke and duplicative process to run Singapore GST rules to not only track belonging status, but also to identify income streams on which Singapore GST rules should apply in addition to local GST / VAT rules. Given the focus on operational risks, this will require significant investments in people and processes that may not be commensurate with the underlying impacted client set.
3. FIs are likely to incur ongoing costs in relation to seeking advice on "belonging" requirements as advice may be sought by offshore operational teams rather than being managed by onshore tax teams.
4. IRAS requires reasonable steps to determine whether customers belong in Singapore, however, this will require changes in client onboarding documentation. This will be in addition to a separate exercise to verify existing client's status. The administrative guidelines, e.g. written declarations, will impose a heavy compliance burden as it is an ongoing requirement to validate and check client information to ensure compliance with the rules.
5. In addition to point 4 above, FIs would need track and determine the belonging status of sub account holder of a jointly operated investment account even though the main account holder could be residing outside SG. This is administratively unfeasible for FIs to cater for all possible scenarios in their systems to cater for this local Singapore requirement.
6. FIs will need to remediate existing contractual agreements – this requires significant client outreach by **<u>every</u>** offshore client facing team in every location, to explain Singapore related changes. It would cause a significant drain on client facing employees, legal teams and several other support functions.
7. FIs will be required to track income streams on which Singapore GST rules ought to apply. Please note that this requirement will be in addition to institutions following local VAT/GST rules in those jurisdictions. FIs may operate multiple platforms across various product offerings which will require multiple tax rules to be in place. In addition, multiple platforms will need to capture clients belonging status. FIs will also need to consider the impact of any rate changes both from a domestic perspective as well OVR / cross border perspective.
8. FIs will need to implement changes to global booking and systems architecture to implement the above. Such changes in systems / tracking requirements need long lead times (two to three years), significant level of global / local syndication to amend systems, are prohibitively costly (tens of millions across dozens of locations) to implement and manage, and create

possibility of significant operational risks. FIs will require ongoing maintenance across multiple platforms.

9. IRAS does offer a bulk upload API solution to validate clients GST registration status. However, for FIs that may have multiple platforms maintaining client data, it is likely technology teams will have to build multiple API solutions to connect to IRAS as it will not be feasible to operate the validation manually. Technology solutions within FIs that are connecting to external platforms need to be carefully considered due to cyber security and internal risk requirements. FIs will consider the API validations high risk given personal identifiable information is captured.
10. Potential data secrecy / client discomfort issues relating to sharing of data outside of their home jurisdictions: FIs will also be reluctant to register, as it will open them to compliance activities by the IRAS. In this respect, in some cases the IRAS may request a foreign institution provide details of underlying transactions where GST was collected. You will appreciate that FIs in most countries will be unable to share client-related information with a foreign tax authority due to regulatory restrictions. This will make any compliance activity by the IRAS practically impossible, and even otherwise simple GST audits potentially morphing into cross-jurisdictional disputes. It is not immediately clear to us how Singapore expects FIs worldwide to comply with its GST rules without implementing some sort of a global solution similar to US FATCA IGAs.
11. Given Singapore is a reputed hub for private wealth services, the typical clients that choose to operate / relocate to Singapore do require diversification across global asset classes across products and services offered by overseas institutions. The ability of such global institutions to offer such access may diminish in view of such incremental compliance burden and may likely impact Singapore's perception from an ease of doing business or attractiveness standpoint.
12. The likely revenue collections for IRAS from such a move would be immaterial compared to the negative impact on business sentiment and prohibitively high compliance costs both for taxpayers and the IRAS.
13. While we acknowledge that the policy motive for this move may not be revenue collection but to ensure parity with charging Singapore GST on similar services, there may be multiple objectives for Singapore based clients to access international products that may or may not be locally available (geographic diversification, market access, associated overseas business interests, etc). Hence, implementing this OVR regime runs counter to the broader policy moves of showcasing business attractiveness, fairness and reducing compliance. These 'business moats' are more relevant for businesses now, given the BEPS related changes that attempt to blunt tax arbitrage and focus on such factors to make business decisions.
14. Singapore has a broad application of applying GST to financial product offerings. By contrast countries such as Canada and New Zealand have a wide range of exemptions available. Therefore, Singapore's expansion of OVR will require the application of GST on multiple product offerings which have otherwise been either exempt or out of scope in other jurisdictions.
15. FIs may have difficulties in assessing whether a subject is taxable, for example, fees charged for transfer of funds are exempted. However, fees charged to customers for leveraging on the FI's network is taxable. These taxable fees include but are not limited to fees charged to billing organisations which make arrangements with the FI to allow the FI's customers to pay their bills or levies through self-service channels such as ATM, internet banking or other mobile banking delivery channels; fees charged to other FIs or NETS for ATM cash withdrawal or account balance enquiry transactions performed by another local or overseas FI's customers, etc. It would be extremely difficult for overseas FIs to distinguish the above-mentioned fees from the exempted fund transfer fees.
16. It would be technically challenging and not practically reasonable to expect overseas FIs to fully appreciate the concept of "ancillary" in Singapore GST context which is critical in

differentiating the services related to provision of loan (exempt) vs separate value added services (taxable), especially in a complex syndicated loan arrangement.

As a result, it may be the case that the most likely outcome to these new requirements by FIs could be limited to one of the following:

- Some FIs may simply decide to off-board their Singapore clients instead of trying to comply with these requirements, which may significantly reduce access for Singapore based clients to global products and services. You may recall that this happened with the introduction of the US FATCA rules. This appears to be potentially the most likely outcome when businesses look at the ongoing costs and benefits of offering banking products to these clients;

- Some FIs may procure advice that these rules do not apply to them or to the services that they provide, and therefore may ignore these rules. There may be several good technical reasons for such a conclusion but regardless this would create an unlevel playing field across the industry;

- Some FIs will simply not be aware of these rules given they do not align with other mature VAT countries that Singapore is generally grouped with from a tax risk perspective (Australia, the UK and the rest of the EU, for example). That is, despite their best efforts and intentions business and tax teams may not appreciate that Singapore is taking this approach given the expectation that their rules typically align with these other countries; and

- The remaining FIs that try to comply will understand that strict compliance is impossible and may implement varyingly inconsistent controls and proxy calculations that may not otherwise meet the IRAS' objectives.

Considering the above, the application of the OVR to financial services appears to be impossible to comply with by FIs, and even a modicum of compliance will require significant infrastructure changes and investments from the financial services industry. Requiring the industry to incur these costs for a most likely negligible impact on Singapore tax revenue goes against the very principles of good tax law design. For these reasons, we urge the Government to reconsider the application of OVR to financial services.

Finally, in the event that the Government nonetheless proceeds with the application of OVR to financial services, we strongly urge the Government to increase the thresholds for its application from the current global turnover of SGD 1 million to at least SGD 10 million as well as remote services threshold of SGD 100,000 to at least SGD 1 million of annual services provided by each supplier / company. Increasing the current thresholds would bring them into more alignment with the principle of economic equivalence while increasing them above the suggested levels would answer to the call for balancing the revenue collectible against the prohibitively high compliance costs both for taxpayers and the IRAS.

Issues with the Proposed Expansion of Overseas Vendor Registration (OVR) Regime to Financial Services

It was announced in Budget 2021 that the current Overseas Vendor Registration (OVR) regime for levying GST on imported services would be extended from digital services currently, to Business-to-Consumer non-digital services, from 1 Jan 2023. Subsequently, IRAS developed a draft GST Guide on the implementation, in which some financial services were cited as an example of a professional service that was to be included in the OVR regime.

Member banks of The Association of Banks in Singapore have responded to the public consultation and have been in dialogue with IRAS to explain that financial services should not be included in the extension of the OVR regime. Notably, the two jurisdictions cited in Budget 2021 as examples with OVR regimes – Australia and New Zealand – exclude financial services from OVR. And the banks have highlighted several concerns and challenges, which fall into the following main categories:

- Implementation and operational challenges;
- Imposition of heavy tax compliance burden outweigh potential tax/policy gains; and
- Impairing Singapore's stature as a wealth management hub.

IRAS' proposed inclusion of financial services in the upcoming OVR extension will affect overseas branches and subsidiaries of our member banks that may provide financial services to customers belonging in Singapore.

In view of these issues, ABS, on behalf of our 155 member banks, is of the view that the financial services sector should remain out of scope of the OVR regime.

Implementation and operational issues

1. Banks, unlike other e-commerce activities, offer a **complex mix of GST taxable and exempt services that are hard to segregate**, as banks act as either principal or service provider in relation to financial instruments. This makes it more complex and costly for banks to implement OVR, vis a vis other industries and transactions. This implementation problem is recognised by IRAS.

   Among clients identified as based in Singapore, the income streams on which GST may apply need to be identified. This is challenging even for Singapore-based banks as the income streams are not neatly segregated into GST exempt and taxable supplies. It would be virtually impossible to expect every overseas bank / financial institution to introduce processes to identify income streams and then apply Singapore tax principles to determine applicability of Singapore GST.

2. Banks generally interact with customers in an **ongoing and continuous service relationship, requiring them to continuously monitor and track changes in customer tax residency status and activities** to determine if GST applies. Other e-commerce activities typically involve the provision of goods/services at a specific point in time, and the determination of GST application is one off.

   Banks will need to upgrade their systems to track customers that belong in Singapore for GST purposes and also to then monitor which customers are registered for GST purposes and those who are not. Even where administrative concessions are provided for documentation and periodicity of tracking, it will require significant effort from all parts of the bank to undertake a one-time identification of Singapore clients and implement ongoing tracking of customers' belonging in Singapore.

   Tracking will need to be ongoing as clients may litigate if they are charged GST after he/she changes domicile from Singapore, therefore making a periodic review approach unfeasible.

   For one-time identification, many segments of the Bank will need to spend an inordinate amount of time briefing across their global teams, such as

   - Legal departments on client documentation,
   - Relationship managers, who will likely have many questions, as well as from the clients they serve,
   - Onboarding/compliance teams on documentation and KYC,
   - IT teams to identify relevant data required, and
   - Tax team inputs, etc.

3. **Confidentiality of customer data**: Banking regulations in most countries do not permit the disclosure of customer information other than to the local authorities. Where disclosure is allowed, the overseas bank would have to ensure that the T&Cs that the client has signed up to, allow the bank to provide the customer information to foreign regulatory authorities. If the existing T&Cs do not allow for such disclosure, the bank would have to obtain client consent to be able to provide customer information to foreign regulatory authorities. This could be a tedious exercise to enable compliance with Singapore GST rules.

4. **Most overseas banks (especially those not operating in Singapore) are not familiar with the details of the Singapore GST rules and the cost of compliance and implementation of these requirements will be high.** For instance, income derived from services provided by non-Financial Sector industries are generally subject to GST with very few exemptions, unlike income from financial services that have a number of exemptions in place. At the same time, the scope of GST exemption for financial services in Singapore is narrower than in other countries. This means that companies cannot leverage their existing systems in locations that already have GST/VAT (The US and Hong Kong - the two significant financial services centres that Singapore deals with - do not have GST/VAT so financial institutions will require a full build). As a result, foreign institutions may choose not to deal with Singapore-based customers.

Imposition of heavy tax compliance burden outweigh potential tax/policy gains

5. The potential tax revenue gain appears to be modest as the **majority of banking services are provided locally**. The operation of banking services is highly regulated and banks typically face challenges and restrictions in providing services across borders to clients in other jurisdictions. This has led to banks setting up local operations in the markets that they wish to access, and local customers generally served by the local operation of the bank.

   The prevailing banking model is thus for services to be provided locally, though there are situations where customers based in Singapore may want to receive services from an overseas bank. Singapore-based clients may opt to open/retain accounts in offshore locations to be closer to investment opportunities, gain better access to markets and offshore instruments, or due to job relocation.

6. On the other hand, implementation and compliance with the proposed OVR extension will incur **significant financial costs and be a major impediment to the ease of doing business with Singapore clients** for financial institutions outside Singapore. In the context of the global agreement on a minimum corporate tax rate, Minister Lawrence Wong stated that one of the principles that Singapore would be guided by is to minimise tax compliance burden on businesses. The proposed OVR registration requirement on Financial Services will contradict this principle enunciated by the Minister.

7. To implement OVR, banks will need to set up **automated solutions that will cost millions or tens of millions of dollars (potentially across each location) to develop and maintain**. Manual implementation would not be feasible due to

operational risks. Such an investment would not make commercial sense for banks as each of their local operations are focused primarily on the domestic market.

8. **The cost of compliance is not commensurate with the GST sought to be collected**. For instance, an employee based in Singapore is subsequently transferred to another country on secondment and opens a bank account in that country. If he/she chooses to retain the account after returning to Singapore, the overseas bank would need to register and charge/pay GST on the services provided. Given the existing GST rules for financial services, the fee charged for the operation of the bank account is GST exempt but the fee for audit confirmation provided on bank accounts is subject to GST. The foreign bank would need to put in place the right processes and systems to track and comply with these rules for the individual customer.

   The current requirement is for overseas vendors to register for GST when their services exceeds S$100,000 per annum. At this threshold, the GST to be collected would be S$7,000 per annum. By contrast, Local vendors are required to register only if their annual sales exceed S$1 million, with the corresponding GST amount of S$70,000.

   Also, when dealing with corporations in Singapore, if the fees charged to the corporation exceed S$1 million, the organisation would be required to register and pay GST through a reverse charge mechanism. Fees to an individual are highly unlikely to exceed S$1 million.

9. For a number of regulated financial services, there is **no local market competition for these services**, and thus the imposition of OVR would not achieve the intended benefit of providing parity between domestic and overseas service providers. For instance, bank accounts opened to hold certain currencies/financial instruments cannot be opened except in the country where the bank is set up or where the securities are traded. This should be distinguished from an online retailer that can buy and sell goods from/into any market with minimal regulatory restrictions and barriers to entry.

Impairing Singapore's stature as a wealth management hub

10. The imposition of OVR on imported financial services may **undo public efforts to develop Singapore as a wealth management hub.** The Government has been successful in attracting wealth management clients, including VCCs, Family Offices, High Net Worth Individuals, Trusts to Singapore. The Family Office segment, for instance, has been growing in recent years, with press reports of 221 single and multi-family offices opening in Singapore in 2020, up from 22 in 2018. These and other wealth management clients typically rely on the ability to access international financial services to invest globally and they will be negatively impacted if **overseas banks discontinue services to Singapore clients due to the cost and complexity of implementing and complying with OVR.** This reaction has been seen by overseas banks to US customers when the US introduced Foreign Account Tax Compliance Act (FATCA).

11. **Singapore is a net exporter of financial services** and would be adversely impacted if the imposition of OVR on overseas banks is **regarded as an encroachment on other countries' banking sectors** and prompts those jurisdictions to **implement similar requirements on banks in Singapore**. It is worth noting that the introduction of FATCA led to the development of the international equivalent Common Reporting Standard (CRS), as well as the establishment of Intergovernmental Agreements (IGAs). If OVR is implemented on financial services, Singapore would be the first major economy to do so, just as when the US introduced FATCA. As far as we are aware, **other jurisdictions that have an OVR regime, such as Australia, and New Zealand, exclude financial services from it.**

ABS is committed to Singapore's stature and growth as an international financial centre and it is in this spirit that we offer our feedback. As may be appreciated from the points above, the application of the OVR rules from 1 January 2023 to the financial services sector will

a. Negatively impact Singapore's status as a financial centre; and
b. Go against the Government's stated principle of easing cost and burden for businesses.

At the same time, it will not:

a. Level the playing field for local providers as they do not actually compete with overseas vendors for the most part; nor
b. Represent significant revenue opportunity for the Government with the regulated nature of financial services and the exempt nature of many financial supplies.