

# TaxFlash

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## ALL ABOUT VAT !!!

In our previous TaxFlash ( No. 09/09) we provided a summary of the main changes covered by the new VAT Law No.42/2009 which will take effect from 1 April 2009. Many of the changes in the Law are directed towards the administration aspects of the VAT, and therefore most tax payers will require a change in their VAT process.

Implementing regulations are crucial to guide taxpayers in applying such changes, and since mid March 2010 the Ministry of Finance (MoF) and the Directorate General of Taxation ( DGT) have begun releasing the long awaited guidance. We summarise below some of the regulations which have been issued up to now and look at the possible impact on your business.

### 1. Tax Invoices

(MoF Regulation No.38/PMK.04/2010 dated 22 February 2010, DGT Regulation No. PER-10/PJ/2010 dated 9 March 2010, DGT Regulation No. PER-13/PJ/2010 and DGT Circular Letter No. SE-42/PJ/2010 both dated 24 March 2010).

- These regulations provide guidance on preparation of tax invoice and reiterate the change concerning the deadline for issuance of tax invoices. In the past, the deadline was at the end of the month following the delivery of taxable goods/services. Based on the new VAT Law, the tax invoice must be issued **at the time the goods/services are delivered**. Other rules on the time to issue a tax invoice remain the same, whereby if a payment takes place before the goods or services is delivered, a tax invoice must be issued at the payment date; where work on a project is delivered in stages and paid on a term basis, a tax invoice must be issued upon the receipt of each term payment; when a taxable entrepreneur (*PKP*) submits a commercial invoice to the State Treasury as a VAT Collector, a tax invoice must also be issued.
- Combined Tax Invoices can be issued to cover all goods and services delivered to the same buyer in one month, such invoices must be issued by the end of the month.

- The term “Simple Tax Invoice” is no longer used and there is no sanction for *PKPs* (Taxable Entrepreneur) if they issue VAT invoices without stating the buyer’s identity ( i.e. name, address and Tax ID number). For retailers, there is no requirement for issuers to sign the invoices.
- There is no further guidance on or definition of the time of delivery, and for taxable services providers the time to raise a tax invoice must be carefully reviewed. Late issuance of a VAT invoice is subject to a penalty at 2% of the Tax Base (the invoice amount).

## 2. Returned Goods & Cancellation of Services (MoF Regulation No.65/PMK.03/2010 dated 18 March 2010)

- Previously there was no specific regulation for cancellation of services, the above regulation provides guidance on the preparation and format of Cancellation Notes for services and Return Notes for goods.
- The most significant change in the rule is for sellers/recipients of the Return/Cancellation Note in which they must credit or report the reduction of Output VAT at the month the goods are returned or services are cancelled. Previously such a report could be made either in the month when the goods are returned or in the month when the Return Note is received.

## 3. Own Construction Activities (MoF Regulation No.39/PMK.03/2010 dated 22 February 2010)

- VAT is due on building construction activities performed outside the course of business or work by an individual or a company in which the result is for own use or utilized by a related party.
- The effective VAT rate stays the same as in the previous regulation, which is 4%, but the threshold of building construction has changed, i.e. the VAT only applies if the total area of the building construction is at least 300 m<sup>2</sup> (previous limit was 200m<sup>2</sup>).
- VAT is payable when “own construction activity” starts, payments must be based on the costs incurred each month and made monthly by the 15<sup>th</sup> of the following month.
- If “own construction activity” is performed in stages, it is considered as one whole activity provided the breaks between work is not more than 2 years.

## 4. Self-assessed VAT on the use of intangible goods and/or services from overseas (MoF Regulation No.40/PMK.03/2010 dated 22 February 2010)

- VAT is due upon consumption or the utilisation of taxable intangible goods and/or taxable services from outside the customs area in the customs area.
- Utilisation of taxable intangible goods and/or services takes place prior to the following events when :
  - a) the taxable intangible goods and/or taxable services are clearly used by the party utilising them;
  - b) the cost of taxable intangible goods and/or taxable services is claimed to be payable by the party utilising them;
  - c) the sales price of taxable intangible goods and/or fee on taxable services is collected by the transferor; or
  - d) the cost of taxable intangible goods and /or taxable services is paid partly or fully by the party utilising them.
- If none of the above four events is known, the time when the utilisation begins is the date when the agreement is signed or in any other time that may be stipulated by the Director General of Taxes.

- The VAT rate is 10% and payments must be made by the 15<sup>th</sup> of the month following the month of utilization.
- Claims for self-assessed input VAT must be made in the VAT Return of the month the VAT is due by attaching the Tax Payment Slip to the Return. Previously the claims were required to be made in the month of the VAT payment.

#### 5. VAT Centralisation (DGT Regulation No. PER-19/PJ/2010 dated 29 March 2010)

- Companies may centralise VAT reporting and so may exclude internal deliveries of taxable goods from the scope of VAT by submitting a written notification to the tax office ( i.e.Head of Regional Tax Office).
- All companies require approval from the DGT for the submitted written notification. In the past, e-filing companies could simply submit a notification for centralising their VAT, with no approval required.
- The approval expiry time remains the same at 5 years.
- For extension of Centralisation, a written notification should be submitted at least 2 (two) months before the approval expires, or in the case of e-filing companies, by 4 years and 10 months after their notification was submitted.

#### 6. Export of Services (MoF Decrees No. 70/PMK.03/2010, dated 31 March 2010)

- The amended VAT law provides that export of services is subject to 0% VAT, however the Minister of Finance is authorised to regulate the limitation and types of such services.
- The MoF Regulation defines that the zero-rated VAT is only applicable to the following services :
  - a. Toll manufacturing services, with certain conditions, among others, that the manufactured goods should be exported.
  - b. Repair and maintenance services which are attached to services or movable goods utilised outside the customs area.
  - c. Construction services, i.e. consultation on construction planning, construction work performance, construction work supervision, which are attached to services or immovable goods located outside the customs area.
- Export of other services, for example PwC services, is still subject to 10% VAT.

#### 7. VAT Refunds (MoF Decrees No. 71 and 72/PMK.03/2010, both dated 31 March 2010)

- For most companies VAT refunds are now only available at the end of the year, rather than on a monthly basis. Any overpaid Input VAT (after crediting against Output VAT) in a particular month must be carried forward to the following month.
- Monthly refunds are available for taxable entrepreneurs (*PKPs*) exporting taxable goods and/or services, *PKPs* supplying VAT collectors and *PKPs* which supply taxable goods and/or services the VAT of which is not collected; if they demonstrate low-risk characteristics and /or meet certain criteria. For these companies, VAT may be refunded after a Review (not an Audit) of their Refund application.

#### 8. Pre-production and Failure to Produce. (MoF Decrees No.81/PMK.03/2010, dated 5 April 2010)

- Taxable entrepreneurs ( *PKPs*) which incur Input VAT during the pre-production stage of a project may still apply for VAT refunds in respect of capital goods on a monthly basis, however if they fail to reach the production stage within 3 years from the date they have credited the Input VAT, they must repay the refunds by the end of the month following failure of the production condition.
- Capital goods are defined as tangible goods with a useful life of more than 1 (one) year and are not intended for sale.

- Manufacturing PKPs are considered to have failed the production condition if they cannot deliver/export taxable goods and/or services within 3 years since they have credited the Input VAT.
- For non-manufacturers, the time limit to prove delivery or export of taxable goods and/or services is 1 year since they credited the Input VAT.
- In case the failure to produce is due to force majeure, repayment of the refunded Input VAT is not required.
- Late repayment of refunds will be subject to an administrative sanction of 2% per month which will be imposed from the date of refunds up to the issue of a Tax Collection Letter.

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