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Changes in KITE Import Duty Exemption and Drawback Concessions to Start in April 2012

The KITE import facility for export purposes (*"Kemudahan Impor Tujuan Ekspor"*) is a major customs duty concession for importers of materials used in manufacturing goods for export. Under this facility, up until now, importers have been able to enjoy import duty, Value Added Tax (VAT) and Luxury Sales Tax (LST) exemptions on import of raw materials used in manufacturing goods for export.

Where import duty has already been paid on import of the raw materials, the KITE facility also allows importer to claim an import duty drawback, after it has exported the finished products.

Under Ministry of Finance ("MoF") regulations No. 253/PMK.04/2011 and No. 254/PMK.04/2011 which will take effect on 1 April 2012, significant changes will be made to the availability of duty and tax concessions under the old KITE facility, as follows:

1. Somewhat confusingly, the regulations no longer use the terminology of "KITE Facility"; however, in substance, the existing concessions under the KITE facility will continue to be available under the new regulations – indeed, the legal basis of the concessions under the new regulation is the same as that which applied to the old KITE facility (i.e. Article 26 and Article 27 of Customs Law No. 10/1995 jo. No. 17/2006). Nevertheless, the scope of the concessions under the existing KITE facility will be more limited under the new "import facility for export" regulation.

2. Prior to 1 April 2012, companies that used the KITE concession only needed one Company Identity Number for accessing the KITE Concession (*"NIPER" or "Nomor Induk Perusahaan"*). Previously this NIPER could be used for claiming both the KITE exemption and also the KITE import duty drawback. Under the new regulations, companies need have separate NIPERs for duty exemption claims and import duty drawback concession claims, respectively.
3. Starting from 1 April 2012, the exemption will only apply to import duty otherwise payable on raw materials to be processed, assembled, or installed into export goods. Previously, the old KITE exemption also applied to VAT and LST "not collected" for such raw material imports. Under the new regulation, the VAT and LST must now be collected. This is a significant reduction of the concession previously available under the old KITE facility.
4. Under the new regulation, the import duty exemption for raw materials will not be available where the raw materials are subject to minimal levels of processing e.g., cutting, sorting, packaging, and/or similar simple activities.
5. The new regulation also does not allow an import duty exemption for:
 - Raw materials that are used up during the production process (i.e. the raw materials cannot be identified in the finished products); and/or
 - Supporting materials that do not become an integral part of finished products.
6. Previously, under the old KITE regulations, an importer could claim import duty and tax exemptions at the time of import of the materials as long as sales of the finished product to local customers did not exceed 25% of total production. In such cases, duty/taxes on finished goods sold locally only became payable at the time of sale.
7. Under the new regulations, concessions are only allowed where 100% of the finished products are produced for export. If any local sales are made, the exemption under the new regulation is not available – if the exemption has previously been claimed, then duty and penalties will apply to the extent of the local sales. In other words, at the time of import, to claim an exemption, the importer's intention must be to produce finished goods for export only – the risk if there are any subsequent local sales of the finished products is the penalties that will apply (between 100% and 500% of the import duty due)
8. Under the new regulations, no concession is available where finished goods are delivered to Bonded Zone Companies (previously, this was possible under the old KITE concession). The new import duty concessions are only available to importers who export their products overseas.
9. A company claiming the exemption under the new regulation must provide a "conversion report" to Customs (when seeking approval of the concession), explaining how the raw materials will be used in producing the finished products which will be exported i.e., details of the quantity of the imported raw materials used in producing each unit of the finished product. This conversion report will become the basis for subsequent customs audit activity in respect of the use of imported raw materials for which duty exemptions have been claimed.

Since these new regulations include a number of significant changes, we urge companies which currently enjoy the KITE concession to carefully consider the potential impact of the new regulations and, where necessary, take action to ensure ongoing compliance with the new rules.

Key points to be considered in using these concessions are:

1. The KITE NIPER needs to be changed to become the NIPER for exemption and/or NIPER for drawback at the latest by 31 December 2012.
2. Preparing the correct “conversion report” and “export realisation report” to avoid a potential 100%-500% penalty and/or cancellation of the NIPER licenses.
3. The concession holder should consider the impact of any sales to domestic and bonded zone companies, since such sales will no longer be granted and import duty concession and will lead to penalties if claimed incorrectly.

Please contact any member of our Customs Team should you require any assistance in reviewing the post 1 April 2012 impact of the new regulations on existing KITE concessions or the practical benefits of these concessions.

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