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***Clarification on services that are not subject to VAT***

We mentioned in our TaxFlash No.05/2012 that under the Government Regulation No.1/2012 (GR-1), the types of non-VATable goods and services as stipulated in Article 4A of Value Added Tax (VAT) Law No.42/2009 would be regulated further in a Minister of Finance (MoF) regulation. To date, the MoF has issued several relevant regulations as follows:

1. Regulation No.80/PMK.03/2012 (PMK-80) dated 29 May 2012 regarding Non-VATable Public Transport Services on Land and Water;
2. Regulation No.82/PMK.03/2012 (PMK-82) dated 6 June 2012 regarding Non- VATable Services Provided by Government in order to Run the Government in General; and
3. Regulation No.83/PMK.03/2012 (PMK-83) dated 6 June 2012 regarding Non-VATable Labor Services

Non-VATable public transport services

PMK-80 stipulates transport services on land and water that are not subject to VAT. PMK-80 revokes previous regulations regarding the same matter (i.e., MoF Decree No.527/KMK.03/2003 (KMK-527) as amended by MoF Regulation No.28/PMK.03/2006 (PMK-28)).

Public transport services on land include transportation by road and train. Public transport on water includes transportation by sea, rivers and lakes, and also ferry services.

PMK-80 confirms that deliveries of public transport services on land and water are not subject to VAT. In principle, definition of public transport services is the activity to transport people and/or goods from one place to another place using public vehicles which requires a payment.

PMK-80 excludes rental or charter of trains and public transport on water from the definition of public transport services, and hence, only rentals or charters of public vehicles on land (other than trains) are subject to VAT. This provision actually does not provide any difference regarding the scope of public transport services compared to PMK-28.

Non-VATable government services

Services provided by government in general covers the type of services that can be implemented only by government agencies. Types of non-VATable government services according to PMK-82 include, among others, building permits, trading permissions, taxpayer registration, resident identity cards, patents and copyright, and also visa approval. However, the delivery of government services that can be provided by parties other than government agencies shall be subject to VAT.

The definition of government agency itself shall refer to the clause regarding non-domestic tax residents based on Article 3 paragraph (3) of the Income Tax Law.

Non-VATable labor services

According to Article 4A of VAT Law and PMK-83, non-VATable labor services shall cover the following:

1. labor services;
2. manpower supply services as long as the manpower providers are not responsible for the work of the workers provided; and
3. training services for workers.

A detailed definition and the criteria for each type of non-VATable labor service is laid down below.

Labor services

This service is provided by the worker to the user subject to the following criteria:

- a) the worker receives remuneration such as salary, wage, honorarium, allowance or other similar remuneration; and
- b) the worker is directly responsible to the user for the services provided.

Manpower supply services

Non-VATable manpower supply services shall fulfill the following criteria:

- a) the manpower providers solely deliver manpower supply services which are not in connection with the delivery of other taxable services;
- b) the manpower providers do not pay the salary, wage, honorarium, allowance or other similar remuneration to the worker;
- c) the manpower providers are not responsible for the work of the workers after they are delivered to the user; and
- d) the workers are included in the organizational structure of the user.

Fees received on the delivery of manpower supply services (including the remuneration received by the workers) will be subject to VAT if they fail to meet the above requirements. However, should the manpower providers split the service fees and the remuneration received by the workers, the VAT imposition base shall be only on the service fees portion.

Training services

Non-VATable training services for workers shall be conducted by an organizer that has obtained a license or is registered with an institution in the field of manpower. A bundled internship program shall also be included as part of non-VATable training services.

Update on the provisions regarding VAT invoices

The procedures regarding preparation and amendment of VAT invoices have been regulated in MoF Regulation No.38/PMK.03/2010 (PMK-38). Following the enactment of GR-1 in early 2012, the MoF has issued Regulation No.84/PMK.03/2012 (PMK-84) in order to update the provisions to be in line with GR-1. PMK-84 was dated and came into effect on 6 June 2012, revoking PMK-38.

Most of the provisions stipulated in PMK-84 are adopted from GR-1, as follows:

- providing a detailed taxable event for each type of goods or service delivery that also becomes the proper timing for issuing the relevant VAT invoice;
- providing a detailed description regarding retailers and discretion for them 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;
- confirming that a VAT invoice cannot be considered to be valid if it issued over a three-month timeframe, and hence the buyer cannot recognise the VAT due as its Input VAT.

Currently, detailed provisions regarding a valid VAT invoice and the relevant procedures regarding VAT invoice amendment or cancellation are regulated in Director General of Taxes (DGT) Regulation No.PER-13/PJ/2010 which was most recently amended by Regulation No.PER-65/PJ/2010.

Reappointment of State Owned Enterprises as VAT Collectors

Starting from 1 July 2012, State Owned Enterprises (*Badan Usaha Milik Negara* or *BUMN*) are reappointed as VAT Collectors. The basis of this reappointment is MoF Regulation No.85/PMK.03/2012 (PMK-85) dated 6 June 2012. BUMNs status as VAT Collectors had been revoked in 2003.

BUMN that are appointed as VAT Collectors shall be those enterprises that are wholly or majority owned by the government through direct capital participation for which funds are sourced from reserved government assets.

VATable vendors are obliged to issue a VAT invoice on the delivery of VATable goods or services to BUMN. The VAT invoice shall be issued at the time of:

- a) the delivery of VATable goods or services;
- b) the receipt of a payment in case payment is received prior to the delivery of VATable goods or services; or
- c) the receipt of a term payment of a delivery of partial work.

The above timing shall also become the timing for BUMN to collect the VAT and/or Luxury-goods Sales Tax (LST) due.

BUMN should remit the collected VAT or LST to the State Treasury and report it to the tax office using the designated VAT return forms no later than the 15th day and the end of the following month after the end of the tax period, for payment and reporting respectively.

Detailed procedures regarding VAT or LST collection, payment and reporting are provided in the attachment of PMK-85.

The VAT or LST shall not be collected by BUMN in case of:

- a) payments of no more than Rp10 million (including VAT or LST) and not as split payments;
- b) payments for the delivery of taxable goods or services which VAT is not-collected or exempted;
- c) payments for the delivery of oil fuel and non-oil fuel by Pertamina;
- d) payments of telephone bills;
- e) payments for air transport service delivered by an aviation company; and/or
- f) other payments for the delivery of non-VATable goods or services.

The collection, payment and reporting of VAT or LST due on the above transactions shall be normally performed by the VATable vendor as if dealing with a regular buyer.

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