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VAT Administrative Changes

A. Change in VAT invoices numbering

On 22 November 2012, the Director General of Tax (DGT) issued Regulation No.PER-24/PJ/2012 (PER-24) as a new administrative regulation regarding Value Added Tax (VAT) invoices (*Faktur Pajak/FP*). PER-24 revokes the previous DGT Regulation No.PER-13/PJ/2010, as amended by PER-65/PJ/2010.

The standard format of FPs as well as the procedures for preparation, amendment, replacement and cancellation of FPs remains the same. PER-24 provides new procedures regarding systematic FP numbering.

Following the issue of PER-24, the DGT also issued Circular Letter No.SE-52/PJ/2012 (SE-52) as a circular that provides further guidance regarding the new procedure of FP numbering. Both PER-24 and SE-52 will be effective from 1 April 2013. Key features of the regulations are listed below.

Key features:

1. The DGT has developed a new electronic system to generate serial numbers for FPs. The new serial numbers can be a set of numbers, letters or combination of numbers and letters. Previously, serial numbers for FPs have been maintained individually by the VAT-able Entrepreneurs (*Pengusaha Kena Pajak/PKP*). A comparison between the old and new serial numbers is as follows:

Old serial number	New serial number
a. 2 digits of Transaction Code b. 1 digit of Status Code c. 3 digits of Branch Code d. 2 digits of Year of Issue e. 8 digits of Serial Number _____ Total 16 digits	a. 2 digits of Transaction Code b. 1 digit of Status Code c. 13 digits of Serial Number _____ Total 16 digits

2. Starting from 1 April 2013, PKPs must use serial numbers generated from this system in preparing their VAT invoices for deliveries of taxable goods/services.

3. In order to enter the system, a PKP must apply to the Tax Service Office (TSO) where the PKP is registered for an activation code and password. The activation code and password will be issued if the PKP fulfills the following requirements: a) the PKP has already been re-registered at the TSO, or b) the PKP has been verified as a new PKP/or transferred from another TSO.

4. After obtaining the activation code and password, the PKP may then request from the TSO a set of serial numbers for its FP. The PKP must have submitted VAT returns for the last three consecutive months prior to the date of application (except for new PKPs). The amount of serial numbers of FP given to PKP varies, as follows:

Type of PKP	Requested serial numbers	The serial numbers given
New PKPs or PKPs that report their VAT returns in manual format	N/A	maximum 75 serial numbers
PKPs that report their VAT returns in electronic format (e-SPT)	>120% of the total number of FPs issued in the last three consecutive months	120% from the total number of FPs issued in the last three consecutive months
	≤120% of the total number of FPs issued in the last three consecutive months	as requested by PKP

5. PKPs that use the same serial number more than once in the same tax year may be considered to be issuing incomplete FPs. Issuing incomplete FPs shall be subject to administrative sanction of 2% from the VAT imposition base.

6. A PKP must apply for a new activation code and password if it moves to a new TSO. However, the available serial numbers issued by the old TSO can still be used by PKP.

7. Unused serial numbers in a tax year must be reported to the TSO when filing the monthly VAT return for December, using a separate form. Discrepancy between FPs reported in monthly VAT returns and in the form of unused serial numbers may lead to verification by the TSO.

8. PKPs can start to apply for activation codes and passwords and then requesting FP serial numbers from 1 March 2013.

9. Retailers are excluded from this regulation, as their FPs are regulated separately.

10. A diagram of the detailed processes to apply for activation codes and passwords, to request FP serial numbers, and returning unused FP serial numbers are attached in SE-52.

B. Amendment of ex-officio determination on the costs incurred for own construction

We discussed in TaxFlash No.12/2012 that the rate of VAT due on building construction activities performed outside the course of business or work by an individual or a company, has been reduced to 2% of the costs incurred. We also mentioned that the costs incurred for own construction will be assessed on an ex-officio basis by the DGT if no or incomplete supporting documents are provided by the taxpayer during a tax audit or verification.

The relevant procedures of ex-officio assessment are regulated in DGT Regulation No.PER-23/PJ/2012 (PER-23). 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 the Technical Procedures of State Building Construction.

On 22 November 2012, the DGT issued Regulation No.PER-25/PJ/2012 (PER-25) as an amendment to PER-23. PER-25 set out the basis to determine the cost if the taxpayer can provide data but it is incorrect or insufficient:

1. the lowest HSBGN of the region, if the costs incurred based on the taxpayer's data are lower than that HSBGN value, or
2. the costs incurred based on the taxpayer's data, if this value is higher than the lowest HSBGN value of the region.

The lowest HSBGN value will still be used as the basis to determine the costs if the taxpayer did not provide supporting documentation during a tax audit or verification.

International Taxation

A. Indonesia – Morocco tax treaty comes into force

The DGT released Circular Letter No.SE-46/PJ/2012 dated 17 October 2012 announcing that the tax treaty between Indonesia and Morocco came into force on 10 April 2012, and will take effect for income paid or credited on or after 1 January 2013.

The tax treaty stipulates among others that dividends, interest and royalties are taxable at a maximum rate of 10%. Only the beneficial owner of that income is acknowledged as the party entitled to the tax treaty benefits. Otherwise, income that is paid to tax residents of Morocco will be subject to the normal Article 26 Withholding Tax (WHT) rate of 20%.

Branch profit tax (BPT) rate is 10%. This rate is not applicable for production sharing contracts in oil and gas industry, their supporting bodies and state owned oil and gas enterprises.

B. Indonesia – Hong Kong tax treaty comes into force

On 21 November 2012, the DGT finally issued Circular Letter No.SE-50/PJ/2012 announcing the entry into force of the Indonesia – Hong Kong tax treaty on 28 March 2012, which will take effect on or after 1 January 2013 and 1 April 2013, for Indonesia and Hong Kong, respectively.

This tax treaty contains the most attractive features among the other Indonesia's treaties, as summarised below:

1. In the absence of a tax treaty, Hong Kong residents receiving income (dividends, interest, royalties and service fees) from Indonesia not attributable to a Permanent Establishment (PE) here are subject to a 20% WHT. Under the treaty the rate will be reduced to 10% for dividends, but if the recipient is a company holding at least 25% of the share capital of the paying company, the WHT rate will be further reduced to 5%. The WHT for royalties and interest will be capped at 5% and 10% respectively.

2. Fees from services will be exempt from Indonesian tax if in performing the services no PE is created in Indonesia. Under the tax treaty, a service PE is defined to include the provision of services by an enterprise if the services continue (for the same or a connected project) for a period or periods aggregating more than 183 days within any 12-month period.

3. In Indonesia, branch profits are subject to the ordinary corporate tax rate and the after-tax profits are further subject to BPT at 20% regardless of whether the profits are remitted to the head office in the home country. In the absence of a treaty, profits of a Hong Kong company doing business through a branch in Indonesia will be double taxed if the profits derived by the branch are not regarded as offshore for Hong Kong profits tax purposes. Such double taxation is avoided by means of a tax credit under the treaty. In addition, the BPT is capped at 5% on the after-tax amount (except for production sharing contracts in oil and gas industry and contract of works in the mining industry).

4. Capital gains derived from alienation of shares in a company that does not derive 50% or more of its asset value directly or indirectly from immovable property owned by the company and located in the other country, regardless of the percentage of shareholding and holding period, are exempt from tax. On the other hand, capital gains derived from transfer/sale of shares in a property holding company may be taxed under the treaty, except in the case that the transfer is made in the framework of a reorganization; or the immovable property held is used to carry on its business (such as a mine or a hotel). The provision would provide Hong Kong tax residents satisfying the conditions, a protection from the 5% Indonesian WHT imposed on sale value of non-listed Indonesian company shares.

Even though the treaty is very much welcomed, there are several areas of uncertainties in implementing and obtaining facilities under the treaty which potentially impact majority of Hong Kong tax residents. We believe that further clarification from the DGT is needed on several issues, such as, whether and/or under what circumstances, the DGT would accept:

1. A company incorporated outside Hong Kong, but managed or controlled in Hong Kong, as a Hong Kong tax resident for the purpose of the tax treaty.
2. The beneficial ownership test can be satisfied, even though dividends are not subject to tax in Hong Kong.

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