

TaxFlash

Tax Services

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Further Developments of the 2005 Draft Amended Tax Laws

The likelihood now seems remote that new amended tax laws will be put into effect next year as originally intended by the government. Public resistance to certain issues covered in the draft amendments will prolong their deliberation by the House of Representatives. The House's Special Committee chairman has indicated that new amendments are only expected to take effect starting 1 January 2007.

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The core concerns of the public, especially the business community, are as follows:

- *The "tyranny" of pay first, argue later will continue.* A tax assessment must be paid within a month of its issuance date. An objection does not set aside the taxpayer's obligation to pay. The DGT is also empowered to collect tax assessments using a distress warrant.
- *Company involvement in tax registration efforts.* The draft amendments suggest that withholding-tax surcharges be imposed on resident taxpayers not

having a tax ID number (NPWP). The surcharge can be either 20% for employee income tax (Article 21 income tax) or 100% for Articles 4.2, 22, and 23 withholding taxes. This requirement would put many companies in a dilemma when dealing with their employees and other third parties. Whilst many of employees will not voluntarily register with the tax office and obtain an NPWP, they also will not readily tolerate extra tax withholding from their income, even though this is what the law would stipulate. The question is whether the companies should impose the withholding surcharges on any relevant parties and be prepared for the consequences that might arise from employees who can not accept reduction of their take home salaries income, or bear the surcharges themselves so that it will increase cost of doing business in Indonesia.

- *Presentation of living costs in a tax return.* The draft amendment requires that the income tax return of an individual taxpayer (Form 1770) should present the individual's costs of living. People have objected to this as they generally do not maintain records of their living costs. Their reactions might be different if the costs of living were deductible from their income and could thereby reduce their tax liability.
- *Income tax on grants from parents/children.* The draft amendment suggests taxing grants from parents or children. It has been pointed out that before a solid and adequate social security scheme has been put in effect, taxing such grants is not an appropriate option.
- *VAT on "exports of services".* The zero-rated VAT on exports of services (and intangible goods) will be good for businesses. The problem is that an export of a service has been defined in such a

way that it would be impossible to implement, i.e., the services must be wholly performed outside Indonesia for zero rating VAT. A more logical definition would be a reliance on the “destination principle” as applied to the inbound use of foreign taxable services or intangible goods.

- *VAT refund only at year end.* Except for certain taxpayers, VAT refunds can only be applied for at year end. Besides disturbing a taxpayers’ cash flow, this rule could potentially trap them in a 100% penalty for carrying over supposedly improper input VAT from one month to the following month.

- c. *e-filing.* This refers to the way the VAT return in electronic format is filed with the tax office, i.e. via a designated application service provider (ASP). Electronic receipt will be issued by the DGT for a VAT return which has been filled out completely and submitted electronically to the tax office. The taxable company concerned will have to file the hard-copy of Form 1106 with the relevant district tax office and attaching the electronic receipt to it.

The conventional/manual mode can only be used until June 2006 by taxable companies who cumulatively receive and issue not more than 300 tax invoices for a particular tax period (a month). Once the threshold has been passed, or starting July 2006, taxable companies have to move to either to using the e-tax return or the e-filing mode.

MoF 47 was subsequently modified by MoF Decree No. 548/KMK.04/1994. Uncertainty arose with enactment of the first amendment of the 1984 VAT Law (Law No. 11/1994) on 1 January 1995, under which bonded zones were no longer regarded as outside the purview of VAT. However, amid a variety of criticism and debates as well as the government’s attempts to restore its VAT/LST authority over Batam, MoF 47 as amended by MoF 548 did survive until the end of 2003, at which time the Government introduced Government Regulation (GR) No. 63/2003.

Unlike the previous attempts, GR 63/2003 tried to restore VAT/LST authority over Batam on a selective basis. While a purchase and import of “core” materials or assets would still enjoy the facility of “tax not to be collected”, as of 1 March 2004, only purchases or imports of certain types of other goods were designated to attract VAT and LST (Ref. Note 3 of Figure 1). However, GR 63 left uncertainty about when self-assessed VAT should start to apply for the use or benefiting of foreign services and intangible goods in Batam.

As part of its “July Package”, the government issued GR 30/2005 in July 2005, which confirmed, among others, that such self-assessed VAT should only be effective starting 1 January 2004. Along with the GR, the MoF issued regulation No. 60/PMK.04/2005 about the procedures for bringing goods in and out of Batam, Bintan, and Karimun bonded storage. Before the regulation took effect on 1 October 2005, the regulation was amended by MoF regulation No. 89/PMK.04/2005. Figure 1 sets out a summary of the developments and the current status of VAT and LST treatments in Batam.

If you need more detailed information or wish to discuss these matters further, please do not hesitate to contact us. (Robertus Winarto).

New VAT Returns Starting 1 January 2006

In mid September, the DGT introduced a new VAT return form (stipulated in Per-145/PJ./2005 and SE-12/PJ.52/2005). With effect from 1 January 2006, all VAT returns must be prepared using the new form (Form 1106).

With the ultimate goal of transferring VAT compliance over to an electronic system, Per-145 allows the filing of three types of VAT returns:

- a. *Manual tax returns.* A taxable company will have to file VAT returns in a “conventional” way, i.e. filling out hard-copy forms, signing them, and submitting the whole package to the relevant district tax office (“KPP”).
- b. *e-tax return.* A taxable company will have to fill out a hard copy of the main Form 1106, sign it and store the relevant attachments in an electronic storage device

VAT and LST in Batam: Developments and Current Status

Flows of goods and services to, in and from Batam have received various tax treatments since the late 1980s. Given its status as a bonded zone and in light of the 1984 VAT Law (Law No. 8/1984), Batam had a quite open and flexible tax treatment which differed from the general VAT and luxury sales tax (LST) rules. The 1984 VAT Law did exclude bonded zones from VAT jurisdiction. Partly on that basis the government issued MoF Decree No. 47/KMK.01/1987 which provided for different VAT and LST treatments in Batam.

Figure 1

VAT and LST Treatment: Developments and Current Status

Event	MoF 47 & 548 (Up to 31/12/03)	GR 63/2003 (1/1/04 – 18/7/05)	GR 30/2005 (19/7/05 – present)
1. Imports of core materials ¹⁾	Tax not due	Tax not to be collected	Tax not to be collected
2. Imports of core capital assets ¹⁾	Tax not due	Tax not to be collected	Tax not to be collected
3. Imports of other goods/assets	Tax not due	Tax due, chargeable on a selective basis ³⁾	Tax due, chargeable on a selective basis ³⁾
4. Inbound purchases of core materials from outside Batam	Tax not to be collected	Tax not to be collected	Tax not to be collected
5. Inbound purchases of core capital assets from outside Batam	Tax not to be collected	Tax not to be collected	Tax not to be collected
6. Inbound purchase of other goods/assets from outside Batam	Tax not to be collected	Tax due, chargeable on a selective basis ³⁾	Tax due, chargeable on a selective basis ³⁾
7. Deliveries of core materials within Batam	Tax not due unless electing otherwise	Tax not to be collected	Tax not to be collected
8. Deliveries of core capital assets within Batam	Tax not due unless electing otherwise	Tax not to be collected	Tax not to be collected
9. Deliveries of other goods/assets within Batam	Tax not due unless electing otherwise	Tax due, chargeable on a selective basis ³⁾	Tax due, chargeable on a selective basis ³⁾
10. Deliveries of services within Batam	Tax not due unless electing otherwise	Tax due, chargeable on a selective basis (but not yet selected) ³⁾	Tax due, chargeable on a selective basis (but not yet selected) ³⁾
11. Deliveries of goods (originating from abroad) to parties outside Batam within the Customs Area	Presumed import tax to be paid; output VAT to be charged	Tax due, chargeable on a selective basis ³⁾	Not discussed, arguably should follow the general rule
12. Inbound use of foreign services or intangible goods in Batam	Not discussed, arguably tax not due ²⁾	Tax is due and to be self-assessed	Tax is due and to be self-assessed
13. Deliveries of services to non-resident parties	Not discussed, arguably follows the general rule	Tax due, chargeable on a selective basis (but not yet selected) ³⁾	Not discussed, arguably should follow the general rule

- Notes**
1. *Core materials* are materials, including auxiliary materials, to be converted into goods for further export sales. *Core capital assets* are those assets (e.g. machinery, equipment) used to produce exported goods
 2. By virtue of GR 30/2005, tax was not due. Tax is only due (and to be self-assessed) effective from 1 January 2004.
 3. As of 1 November 2005, four types of goods/products have the tax due and collected: motor vehicles, cigarette and other tobacco products, alcoholic beverages, and electronic products.
 4. The tax includes VAT and luxury sales tax (LST).

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