



Financial Services TaxFlash

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Implementing rules for
VAT under the HPP
Law ^{P1}

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Implementing rules for VAT under the HPP Law

Dated 2 December 2022, the Government has issued Government Regulation No. 44/2022 (GR-44) on implementation of Value-Added Tax (VAT) and Luxury-goods Sales Tax (LST) based on the Harmonisation of Tax Regulations (*Harmonisasi Peraturan Perpajakan/ HPP*) Law. GR-44 revokes GR No. 1/2012 (GR-1) and Article 5 GR No. 9/2021 (GR-9), whereby the implementing regulations GR-1 and GR-9 are still considered valid if it is not contradictory with provisions in GR-44.

Updates for Financial Services Industries

A. VAT on the delivery of foreclosed assets by creditors (Article 10 of GR-44)

Before GR-44

Previously, VAT treatment on delivery of foreclosed assets is only mentioned in the Directorate General of Taxation (DGT) Circular Letter No. SE-121/PJ/2010 dated 23 November 2020 (SE-121) regarding the affirmation of VAT treatment on banking business activities. SE-121 states in its point 6 that the sale of foreclosed assets by banks is subject to VAT.

After GR-44

GR-44 Article 10 paragraph (1) states that the delivery of rights over taxable goods based on an agreement is also included as delivery of taxable goods. It is further stated in the paragraph (2) that sale of collateral from creditor to buyer are considered as delivery of rights over taxable goods as mentioned in paragraph (1).

In addition, paragraph (3) also mentioned that the collateral includes taxable goods that has been taken over by the creditor through a:

- a) Security right (*hak tanggungan*) over land and objects related to land
- b) Fiduciary guarantee (*jaminan fidusia*)
- c) Mortgage (*hipotek*)
- d) Pawn (*gada*); or
- e) Other similar charges

As a result, in line with the Article 1A of the VAT Law, GR-44 has explicitly regarded sales or transfers of foreclosed assets performed by banks and multi-financing companies as VAT-able deliveries. GR-44 also provides examples of sales of collateral by the creditor as below:

Example 1:

Due to a failure to settle Mr. A's (debtor) obligations to Bank B (creditor), Bank B executed collateral in the form of lots of land belonging to Mr. A based on the security right on the land. Bank B sells the plots of land to Mr. C (buyer) through a public auction and collects the receivables from the sale proceeds.

The sale of land plots by Bank B to Mr. C is included as a delivery of Taxable Goods subject to Value Added Tax.

Example 2:

PT D (creditor) is a financing company that executes a financing object in the form of a motorbike from Mr. E (debtor) based on a fiduciary guarantee. PT D sold the motorcycle to Mr F (buyer) through a private sale which was carried out based on a price agreement between PT D and Mr E before the collateral was sold.

The sale of motorbike by PT D to Mr. F is regarded as a delivery of Taxable Goods subject to Value Added Tax.

Provisions regarding collateral delivery limitation, taxable event/timing, VAT collection, settlement, and reporting mechanism will be further governed in a Ministry Regulation.

B. Non-taxable delivery of collateral from debtor to creditor in relation to Sharia financing transaction scheme (Article 12 of GR-44)

Generally, under previous and current tax law, the delivery of taxable goods in the form of collateral from debtor to creditor for debt guarantee purpose shall not be imposed to VAT. GR-44 provides more certainty for delivery of collateral in the context of sharia financing, confirming that it is also not subject to VAT, as long as the taxable goods are returned to the debtor.

GR-44 specifically defines the "delivery of taxable goods in sharia financing transaction scheme" as:

- a) Delivery of Taxable Goods in the event of issuance of sukuk, including delivery of Taxable Goods to and from the company issuing the sukuk (special purpose entity)

Example:

PT A (issuer) issues an ijarah sukuk based on an ijarah object in the form of a vehicle as the underlying and at the same time the investor hands over some funds to PT A. Upon issuance of the sukuk, PT A transfers the vehicle to the investor and the investor receives the benefits of the ijarah object from PT A. PT A makes lease payments in the form of periodic installments of the ijarah fee in accordance with the time agreed along with the remaining ijarah fee at the maturity date of the sukuk. The investor transfers the vehicle to PT A at the maturity date of the sukuk.

Based on the above, delivery of vehicle:

- from PT A to the investors, and
- from the investors back to PT A

Shall not be subject to VAT.

- b) Delivery of Taxable Goods in a commodity trading scheme based on sharia principles in commodity exchanges with a trading mechanism with follow-up sales in sharia commodity markets, which occurs in order to comply with sharia principles.

Example:

Mr. A (customer) submitted a loan application in the amount of Rp100,000,000 (one hundred million rupiahs) to Sharia Bank B which is a commercial participant in the Islamic commodity market. Upon this request, in order to comply with sharia principles, Sharia Bank B purchased Crude Palm Oil (CPO) from members of trader group C consisting of trader 1, trader 2, and trader 3 who are commodity trader participants in the sharia commodity market. One member of trader group C hands over CPO to Sharia Bank B and Sharia Bank B makes a payment of Rp. 100,000,000 (one hundred million rupiah) to a member of trader group C. Then, Bank Syariah B sells the CPO for Rp.110,000,000 (one hundred and ten million rupiah) to Mr. A, and Mr. A to pay in installments for 1 (one) year according to the agreement in the Murabaha contract. Next, Mr. A sells the CPO to a member of trader group C for Rp. 100,000,000.00 (one hundred million rupiahs) so that the CPO, which is the object of commodity trading based on sharia principles, returns to the same party, namely a member of trader group C.

Based on the above, delivery of CPO from:

- Member of trader group C to Sharia Bank B
- Sharia Bank B to Mr. A
- Mr. A to member of trader group C

Shall not be subject to VAT. In the event that the original owner of the CPO does not receive CPO back in the same amount and value, the transaction is included in the definition of delivery of Taxable Goods in which Value Added Tax is payable.

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