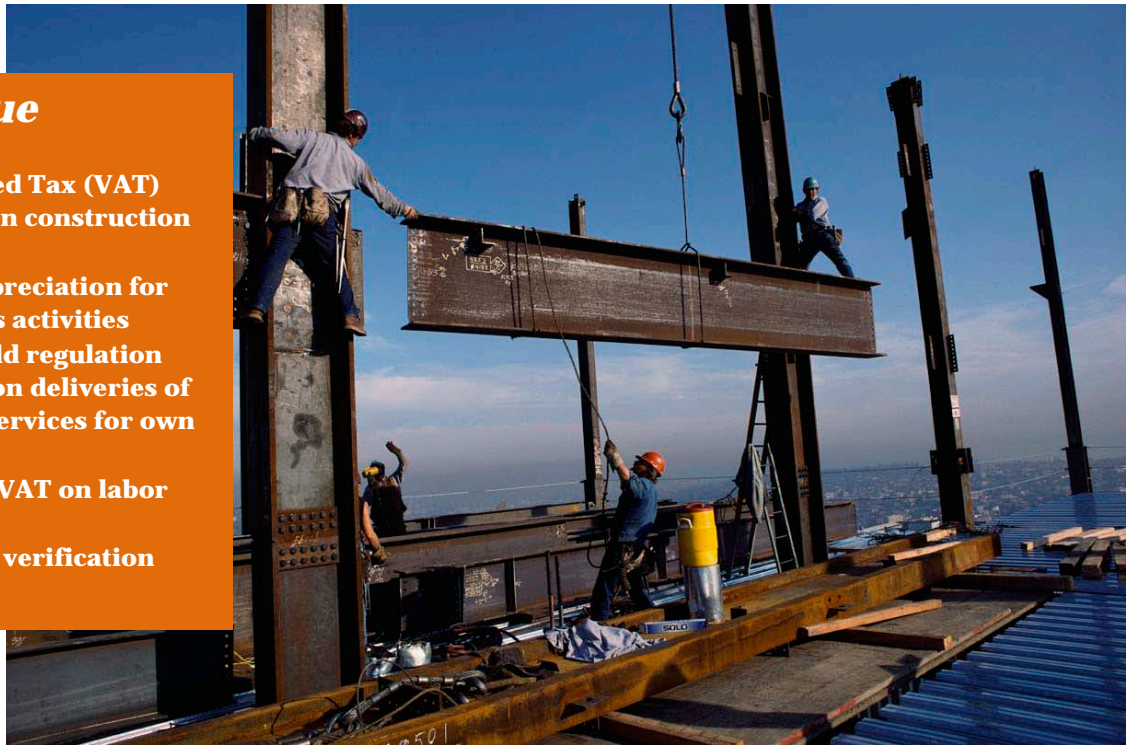


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## ***New Value Added Tax (VAT) standard for own construction activities***

Under the Law, VAT is due on building construction activities performed outside the course of business or work by an individual or a company of which the result is for own use or for another party's use.

The Minister of Finance (MoF) has announced a new limitation and VAT imposition procedures on own construction activities through the issue of Regulation No.163/PMK.03/2012 (PMK-163). PMK-163 was stipulated on 22 October 2012 and becomes effective 30 days after the stipulation date (i.e., 21 November 2012). PMK-163 revokes the previous MoF Regulation No.39/PMK.03/2010 (PMK-39) regarding the same matter.

Building is defined as one or more technical constructions permanently planted or attached to an area of land and/or water with the following criteria: the main construction consists of wood, concrete, bricks or similar material, and/or steel; and the building is used as house or business.

### **Rate and threshold**

VAT only applies if the total area of the building construction is at least 200 square meters (m<sup>2</sup>) (the previous limit was 300 m<sup>2</sup>) and the effective VAT rate has been reduced to 2% (previously 4%). Any VAT paid associated with the cost incurred for own construction cannot be credited as Input VAT.

VAT is payable from the start of own construction activity until completion. If the construction activity is performed in stages, it is considered as one whole activity if breaks between works are not more than two years. The place of VAT due is where the building is located.

### **Payment and reporting**

VAT payments must be based on the costs incurred each month and made monthly by the 15th of the following month using a Tax Payment Slip (*Surat Setoran Pajak/SSP*), while the reporting must be done by the end of the following month after the costs are incurred.

The procedures in filling out the SSP and tax reporting depend on the building location, whether it is located in the region under the authority of the same tax office that is administering the taxpayer or located in a different region.

The tax office may issue a Warning Letter if the taxpayer does not fulfil the VAT payment and/or reporting obligation, or issue a Request Letter if there is an indication of unusual VAT payment or reporting.

### **Tax audit or verification**

A tax audit or verification may be conducted if there is no response from the taxpayer within 14 days from the issue of a Warning Letter or a Request Letter. The tax audit or verification will result in a form of a Tax Assessment Letter or the tax office will issue a Tax ID Number to the taxpayer on ex-officio basis.

The costs incurred for own construction will be assessed on ex-officio basis by the Director General of Tax (DGT) if no or incomplete supporting documents are provided by the taxpayer during a tax audit or verification. In this regard, the DGT issued Regulation No.PER-23/PJ/2012 (PER-23) dated 5 November 2012, which further regulates this ex-officio assessment. PER-23 states that the costs will be determined based on the lowest building value (*Harga Satuan Bangunan Gedung Negara/HSBGN*) of each region, in accordance with the Minister of Public Works Decision

No.45/PRT/M/2007 regarding Technical Procedures of State Building Construction.

Previously, PMK-39 stipulated that if a building as a result of an own construction is used by another party, this other party is jointly and severally liable for payment of the said VAT if the building providers cannot show any proof that the VAT due has been paid. This provision regarding joint liability is no longer stipulated in PMK-163.

### **Fixed assets depreciation for certain business activities**

Fixed assets depreciation for certain business activities (i.e., forestry, plantation and cattle breeding) is regulated specifically in a MoF Regulation with amendments from time to time. The latest regulation regarding this is MoF Regulation No.126/PMK.011/2012 (PMK-126) dated 6 August 2012. PMK-126 classifies a group of assets' useful life according to business activity. Please refer to TaxFlash No.08/2012 for the complete list of groups.

Notwithstanding the above, a taxpayer may request to use the actual useful life of an asset in calculating its depreciation expense, the procedure for which is set out in DGT Regulation No.PER-21/PJ/2012 (PER-21). PER-21 was dated and effective from 24 October 2012.

An application to use the actual useful life of certain fixed assets must be submitted to the DGT prior to the start of depreciation and supported with the following documents:

1. Detailed explanation regarding the fixed assets;
2. Study regarding estimation of the fixed assets' useful lives; and
3. Proxy letter if the application is submitted by the taxpayer's proxy.

The DGT will review the submitted application and a data request letter will be sent to the taxpayer if the data provided are incomplete. Failure to meet the deadline as stated in the letter may lead to the application being rejected. The DGT will provide a decision at the latest one month after the application and the supporting documents having been completely received.

Standard forms for the Application Letter, the Data Request Letter and the Decision Letter are provided in PER-21.

## **Revocation of old regulation regarding VAT on deliveries of taxable goods/services for own use or as gifts**

Deliveries of taxable goods/services for own use or as free gifts are generally subject to VAT. However, own uses of taxable goods/services for further production are not considered a delivery of taxable goods/services, and thus are not subject to VAT. Nevertheless, VAT is applicable on the own use of taxable goods/services if they are used to produce taxable goods/services which are not subject to VAT or VAT exempt. The provisions are stated in Government Regulation No.1/2012 (GR-1) as the implementing regulation of the amended VAT Law No.42/2009.

The above provisions were also detailed in DGT Decision No.KEP-87/PJ/2002 (KEP-87) which was based on the old VAT Law. As the VAT Law and its implementing regulation have changed, the DGT revoked KEP-87 by issuing Regulation No.PER-22/PJ/2012 (PER-22) on 1 November 2012. PER-22 is applicable retroactively from 4 January 2012, which is the effective date of GR-1.

The VAT imposition base on deliveries of taxable goods/services for own use or as free gifts is the sale price (of the same goods/services) with the gross margin deducted, as regulated in MoF Regulation No.75/PMK.03/2010.

## **Clarification of VAT on labor related services**

The MoF has set out the definition and criteria of non-VATable labor/manpower services in Regulation No.83/PMK.03/2012 (PMK-83). Please refer to TaxFlash No.07/2012 for our discussion regarding this matter. Following the issue of PMK-83, the DGT issued Circular Letter No.SE-47/PJ/2012 (SE-47) on 1 November 2012 as further implementing guidelines.

SE-47 tries to clarify the criteria of non-VATable labor services by providing some examples of labor services which either qualify or do not qualify as non-VATable services. Below are examples of labor services that qualify as non-VATable services:

1. provision of employment services by an employee directly to his or her employer;

2. provision of manpower supply services where the workers are employed by the user from whom they directly received the remuneration and the manpower providers are not responsible for the work result of the workers;
3. provision of training services for workers that is conducted by a licensed manpower training organization.

The following are examples of labor services that do not qualify as non-VATable services and are therefore subject to VAT:

1. provision of packaged services which include provision of labor, work method, supplies and equipment (example: cleaning services);
2. provision of manpower supply services where the workers are employed and responsible to the manpower providers from whom they received the remuneration;
3. provision of employee selection for recruitment;
4. provision of an internship program that is conducted by an unlicensed manpower training organization.

Particularly for point number 2, VAT will be imposed on the fees received on the delivery of manpower supply services (including the remuneration received by the workers). 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.

## **Clarification on verification**

In our TaxFlash No.10/2012 we discussed about Verification Procedures based on MoF Regulation No.146/PMK.03/2012 (PMK-146). To provide clearer guidance, the DGT then issued Circular Letter No.SE-48/PJ/2012 (SE-48) on 1 November 2012 regarding the Verification Policy. SE-48 confirms several matters as listed below.

### **Verification officer**

Verification officers are appointed by each Head of Tax Service Office (TSO) and consist of the following:

1. Account representative;
2. TSO officer;
3. Head of Tax Office for Service, Counselling and Consultation (*Kantor Pelayanan, Penyuluhan dan Konsultasi Perpajakan/KP2KP*);
4. KP2KP officer

### Verification timeline

Verification shall be concluded within a certain timeline, which depends on the matters being verified, as follows:

No.	Verification purposes	Timeline	Regulatory basis
1	To affirm VAT-able Entrepreneur status based on the taxpayer's application	Five working days	MoF Regulation No.73/PMK.03/2012
2	To revoke a Tax ID Number or VAT-able Entrepreneur status based on the taxpayer's application	Six or 12 months	Article 2 of KUP Law
3	To issue a Tax ID Number or to affirm VAT-able Entrepreneur status based on ex-officio assessment according to Article 3 and/or Article 8 of PMK-146	Three months from the issue of the Assignment Letter to the signing date of the Verification Result	Article 3 and/or Article 8 of PMK-146
4	To issue a Tax ID Number or to affirm VAT-able Entrepreneur status based on ex-officio assessment according to Article 5 and/or Article 10 of PMK-146	Three months from the issue of the Assignment Letter to the signing date of the Verification Result	Article 5 and/or Article 10 of PMK-146
5	To issue a tax assessment letter according to Article 13 of PMK-146	Three months from the issue of the Assignment Letter to the signing date of the Verification Result	Article 13 of PMK-146

### Verification Result

A valid Verification Result must contain certain matters, which at the minimum are as follows:

1. For the purpose of issuing a Tax ID Number or affirming VAT-able Entrepreneur status:
  - a) Verification assignment;
  - b) Taxpayer's identity;
  - c) Verification purposes;
  - d) Description of verification result;
  - e) Summary and proposal from the verification officer; and
  - f) Disclosure of other relevant information.

2. For the purpose of issuing a tax assessment letter :
  - a) Verification assignment;
  - b) Taxpayer's identity;
  - c) Fulfilment of tax obligation;
  - d) Available data/information;
  - e) Matters being verified;
  - f) Description of verification result;
  - g) Tests being carried out;
  - h) Calculation of tax due; and
  - i) Summary and proposal from the verification officer.

Standard forms for the Assignment Letter and Verification Result are provided in SE-48.

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