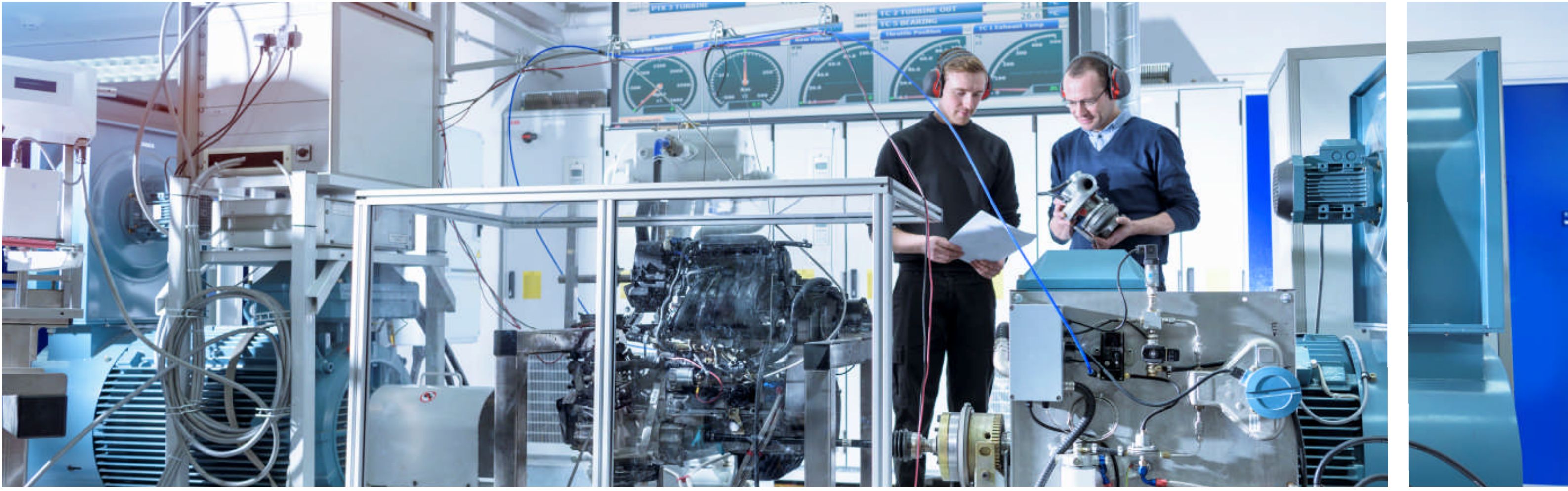

TaxFlash

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Special Economic Zones – Tax Facility Update

On 24 February 2020, the Government issued Regulation No.12 Year 2020 (GR-12). GR-12 provides a range of facilities for taxpayers investing in certain industries in Special Economic Zones (*Kawasan Ekonomi Khusus/ KEKs*). GR-12 is effective from the date of promulgation (i.e. 24 February 2020).

The industries eligible for the facilities in each KEK differ on a regional basis. The eligible industries are:

a) Development and management of KEKs;
b) Procurement of KEK infrastructure;
c) Upstream and downstream processing of certain commodities;
d) Manufacturing of certain products;
e) Energy development;
f) Logistics;
g) Tourism services (see below);
h) Health services;
i) Educational services;
j) Technology research and development;
k) Financial services;
l) Creative industries; and
m) Other industries determined by the National Council.

The facilities include concessions with regards to:
a) Taxation, customs, and excise (see below);
b) Logistics;
c) Employment obligations;
d) Immigration;
e) Land and spatial planning;
f) Business licences; and
g) Other matters.

This TaxFlash addresses the key points relating to the taxation, customs, and excise (i.e. Income Tax, Value-Added Tax (VAT)/Luxury-goods Sales Tax (LST), Import Duty, and Excise facilities).

A. General requirements

Taxpayers must meet the following criteria to be eligible for facilities in KEKs.

1. For taxpayers organising a KEK's business activity – known as a Business Entity (*Badan Usaha/BU*):
   a) Have been registered as a domestic taxpayer;
   b) Have been registered by the relevant Government agency as a Business Entity that develops or manages a KEK;
   c) Have followed the guidelines according to the stages of business; and
   d) Have been issued a business licence from the relevant institution.
2. For taxpayers carrying out business in a KEK – known as a Business Player (*Pelaku Usaha/PU*):
   a) Have been registered as a domestic taxpayer; and
   b) Have been issued a business licence from the relevant institution.

B. Income Tax Facilities

1. Corporate Income Tax (CIT) Reduction

A CIT Reduction for a BU/PU is available for the income received from the main activities only.

GR-12 does not elaborate on the CIT reduction facility, including the application process. Detail on the amount, duration, submission, decision, utilisation, etc. will be provided in a separate Minister of Finance (MoF) Regulation.

The CIT treatment for activities outside of the main activity (including withholding tax on third party payments) is subject to normal tax.

If a CIT reduction is granted, the taxpayer is required to submit periodical reports on the investment and production realisation. This facility can be revoked if the taxpayer fails to fulfil these requirements or fails to submit the periodic reports. If so, the taxpayer must repay the CIT (previously reduced), plus the associated penalties.

2. CIT Allowance

Taxpayers who do not obtain a CIT reduction, or carry out activities outside of their main activities, may alternatively apply for an Income Tax Allowance. This provides the following:
a) 30% uplift in deductibility for amounts invested in certain assets;
b) Accelerated of fiscal depreciation and amortisation;
c) A reduction in the withholding tax rate on dividends paid to non-residents to 10% (before any lower tax treaty relief); and
d) An extension of the tax-loss carry forward period to up to 10 years.

Detail on submission, decision, utilisation, etc. will also be provided in a separate MoF Regulation.

A BU and/or PU who enjoys the tax holiday facility may not enjoy the Tax Allowance facility and vice versa.

3. Other Income Tax Facility

This involves an Income Tax "not collected" mechanism for a BU conducting the following transactions:

a) Land procurement for a KEK;
b) The sale of land and/or buildings in a KEK; and/or
c) The lease of land and/or buildings in a KEK.

C. VAT/LST Facilities

GR-12 provides that VAT/LST is to be "not collected" on the following transactions:

a) The delivery of certain taxable and/or intangible taxable goods in the KEK by VATable Entrepreneurs to a BU or a PU;
b) The importation of certain taxable goods by a BU or a PU;
c) The delivery of certain taxable goods between a BU or a PU;
d) The delivery of taxable services and/or intangible taxable goods, including rental for land and/or buildings for a minimum period of five years in a KEK, by a PU or a BU to another PU or a BU in any KEK or between KEKs;
e) The delivery of certain taxable services by a VATable Entrepreneurs to a BU or a PU; and
f) The utilisation of taxable services and/or intangible taxable goods from outside the Customs Area in a KEK by a BU or a PU.

The taxable goods and services mentioned above are stipulated in GR-12.

Where a KEK area overlaps with a Free Trade Zone (FTZ), VAT will not be collected on the delivery of taxable services from or to the FTZ. The delivery of taxable goods and/or services by a PU from a KEK to Other Places in the Customs Area (*Tempat Lain Dalam Daerah Pabean/TLDDP*) will be subject to normal VAT/LST treatment, except where the delivery is made to parties who also enjoy these VAT/LST facilities.

D. Import Tax and Customs Facilities

1. Facilities for BUs and PUs

During the construction and development stage, a BU is eligible to enjoy Import Duty exemption and Import Taxes (i.e. import VAT/LST and Income Tax Article 22) "not collected" for the import of capital goods in the context of developing a KEK.

During the construction and development stage, a PU is eligible for the same facilities for the import of capital goods, as well as goods and materials for business purposes. After the construction and development stage, a PU is also eligible for a postponement of Import Duty and an Excise exemption, as long as the goods are raw materials or auxiliary materials used in the production of non-excisable goods.

In order to enjoy the Import Duty facilities, the BU or PU must have their information system connected to the Directorate General of Custom and Excise.

2. Facilities for the movement of goods in a KEK

a) Inflows

Origin of goods	Import Duty exemption/ postponed	Excise exemption	Import Taxes "not collected"	Domestic VAT/LST "not collected"
a. from outside the Customs Area	√	√	√	
b. from a PU in another KEK	√	√	√	
c. from a Bonded Stockpiling Zone outside the KEK	√	√	√	
d. from an FTZ	√	√	√	
e. from a TLDDP		√		√
f. from another PU within the KEK	√	√	√	√

b) Outflows

Destination of goods	Tax and Customs treatment
To outside the Customs Area	Follow the prevailing regulations on exports.
To a PU in another KEK, a Bonded Stockpiling Zone outside the KEK, and an FTZ	Follow the facilities available in the destination.
To TLDDP intended for domestic use	Import Duty, excise, and import taxes which were not-collected/ exempted/postponed must be paid. 0% Import Duty is applicable for products with minimum 40% local content.

E. Tax Facilities for Tourism KEK

The following facilities are available in a KEK that focuses on tourism:

1. Customs and excise facilities for the acquisition of capital goods and raw materials by a PU for the following activities:
   a) Accommodation services;
   b) Meetings and conference centres;
   c) Marinas (special piers for tourist ships);
   d) Special airports for tourism;
   e) Tourism transportation services;
   f) Development of resort and residences;
   g) Catering services;
   h) Malls;
   i) Recreation centres;
   j) Education/training centres;
   k) Sport centres and facilities;
   l) Retirement centres; and/or
   m) Other tourism support activities as determined by the National Council.
2. VAT refunds for foreigners on the purchase of goods from participating stores.
3. An exemption from LST and Article 22 Income Tax on the purchase of houses and residences in a tourism KEK.

F. Regional Tax

A Regional government may stipulate a reduction, relief and/or exemption from regional taxes to a PU/BU in accordance with the provisions in the relevant Regional Law.

The reduction of regional tax can be between a 50% to 100% reduction. Details will be stipulated in a separate regulation.

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