International Fiscal Association

ASIA PACIFIC REGIONAL TAX CONFERENCE

Indirect tax developments of remote services in Asia Pacific

Quiz

Which of the following APAC countries require foreign online service providers to register for VAT/GST in their country?

1. Australia	2. Bangladesh	3. India	4. Indonesia	5. Japan
6. Malaysia	7. New Zealand	8. Nepal	9. Singapore	10. Thailand

Panel members

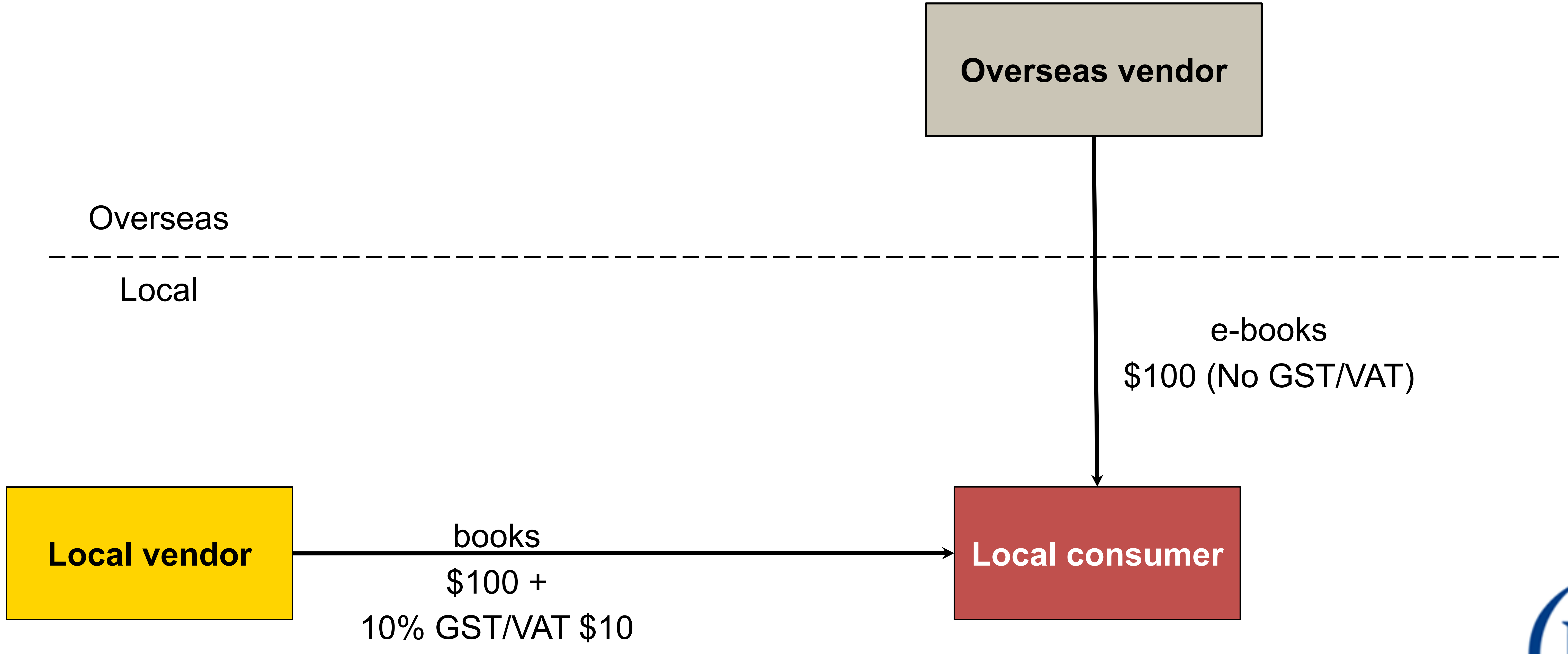
- ❑ Kor Bing Keong, GST Partner, PricewaterhouseCoopers Singapore
- ❑ Wong Sze Teen, Group Tax Specialist, GST Division, Inland Revenue Authority of Singapore
- ❑ Ichwan Sukardi, Managing Partner, Tax, RSM Indonesia
- ❑ Tan Wei Hann, Indirect Tax Director, Facebook Singapore Pte Ltd
- ❑ Thenesh Kannaa, Executive Director, TRATAX Sdn Bhd

Agenda

- Introduction
  - Overview of the VAT/GST rules in APAC region for taxing remote services (digital and non-digital) supplied by overseas vendors
  - Comparative analysis on the remote services rules in SG, AU and NZ
  - Malaysian Service Tax rules on taxing digital services supplied by overseas vendors
  - Indonesian VAT rules on taxing digital services supplied by overseas vendors
- Panel discussion and case study

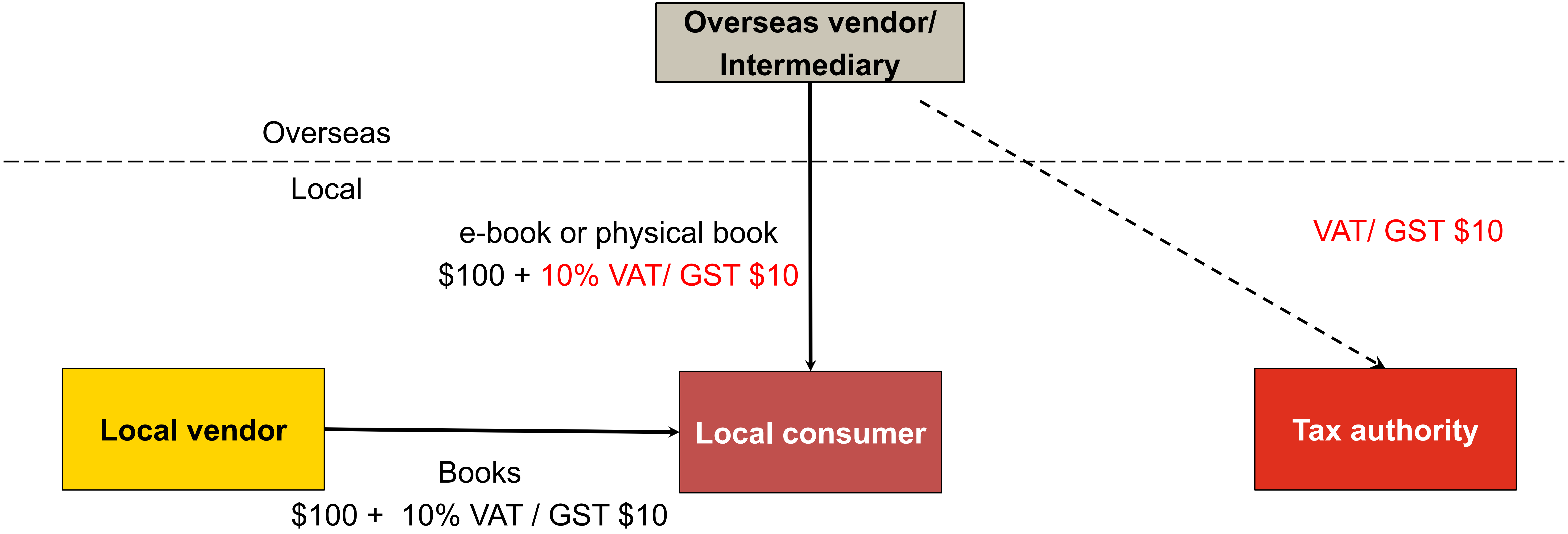
VAT/GST on cross border supply of digital services to end consumers

Example: Local customer purchases books amounting to $100

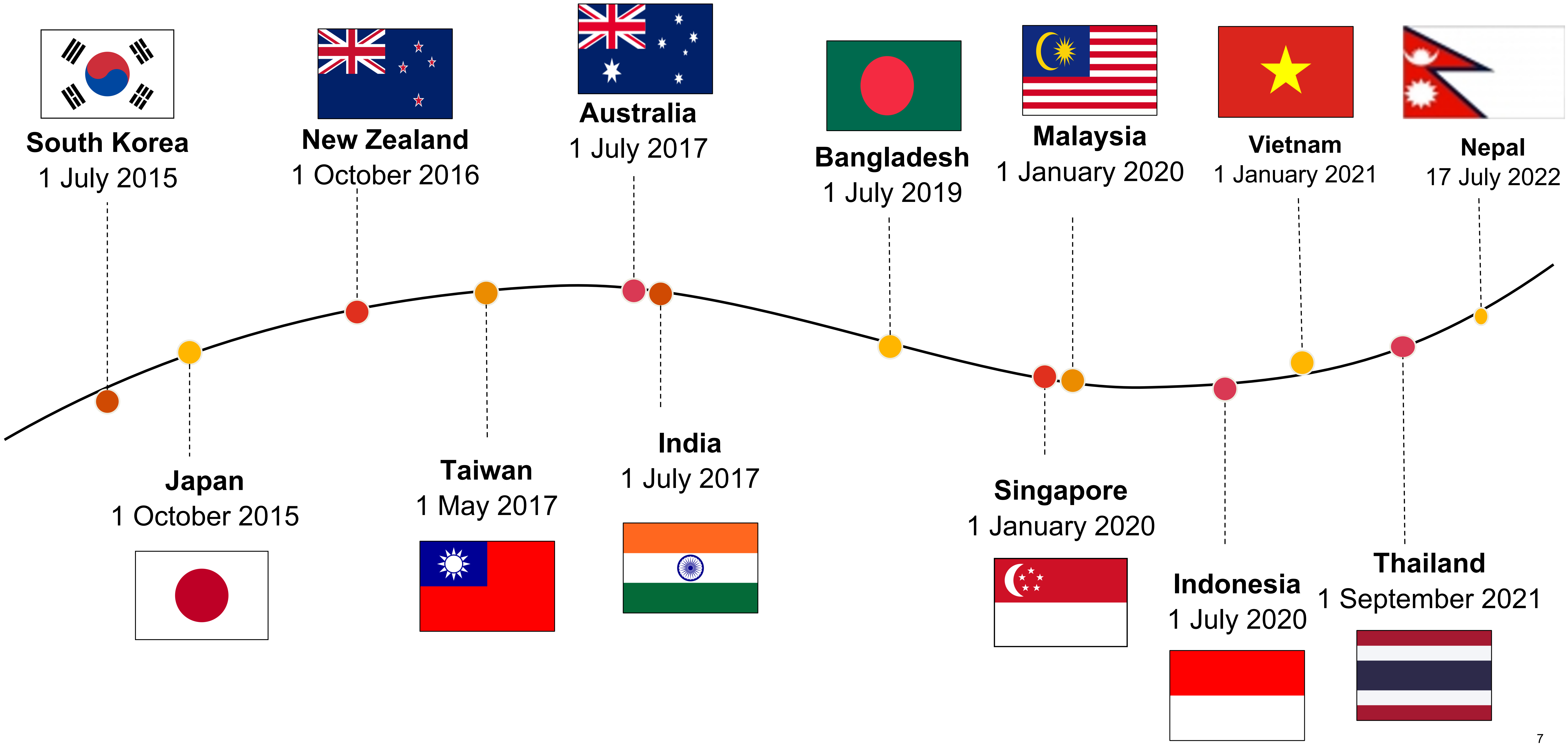


VAT/GST registration of overseas vendors

Example: Local customer purchases books amounting to $100

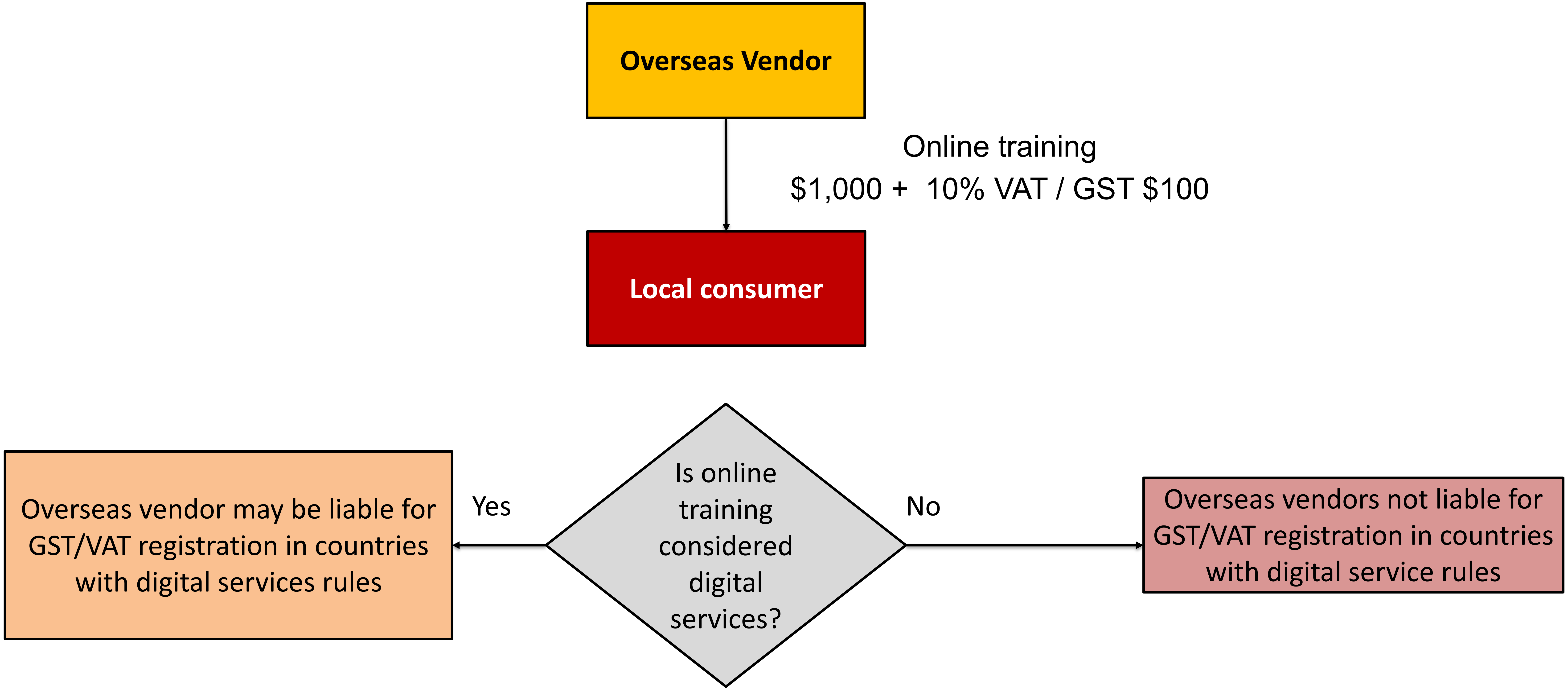


Examples of APAC countries that have implemented VAT/GST rules on digital services

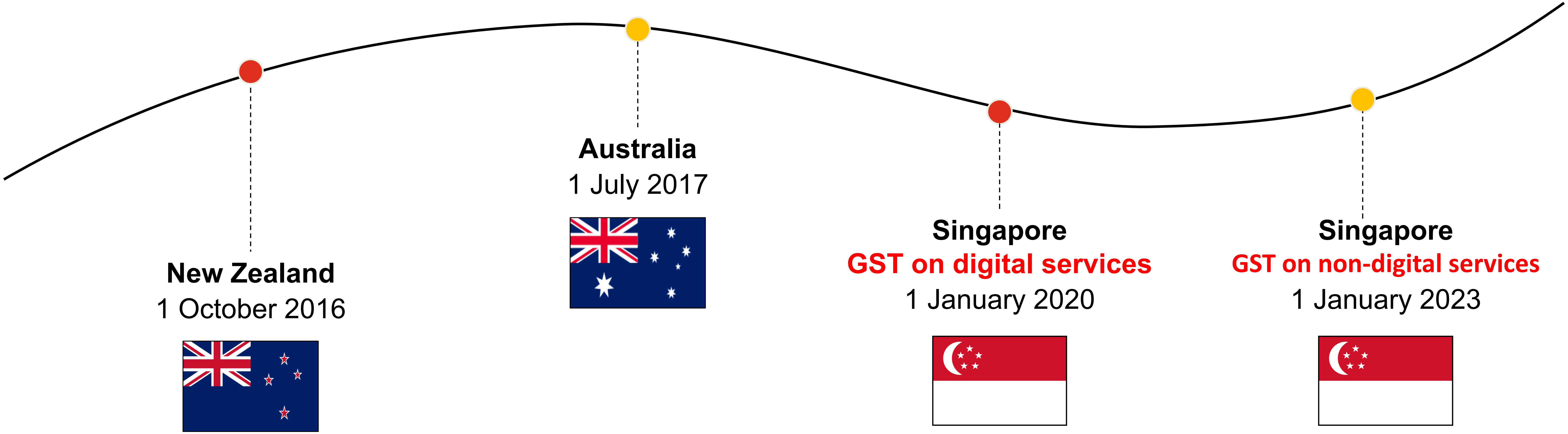


Digital vs Non-digital Services

Example: Local customer purchases online training (pre-recorded training + live tutorial sessions) amounting to $1,000



Implementation of VAT/GST rules on **digital services and non-digital services (remote services)** in APAC



Comparison of GST rules implemented in Australia, New Zealand and Singapore on taxing remote services

	Australia	New Zealand	Singapore
Date of implementation	1-Jul-2017	1-Oct-2016	1-Jan-2020 (imported digital services) / 1-Jan-2023 (imported non-digital services)
GST registration threshold	A$75,000 (or A$150,000 if you are a non-profit organisation) in a 12 months period	NZ$60,000 in a 12 months period	a) S$1m in global annual revenue; and b) S$100,000 in a 12 months period
GST rate	10%	15%	8% (current) / 9% (wef 1 Jan 2024)
Any difference between the GST registration threshold applicable to domestic companies and overseas companies?	No	No	Yes. Domestic companies: Taxable turnover> S$1million Overseas companies: Annual global turnover > S$1 million & make B2C supplies of remote services to Singapore customers > S$100,000
Scope of remote services	Non-resident business supplying '"Inbound intangible consumer supply" to Australian non-GST registered consumer	Non-resident business supplying “Remote service” to New Zealand non-GST registered consumer	Non-resident business supplying '"Remote service" to Singapore non-GST customers

Malaysia:
Service Tax on Digital Services (SToDS)

Imposition and Scope of Service Tax on Digital Services (“SToDS”)

- SToDS shall be charged and levied on any digital service provided by a foreign registered person (FRP) to any consumer in Malaysia.
- Effective date: 1st January 2020
- Tax rate: 6%
- Registration threshold: MYR 500,000

Vital Terminology

Term	Definition
Digital service	Any service that is delivered or subscribed over the internet or other electronic network and which cannot be obtained without the use of information technology and where the delivery of the service is essentially automated.
Foreign registered person (FRP)	• any person who is outside Malaysia providing any digital service to a consumer • operators of online platform for buying and selling goods or providing services • any person who makes transactions for provision of digital services on behalf of any person
Consumer	Same criteria as identifying the Malaysian sales – see next page. Important note: Consumer is not confined to individuals. In the view of Customs, ‘consumer’ in this context include companies and hence business-to-business (B2B) transactions are within the scope of digital service tax.

Identifying the "Malaysian sales"

- Any person who fulfils at least ***<u>any two</u>*** of the following:
  1. makes payment for digital services using credit or debit facility provided by any financial institution or company in Malaysia;
  2. acquires digital services using an internet protocol address registered in Malaysia or an international mobile phone country code assigned to Malaysia;
  3. resides in Malaysia.

Factors to consider to determine whether the consumer "reside in Malaysia":

- The billing address of the consumer is in Malaysia
- The home address of the consumer is in Malaysia
- Recipient's country selection

Administrative Details

Timing of tax due	Upon receipt of payment (not issuance of invoice) Exception: Where payment is not received within 12 months from invoice date, tax is required to be accounted in the 12th month.
Taxable period	Every 3 months (Quarterly) Exception: The duration of the first taxable period may be varied so that the financial year-end coincides with the end of a taxable period.
Submission of return & payment of tax	Within 1 month from end of taxable period via form DST-02 (whether or not there is any service tax to be paid)

Extract from Guide on: Digital Services By Foreign Service Provider (FSP)- PG 1/2

FSP is a person either business or individual outside Malaysia who provides digital services to consumer. FSP includes person:

- ❑ who provide digital service directly or:
- ❑ who sell digital service on behalf of service provider through his online platform. Online platform operator who makes transaction for provision of digital services on behalf of any service provider shall be regarded as FSP. FSP is considered as making transaction on behalf of any service provider if any of the following conditions are met:
    - The online platform operator is authorizes/ functions setting the term and conditions of the underlying transactions;
    - The online platform operator has a direct or indirect involvement in the payment processing;
    - The online platform operator has a direct or indirect involvement in the delivery of the digital service;
    - The online platform operator provides customer support service in relation to the supplies provision of digital services;
    - The invoice or any other document provided to the consumer identifies the supply as made by the online platform operator;

Extract from Guide on: Digital Services By Foreign Service Provider (FSP)- PG 2/2

FSP who is liable to be registered under the implementation of service tax on digital services (SToDS) shall apply for registration not later than the last day of the month following the month in which he exceeds threshold. FSP, who has been registered will be referred as Foreign Registered Person (FRP).

Contents of Invoice

- Invoice to consumer for the provision of SToDS shall state the following particulars:
  - Date of invoice
  - Registration number
  - A description sufficient to identify the digital services provided
  - The total amount payable excluding tax, the rate of service tax and the total service tax chargeable (shown as separate amount) (there’s no express requirement to show these values in MYR on the invoice. Conversion is required for compliance purposes)

Applicable Penalties

Offence	Penalty
Late registration	Fine up to MYR 30,000 or imprisonment up to 2 years or both
Late submission of return	Fine up to MYR 50,000 or imprisonment up to 3 years or both
Failure to issue invoice	Fine up to MYR 30,000 or imprisonment up to 2 years or both
Late payment of service tax	10% to 40%*

*Late payment of service tax penalty	
1-30 days from the 1st day after due date	10%
31-60 days from the 1st day after due date	Additional 15% (total 25%)
60 days and above from the 1st day after due date	Additional 15% (total 40%)

Offset for business customers

- When certain criteria are met, the customer is entitled to credit/refund by offsetting method for the SToDS paid on acquisition.
- The criteria to be fulfilled by the customer are as follows:
  - The customer is a registered person;
  - The customer is providing the ‘same digital service’ to end customer for furtherance of business (i.e., not for personal consumption);
  - The imported digital services are provided by FRP; and
  - The customer has paid service tax to FRP

Exemption(s)

- Effective 14th May 2020, intragroup exemption is applicable for SToDS. Details are as follows:
  - Exemption applies to foreign registered person who provide digital services to Malaysian companies within the group of companies (as defined).
  - However, if the foreign registered person also provides the same service a person in Malaysia outside the group, both the digital services provided within and outside the group is subject to 6% SToDS (no de minimis applicable)

Record Keeping

- ❑Records can be kept in an electronically readable form, and must be readily accessible and convertible in writing

- ❑ Records are to be kept for a period of 7 years

INDONESIAN: VAT ON DIGITAL SERVICES

SUPPLIED BY OVERSEAS VENDORS

Introduction: VAT Rules in Indonesia on foreign services

Law No 8 Year 1983 lastly amended by Law No 6 Year 2023

VAT Law lastly amended by Law No 6 Year 2023 (approval of PERPPU of CIPTA KERJA)

Government Regulation No 44 Year 2022 (GR-44)

Implementation VAT on goods & services & sales tax on luxurious goods

Minister of Finance Regulation No 40/PMK.03/2010 (MoF Regulation-40)

Administrative procedure of VAT on goods & service from overseas

Circular Letter of Director General of Taxation No SE-147/PJ/2010 (Circular Letter-147)

Further explanation of MoF Regulation-40

KEYPOINTS

- ❑VAT on foreign services is imposed on the utilization of (a) intangible goods from outside customs area; and/or (b) taxable service from outside customs area
- ❑VAT is collected through the self-assessment system or known also as "Reverse Charges" VAT
- ❑When it is payable: (a) acquisition prices are declared as debt by the buyer; (b) reimbursement is invoiced by seller; or (c) acquisition prices are paid either partly or wholly by the buyer
- ❑VAT paid is treated as INPUT VAT under the credit mechanism

VAT rules on foreign digital services – Prior 1 July 2020

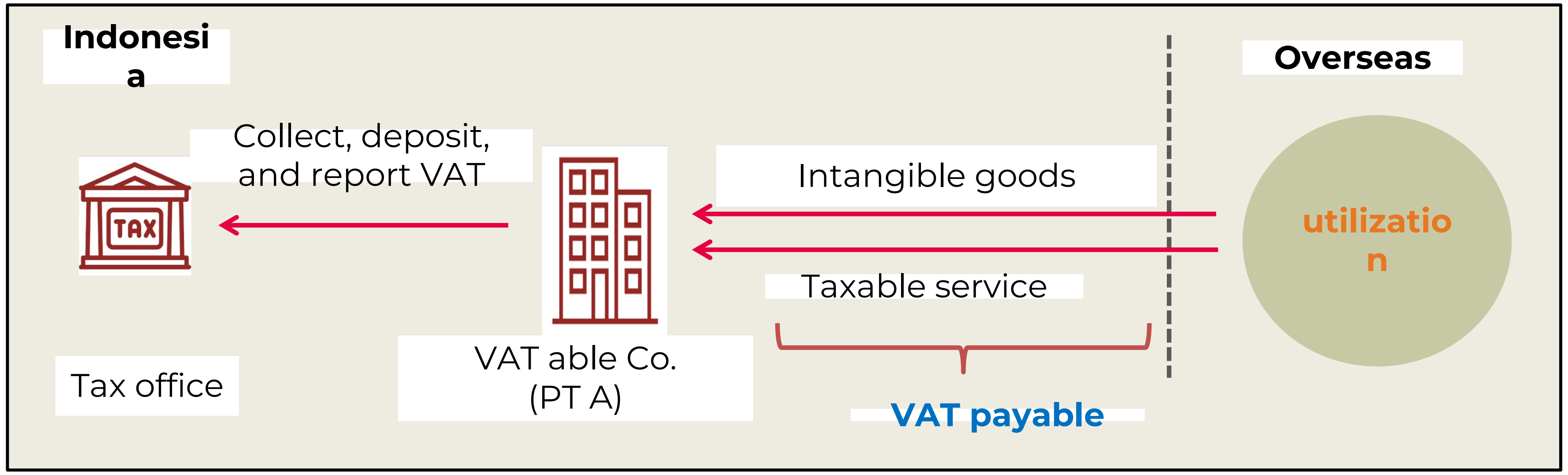
Government Regulation No 80 Year 2019 concerning Electronic Commerce (E-Commerce) (GR-80)

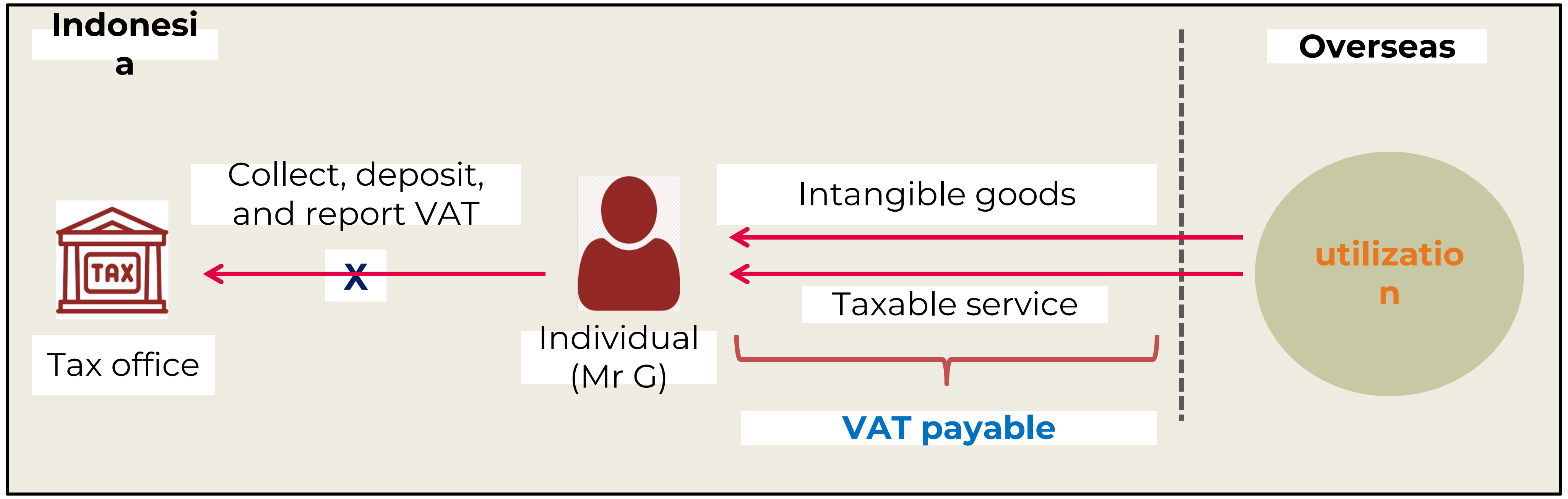
- ❑ E-Commerce is defined as trading or transactions which are conducted through a series of electronic devices and procedures
- ❑ Any tax implication on e-commerce business activities that happened before shall be subjected to general VAT rules
- ❑ Foreign e-commerce provider and/or domestic e-commerce provider shall retain e-commerce data and information related financial min 10 years (follows Indonesia Law of General Provisions and Taxation Procedure)

VAT Law

- ❑ VAT is imposed on the utilization of (a) intangible taxable goods from outside customs area; and/or (b) taxable service from outside customs area
- ❑ Self-assessment system / Reverse Charges VAT applies, but likely only cover the taxable entrepreneur – whilst individual taxpayers will remain untaxable.

VAT collection mechanism: Prior 1 July 2020





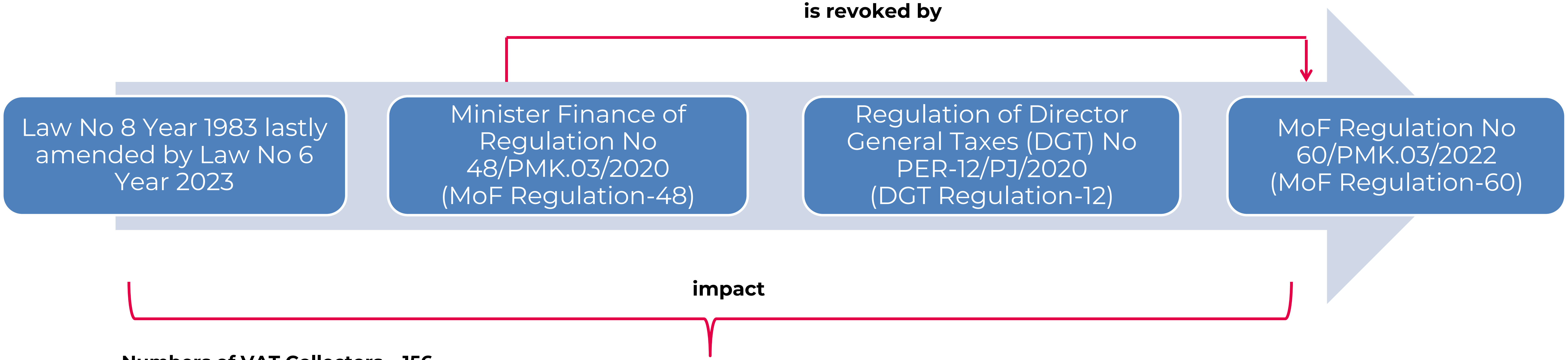
Condition A: customer is a VAT able company

- PT A is a VAT able Co. and be subject to 10% VAT rate of its transactions
- PT A shall perform a self assessment on VAT payable due to PT A utilizes intangible taxable goods / taxable service
- PT A may credit Input VAT paid under the self assessment – neutral.

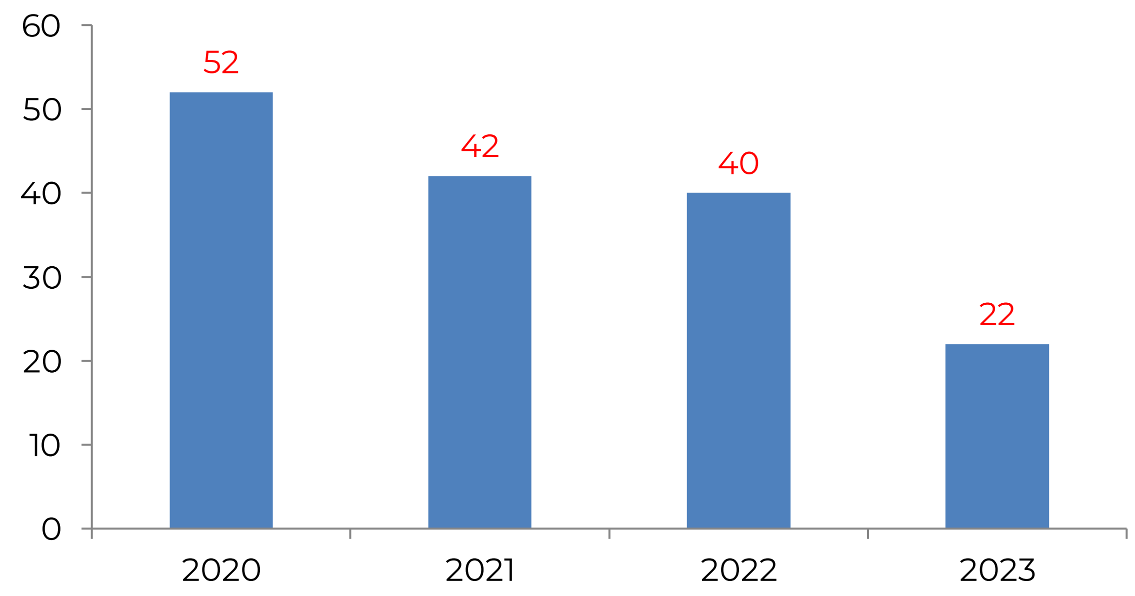
Condition B: customer <u>is not</u> a VAT able company

- Mr G is not a VAT able Co (not VAT registered).
- Technically, Mr G shall perform a self assessment on VAT payable. In fact never an individual pays this type of VAT. It can be claimed as expenses if Mr G performs bookkeeping to calculate his personal income tax – otherwise it is treated as cost.

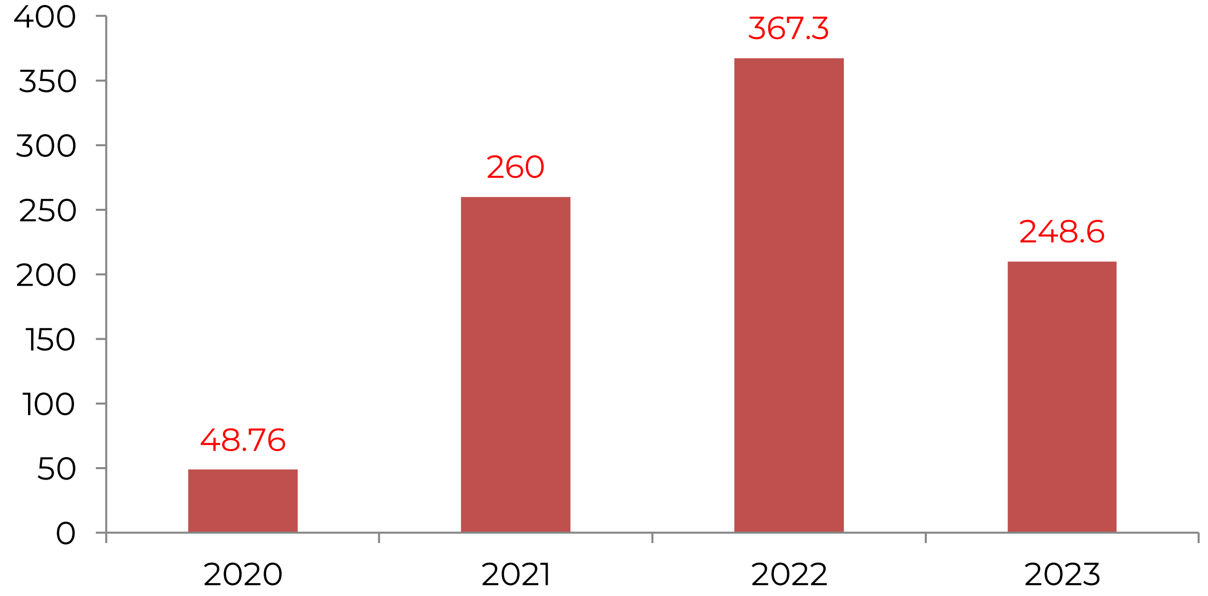
VAT rules on foreign digital services - Since 1 July 2020



Numbers of VAT Collectors – <u>156 companies</u>
between 2020 – July 2023



VAT Revenue in (USD/ million) - USD 924
between 2020 – July 2023



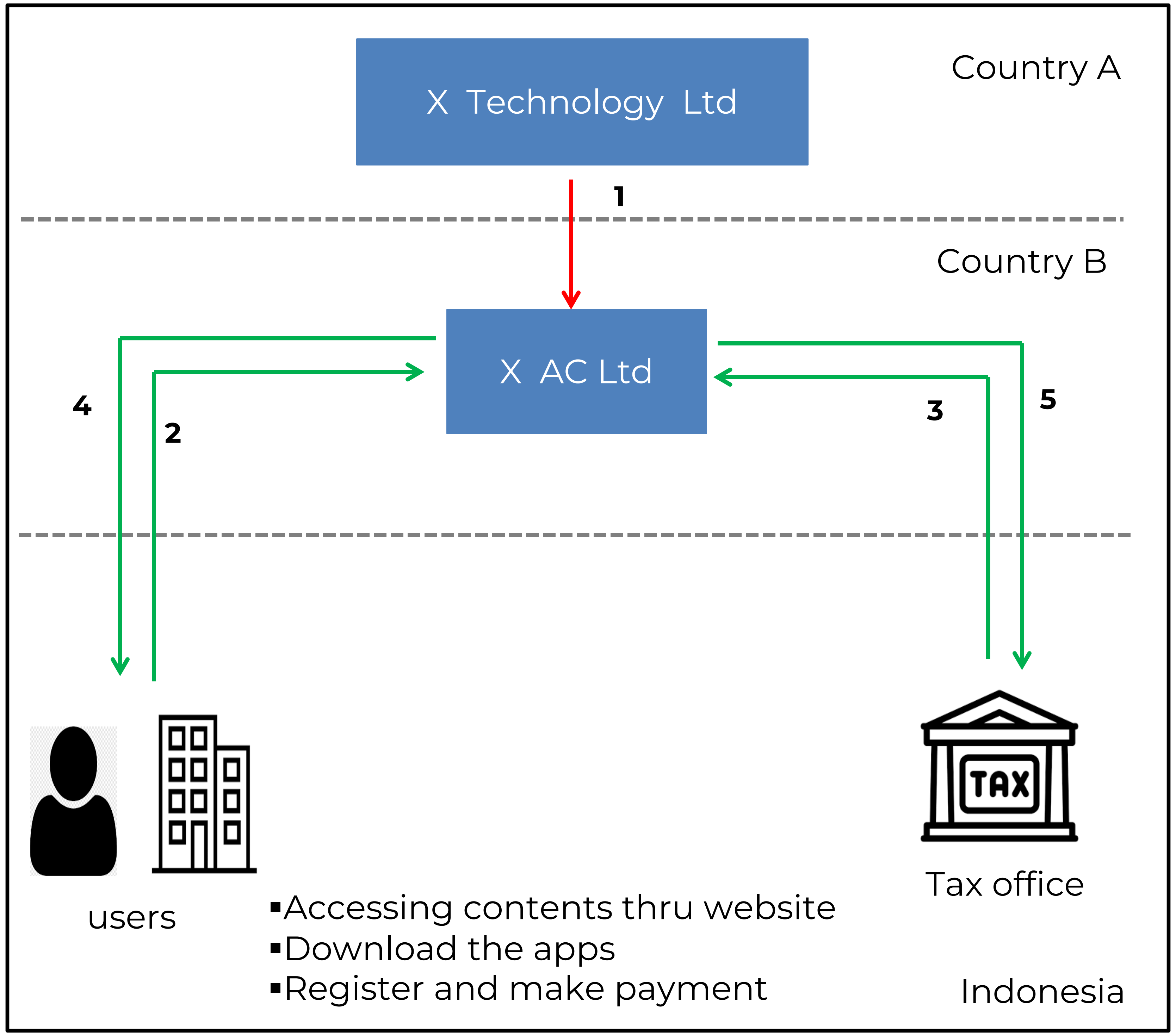
Note:
- *The appointment of VAT collector starts in July 2020 but becomes effective in August 2020*
- *Data provided is up to July 2023*

Source: DGT' website

Key Points: VAT rules on foreign digital services - Since 1 July 2020

Law-2	❑ Foreign sellers, foreign service providers,(foreign digital players) and foreign e-commerce providers are obliged to collect, deposit, and report VAT either through a foreign e-commerce provider or by appointing domestic e-commerce provider (e-commerce providers) ❑ Administrative penalties shall be subjected to foreign digital company in the form of termination access if it fails to meet the tax rules
DGT Regulation-12	❑ Requirements to register or appointed: a) value of transaction exceeds IDR600 million in 1 year or IDR50 million in 1 month; and/or (b) amount of traffic or accessors exceeds 12.000 in 1 year or 1.000 in 1 month ❑ To collect the VAT – any foreign digital companies may: (1) DGT shall appoint VAT collector that has met the requirements; or (2) foreign company may submit notification to the DGT through email or system provided by the DGT ❑ Payment and reporting mechanism by foreign company or agent in Indonesia
MoF Regulation-60	❑ 11% VAT (commencing 1 April 2022) shall be applied on digital transactions ❑ Tax object covers: the use/ right to use copyright, industrial or commercial tools, motion picture films, films/ video tapes for TV broadcasting/ sound tapes for radio broadcast, or the utilization of digital goods or digital services ❑ VAT shall be collected, paid, and reported by foreign digital companies that (a) are appointed as VAT collector and (b) have obligation to issue commercial invoice ❑ VAT collector shall (a) deposit VAT collected no later than the end of the subsequent month after tax period ends and (b) report on a quarterly basis, at the latest by the end of the subsequent month after the quarter period ends

Illustration: how VAT on Digital services is imposed

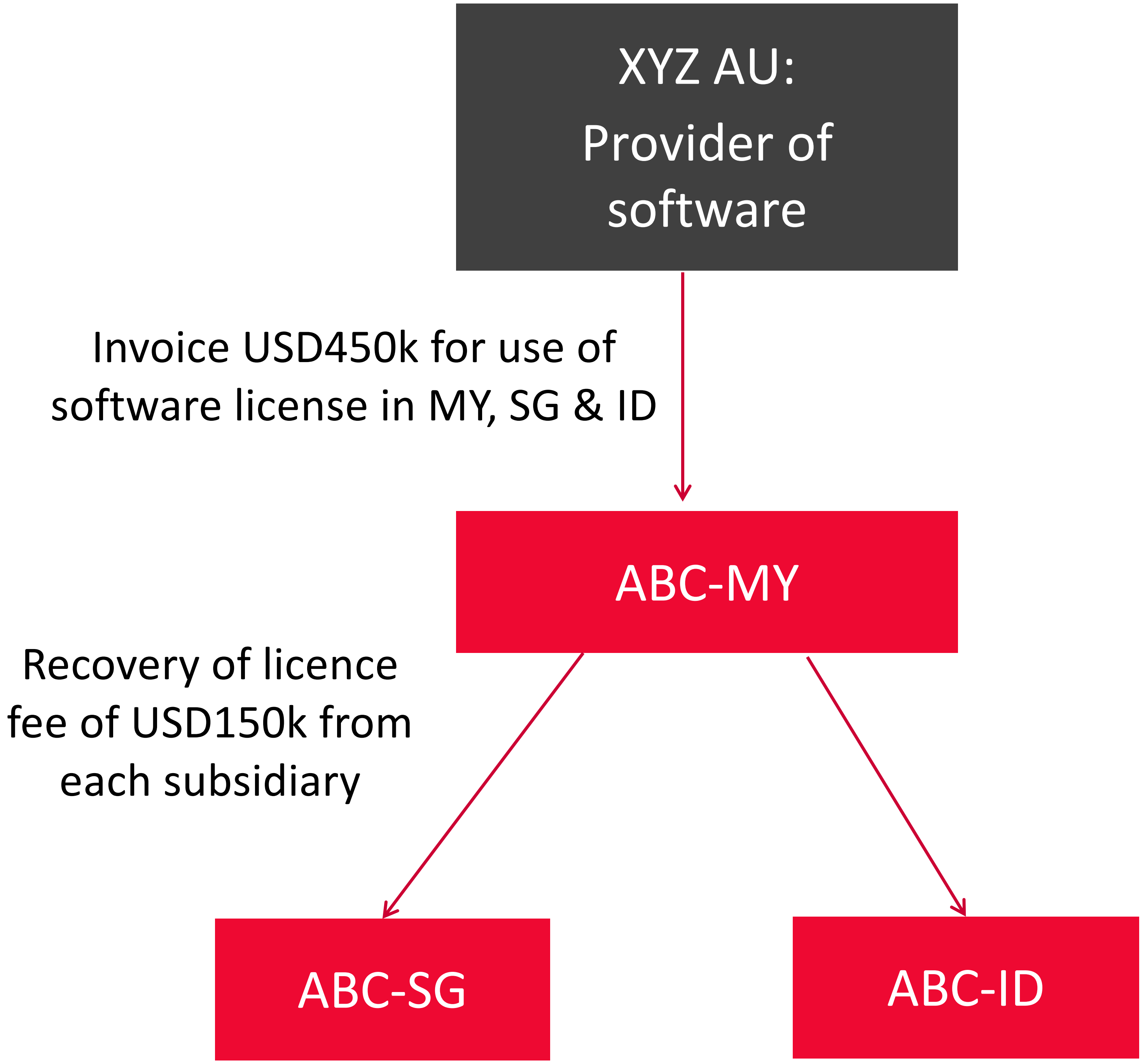


Note:

1. X Technology Ltd in Country A has subsidiary X AC Ltd in Country B
2. Users / customers are domiciled in Indonesia. They utilize directly streaming music service provided by to X AC Ltd by accessing website/ download apps; register by using email/ no HP; and users make payment on that service by using credit card
3. X AC Ltd has been appointed as VAT collector by the DGT on 7 July 2020
4. X AC Ltd shall fulfill VAT collection obligation: (a) issue invoice to users and impose 11% VAT, (b) X AC Ltd shall put identify (name and VAT numbers of users or email users registered in the DGT system (if the user is an entity) in order the entity to be able to claim its Input VAT
5. X AC Ltd shall collect, deposit and report VAT to the tax office, based on the provisions governed under VAT digital services regulation

Panel Discussion

Case study



Background:

- XYZ AU bills ABC-MY (regional HQ of ABC Group) for software licence fee of USD450k.
- ABC-MY pays XYZ AU & recovers USD150k each from the subsidiaries ABC-SG and ABC-ID.
- The services are "delivered electronically" and directly by XYZ AU to the entities in MY, SG & ID respectively.
- All the ABC entities are not registered for service tax/GST/VAT before these transactions.

Discussion points:

What are the potential service tax/GST/VAT implications in Malaysia, Indonesia and Singapore?

THANK YOU