Tax Indonesia

TaxFlash

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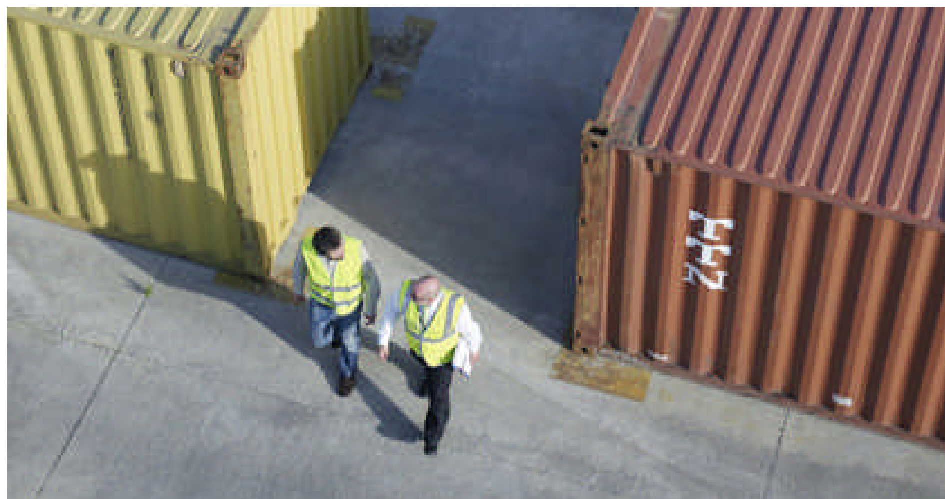

New import regulation – a challenge to importers and manufacturers

The Minister of Trade (MoT) has recently issued new regulation No. 27/M-DAG/PER/5/2012 on Import Identification Numbers, which came into effect on 2 May 2012.

The issuance of this new regulation has brought about many concerns from those importers and manufacturers who will be significantly affected. There are several new provisions under this new regulation which are of concern to the industry:

Restriction on Importers and Manufacturers	Restriction on Imported Goods
1. General import trading companies are allowed to import products only of the same section in the customs' harmonized code; 2. Manufacturers holding an import license (API-P) can only import finished products to be directly sold to the customer if the products are for market testing and to complement production (complementary goods) under specific quota and time frames. This would require a Producer Import (PI) License to be obtained.	1. Goods for market testing are those which have not yet been produced by the manufacturers in Indonesia and are in accordance with its industrial/ manufacturing license while complementary goods are defined as industrial goods related to the manufacturing license and imported from its overseas company which has a special relationship; 2. A special relationship means a relationship between the manufacturer and the overseas company where one of the parties has controlling authority over the other in executing financial and operational decisions under the existing accounting standards.

The MoT will conduct a post-audit regarding importation compliance on manufacturers holding a PI license.

The deadline for adjusting the existing importer import license (API-U) and API-P to comply with this new regulation is 31 December 2012.

Under the above provisions, general importers of trading goods would be restricted to importing only one section of goods of the customs' harmonized code which would raise the need to consider establishing a new import trading company in Indonesia to allow them to import more than one section of goods. In addition, the manufacturing company can now no longer carry out general import trading business other than for products related to market testing and complementary goods.

There has been a series of discussions between several business associations and the MoT due to the significant impact of this new regulation. Based on the recent information that we have, the MoT may accommodate some changes to the provisions which may include:

- Broadening the definition of affiliated overseas companies in point (4) above;
- Allowing general import trading companies to import more than one section of goods if the goods are sourced from overseas companies which have a special relationship;
- Allowing manufacturers to continue importing finished products beyond market testing and complementary products on condition that the purchase order was issued prior to this new regulation.

VAT on deliveries to and from Free Trade Zones

In early 2012, the Government of Indonesia issued Regulation No.10/2012 (GR-10) regarding Treatment of Customs, Tax and Excise on the Flow of Goods to and Originating from Free Trade Zones (FTZ) and Free Ports. This regulation, among others, sets out general procedures on the flow of goods to and originating from FTZ. However, detailed procedures in relation to Value Added Tax (VAT) and/or Luxury-goods Sales Tax (LST) administration in relation to the flow of goods and services to and from FTZ is stipulated further in a Minister of Finance regulation.

Finally on 26 April 2012, the Minister of Finance (MoF) issued Regulation No.62/PMK.03/2012 (PMK-62) regarding Procedures of Monitoring, Administering, Payment and Settlement of VAT and/or LST on the Delivery of Taxable Goods and/or Taxable Services from FTZ to Other Places within the Customs Area and the Delivery of Taxable Goods and/or Taxable Services from Other Places within the Customs Area to FTZ. PMK-62 is the implementing regulation of GR-10.

Key points of PMK-62 are summarised below.

Delivery of Taxable Goods from FTZ to Other Places within the Customs Area

- The delivery of taxable goods/luxury goods from FTZ to other places within the Customs Area is subject to VAT and/or LST, which will be due at the time when the taxable goods are released from FTZ.
- FTZ, Bonded Zones and Special Economic Zones are excluded as other places within the Customs Area.
- The VAT and LST due should be collected and paid to the State Treasury by the party releasing the taxable goods using a Tax Payment Slip (*Surat Setoran Pajak/SSP*).
- An SSP completed by a relevant invoice and Customs Notification will be regarded as a document equivalent to a VAT invoice, on which VAT is creditable in the buyer's hands.
- PMK-62 specifically provides for exemption from VAT/LST on certain taxable goods/luxury goods.

Delivery of Intangible Taxable Goods and/or Taxable Services from FTZ to Other Places within the Customs Area

- The delivery of intangible taxable goods and/or taxable services from FTZ to other places within the Customs Area, Bonded Zones or Special Economic Zones is subject to VAT.
- The VAT will be due at the time when the intangible taxable goods and/or taxable services are utilised in other places within the Customs Area, Bonded Zones or Special Economic Zones. The party utilising the taxable goods and/or taxable services should self assess the payment of VAT due using an SSP.
- PMK-62 lists the events in utilising intangible taxable goods and/or taxable services that determine when VAT is collected.
- An SSP completed by a relevant invoice or agreement will be regarded as a document equivalent to a VAT invoice, on which VAT is creditable in the buyer's hands.
- The above provision will not be applied to the delivery of intangible taxable goods and/or taxable services that are exempted from the imposition of VAT according to the VAT Law.

Delivery of Taxable Goods and/or Taxable Services to FTZ

- VAT is not collected on the delivery of taxable goods or intangible taxable goods from other places within the Customs Area, Bonded Zones or Special Economic Zones to FTZ. A VAT invoice should still be made on this type of delivery.
- VAT is due on the delivery of taxable services from other places within the Customs Area, Bonded Zones or Special Economic Zones to FTZ, which are performed outside FTZ. This VAT will not be applied on the delivery of certain taxable services that are exempted from the imposition of VAT according to the VAT Law.

Apart from the points above, PMK-62 also provides detailed provisions regarding VAT treatment on the delivery of airline and telecommunication services within FTZ, which basically provides that deliveries of such services within FTZ are exempted from VAT, but deliveries from and to FTZ are subject to VAT with an exception of the telecommunication services to FTZ using fixed line network.

New implementing regulation on VAT

After the new VAT Law No.42/2009 was enacted on 1 April 2010, the President finally signed Government Regulation No.1/2012 (GR-1) on 3 January 2012 as the associated implementing regulation of the VAT Law. The regulation is essentially to cater for the changes applied in the new VAT Law and to adopt some of the rules from earlier lower–ranked regulations, including MoF and Director General of Tax (DGT) regulations mentioned below. This strengthens the position of the tax treatment covered in these regulations. GR-1 revokes the previous implementing regulation of the VAT Law (i.e., Government Regulation No.143/2000 (GR-143)).

After more than four months since the stipulation of GR-1, we review the practical implementation of the regulation and provide our comments below on several of the important rules covered by GR-1.

Performance principle in export of services

Last year, the DGT issued Circular Letter No.SE-49/PJ/2011, which stipulates that services provided to customers outside of the Customs Area are:
- considered to be locally delivered, if performed within the Customs Area, and are therefore subject to the regular VAT rate of 10%; and
- considered to be beyond the scope of the VAT Law, and hence not subject to VAT, if performed outside of the Customs Area.

The basis of this Circular relies on the 'performance principle' as opposed to the consumption principle. The same approach is also adopted in Article 6 of GR-1 which stipulates that VAT is imposed on the delivery of services

performed within the Customs Area, regardless of whether the services will be utilised within or outside the Customs Area.

Definition of capital goods

Back in 2010, the MoF issued Regulation No.81/PMK.03/2010 (PMK-81) regarding the period for calculation and procedures for repayment of Input VAT, which has been credited and refunded for Taxable Entrepreneurs who fail to produce. A *failure to produce* for an entrepreneur whose main business activity is manufacturing of taxable goods arises if, during the three years from the first time the entrepreneur credits Input VAT, the entrepreneur fails to deliver or export VATable goods. It appears that the credited VAT must be VAT related to capital goods.

PMK-81 defines capital goods as tangible assets that have a utilisation period of more than one year. A wider definition regarding capital goods is provided in GR-1, which stipulates that the capital goods shall include other expenditure related to the acquisition of those capital goods, which have to be capitalised to the acquisition value of the capital goods, e.g., engineering and construction cost. Therefore, Input VAT associated with that expenditure shall be creditable by the entrepreneur during the pre-production period.

VAT obligation on foreclosed assets

GR-1 stipulates that VAT invoice on the sale of auctioned goods shall be issued by the owner of the goods. If the owner did not issue a VAT invoice, the winner of the auction shall self-assess the VAT due.

This will provide stronger position for financial institutions who sells their debtors' foreclosed assets through auction, that they are not liable to issue VAT invoice as long the ownership of the goods still remains in the debtors' hands.

The crediting of Input VAT

The Input VAT paid to acquire taxable goods or services should be credited against Output VAT at the place where the Taxable Entrepreneur is confirmed. However, in regard to import activities, the DGT may determine a place other than the place where the import activities are conducted, as the place for crediting Input VAT, either at the written request of the Taxable Entrepreneur or ex-officio. This place determination will be regulated further in a MoF regulation.

Relaxation of the timing of issuing VAT invoices

In August 2011, the DGT issued Circular Letter No.SE-50/PJ/2011 (SE-50) which provides clarification and certainty on the times at which VAT invoices must be issued. The main content of the Circular is to follow accounting concepts on deliveries. The term delivery, in this case, is defined as the time when risk and ownership of goods have been transferred or when income from a service delivery can be reliably estimated or measured. Please refer to TaxFlash No.08/2011 for our discussion regarding this Circular.

GR-1 adopts the spirit of the Circular and provides more specific provisions compared to the Circular. It stipulates the detailed taxable event for each type of goods or service delivery which become the proper timing for issuing VAT invoices.

Valid VAT invoices

A VAT invoice cannot be considered to be valid if it issued over a three-month timeframe. Therefore, the relevant Taxable Entrepreneur will be considered as not issuing a VAT invoice. At the hands of the buyer, the VAT collected using this invalid VAT invoice cannot be credited as an Input VAT.

Detailed requirements regarding a valid VAT invoice are already regulated in DGT Regulation No.PER-13/PJ/2010, most recently amended by Regulation No.PER-65/PJ/2010. Please refer to our TaxFlash No.03/10 for our discussion regarding VAT invoices.

Discretion for retailers with regard to a valid VAT invoice

GR-1 provides leniency for retailers that they will not be subject to a Tax Collection Notice if issuing a VAT invoice that does not disclose the identity of the buyer. A detailed description regarding the retailer is also provided in this regulation.

Joint liability for VAT payment

VAT Law stipulates that a buyer of goods or services is jointly and severally liable for payment of VAT if the VAT due cannot be collected from the sellers or service providers and the buyers are not able to show any proof that VAT has been paid. For the purpose of efficiency, GR-1 provides an opportunity for the Indonesian Tax Office (ITO) to choose whether to collect the VAT due from the sellers or to directly check with the buyer for the VAT payment evidence. If the result from one of the approaches is satisfactory, this joint liability will not be imposed upon the buyer. Detailed procedures regarding joint liability for VAT payment will be regulated further in a MoF regulation.

Refund of VAT over-collected by the sellers

Sellers may made mistakes in collecting VAT on the delivery of goods or services to the buyer, resulting in the VAT collected and paid to the government being higher than it should. The overpaid VAT may be requested for a refund only by the buyer of goods or services as long as that VAT has not being credited or charged as cost. GR-1 provides a new condition that the buyer can still request a refund if the VAT has not yet being capitalised to the acquisition value of the respective goods.

Revocation of old provisions

Some of the provisions regulated in GR-143 were revoked in GR-1 since those provisions are already sufficiently addressed in several MoF regulations issued after the enactment of VAT Law No.42/2009.

- Times at which VAT invoices must be issued in regard to transactions with VAT Collectors

  The VAT Collector is currently either the State Treasury or Production Sharing Contract (PSC) companies. In regard to transactions with PSC companies, the MoF has issued Regulation No.73/PMK.03/2010 (PMK-73) regarding Appointment of Oil and Gas Contractors as VAT Collectors. PMK-73 stipulates that VAT invoice on the delivery of taxable goods or services to an oil and gas contractor must be issued at the latest upon:
  a) the delivery of taxable goods or services;
  b) the receipt of a payment, in the event that payment was received before the delivery of taxable goods or services; or
  c) the receipt of a term payment in relation to the delivery of partial work.

  For transactions with the State Treasury, SE-50 also regulates that a VAT invoice should be issued at the time when a Taxable Entrepreneur sends an invoice to the State Treasury as a VAT Collector.

- Guidance on the calculation of the crediting of Input VAT

  Amount of Input VAT that can be credited by a Taxable Entrepreneur whose business turnover within one year does not exceed a certain amount (i.e., Rp 1.8 billion) can be calculated by using guidance on the calculation of the crediting of Input VAT, as follows:
  a) 60% of Output VAT for the delivery of taxable services; or
  b) 70% of Output VAT for the delivery of taxable goods.

  This guidance is regulated in MoF Regulation No.74/PMK.03/2010.

- Other Values as VAT Imposition Base

  Other Values may be set out by the MoF as VAT Imposition Base on certain taxable goods or services. A detailed list of other values is regulated in MoF Regulation No.75/PMK.03/2010 and Regulation No.102/PMK.011/2011.

Non-taxable goods and services

GR-1 confirms that the positive list of non-taxable goods and services is as stipulated in Article 4A of VAT Law and will be regulated further in a MoF regulation. This provision revokes Government Regulation No.144/2000 as the previous implementing regulation regarding Non-taxable Goods and Services. To date, there has been no MoF regulation issued in relation to this.

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