

TaxFlash



Exchange of information on foreign customers

As part of the effort to implement the tax information exchange agreements that Indonesia has committed to, the Financial Services Authority (*Otoritas Jasa Keuangan/OJK*) issued Regulation No.25/POJK.03/2015 (POJK-25) dated 11 December 2015 regarding exchange of information on foreign customers to partner countries/partner jurisdictions.

The Exchange of Information (EOI) agreements are intended to provide the information on foreign customers in order to identify any tax avoidance. Consequently, certain Financial Institutions (FIs) have to periodically submit the financial information on foreign customers to partner countries/partner jurisdictions.

The key points of POJK-25 are set out below.

Scope of foreign customers

Foreign customers are individuals or foreign corporations who meet criteria as stipulated in the EOI agreements and who are taxpayers of partner countries/partner jurisdictions who:

- have a bank account and/or use banking services;
- have a security account or directly use security companies and/or custodian banking services (as direct customers);
- are policy holders or participants in a life insurance company; and/or
- are customers (other than the above) who meet the criteria as stipulated in the automatic EOI, to be stipulated further in OJK's circular letter.

Foreign corporations include:

- A company established or domiciled in other countries (“foreign company”);
- A branch or representative office of a foreign company;
- A company owned by foreign individuals and companies with a percentage of ownership based on the EOI agreements, which are established or domiciled in or outside of Indonesia (“foreign subsidiary”); or
- A branch or representative office of foreign subsidiaries.

Reporting mechanism

Foreign customers’ information to be reported must contain information regarding the foreign customers and their financial information.

The information can be submitted to the Indonesian tax authority or OJK.

The deadline for the reporting is at least 60 days before the deadline of reporting to the tax authority of the partner countries or jurisdiction based on the relevant EOI agreement. The FIs should submit the name of the officer who will be responsible for reporting on the foreign customers’ information.

Due diligence process to be carried out by FIs

In relation to the submission of the foreign customers’ information, FIs must:

- identify which customers or prospective customers meet the criteria as foreign customers;
- request the relevant information and/or documents to verify that the customer meets the criteria as a foreign customer;
- request voluntary written consent from the foreign customers or prospective foreign customers for the FI to provide their information to the Indonesian tax authority and then to the partner countries/partner jurisdictions; and
- conduct a screening of foreign customers who have an account balance or a minimum amount determined in the EOI agreements.

Detailed provisions of POJK-25 will be regulated in the OJK Circular Letter Regulation.

The procedure to issue Tax Exemption Letter for foreign country representatives and international organisations – an update

The Minister of Finance (MoF) has amended Regulation No.162/PMK.03/2014 (PMK-162) regarding the procedure to issue Valued Added Tax (VAT) and/or Luxury-goods Sales Tax (LST) Exemption Letter for foreign country representatives and international organisations through Regulation No.248/PMK.010/2015 (PMK-248). PMK-248 is dated and effective since 29 December 2015.

PMK-248 adds several articles as an amendment of PMK-162, as set out below:

- The VAT/LST exemption would be given on the import or delivery of taxable goods and/services if this is agreed in an international agreement and would be valid up to the end of the international agreement.
- The VAT/LST can be refunded if it has already been paid by the foreign country’s representative or international organisation.
- The exempted tax must be repaid if the relevant taxable goods are transferred within four years, unless the transfer is made between eligible foreign country representatives or international organisations and the recipient requests a dispensation letter from the MoF.

Strategic goods on Supreme Court Decision No.70/P/HUM/2013 – an update

As previously indicated, the Supreme Court granted Judicial Review to revoke several articles of Government Regulation (GR) No.31 Year 2007 (GR-31) concerning the VAT exemption facility for agricultural products (including plantation and forestry products) as strategic goods (please refer to our TaxFlash No. 12/2014 for a discussion on this) the government has revoked GR-31 and replaced it with GR No.81 Year 2015 (GR-81) dated 9 November 2015. As a result, GR-81 was effective 60 days after enactment (from 9 January 2015).

Highlights of the GR-81 are:

- The elimination of the agriculture products as strategic goods. This is in line with the Supreme Court Decision No.70/P/HUM/2013 (PUT-70), which revoked several articles of GR-31.
- The addition of several goods as strategic goods, such as raw hides and skins which are not tanned and raw material of silver craft in the form of granules and/or bars.
- These strategic goods must be used in accordance with their original purposes and cannot be handed over partly or entirely to other parties within a specified restriction period, otherwise the exempted VAT must be paid. GR-81 changes this restriction period from five years to four years as of the date of the import and/or acquisition.

Several provisions in GR-81 are regulated in the following MoF regulations:

1. Regulation No.267/PMK.010/2015 regarding livestock and the materials used to produce animal feed and fish feed;
2. Regulation No.268/PMK.03/2015 regarding procedures for applying the VAT exemption on the import and/or delivery of strategic goods and procedures for the payment of VAT on transactions that were previously exempted, as well as the associated sanctions; and
3. Regulation No.269/PMK.010/2015 regarding the threshold for the sale price of basic flats (*Rumah Susun Sederhana Milik/RUSUNAMI*) and the threshold for the buyer's level of income.

Details of those MoF regulations are available upon request from your usual PwC Indonesia contact.

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