

TaxFlash



New Customs Regulations

A. New import duty rates for free trade agreements

The Minister of Finance (MoF) issued the following regulations that stipulate new import duty rates in accordance with Indonesia's participation in several free trade agreements:

1. Regulation No.208/PMK.011/2012 (PMK-208) dated 17 December 2012 regarding Import Duty Rates in relation to Association of South East Asian Nations (ASEAN) Trade In Goods Agreement (ATIGA). PMK-208 revokes MoF Regulation No.128/PMK.011/2012.
2. Regulation No.209/PMK.011/2012 (PMK-209) dated 17 December 2012 regarding Import Duty Rates in relation to Indonesia – Japan Economic Partnership Agreement (IJEPA). PMK-209 revokes MoF Regulation No.95/PMK.011/2008.
3. Regulation No.221/PMK.011/2012 (PMK-221) dated 21 December 2012 regarding Import Duty Rates in relation to ASEAN – India Free Trade Area (AIFTA). PMK-221 revokes MoF Regulation No.95/PMK.011/2008.

The agreements are intended to increase trade by reducing import duty rates on most goods to 0%. Timing and the applicable import duty rates are different in each regulation, as follows:

ATIGA	IJEPA	AFTA
<p>Import duty rates vary in the following periods:</p> <p>a) 1 January to 31 December 2013;</p> <p>b) 1 January to 31 December 2014; and</p> <p>c) after 1 January 2015</p>	<p>Import duty rates vary in the following periods:</p> <p>a) 1 January to 31 December 2013;</p> <p>b) 1 January to 31 December 2014;</p> <p>c) 1 January to 31 December 2015;</p> <p>d) 1 January to 31 December 2016;</p> <p>e) 1 January to 31 December 2017; and</p> <p>f) after 1 January 2018</p>	<p>Import duty rates vary in the following periods:</p> <p>a) 1 January to 30 December 2013;</p> <p>b) 31 December 2013;</p> <p>c) 1 January to 31 December 2014;</p> <p>d) 1 January to 31 December 2015;</p> <p>e) 1 January to 30 December 2016;</p> <p>f) 31 December 2016;</p> <p>g) 1 January to 31 December 2017; and</p> <p>h) after 1 January 2018</p>

The facility will only be provided to imported goods with a complete Certificate of Origin from the issuing authority in the origin country and the facility code of the preferential duty scheme is mentioned in column 19 of the import declaration.

Notwithstanding the above, the general import duty rate based on domestic regulation will still be applicable if it is lower than the preferential duty rate.

The complete list of import duty rates is available on request from your usual PwC Indonesia contact.

B. Longer time provided for import license adjustment

The Minister of Trade (MoT) has set out new criteria on import license or Import Identification Numbers (*Angka Pengenal Impor/API*) through the issue of Regulation No.27/M-DAG/PER/5/2012 (PER-27) which has been effective since 2 May 2012.

PER-27 has brought about some concerns from importers and manufacturers due to the following restrictions for them:

1. General import trading companies holding General API (API-U) are allowed to import products only of the same section in the customs' harmonized code;

2. Manufacturers holding Producer API (API-P) can only import finished products to be directly sold to the customer if the products are for market testing and to complement production (complementary goods) under specific quotas and time frames. This would require that the manufacturers be confirmed as a Producer Importer by the Director General for Foreign Trading under MoT.

The deadline for adjusting the existing import license (API-U or API-P) to comply with PER-27 was 31 December 2012. However, noting concern from the industry, the MoT has extended the deadline to 31 March 2013 through the issue of Regulation No.84/M-DAG/PER/12/2012 (PER-84) dated 27 December 2012.

Please refer to TaxFlash No.05/2012 for our detailed discussion surrounding PER-27.

Sales Tax on first generation CCoW contractors

The MoF issued Regulation No.194/PMK.03/2012 (PMK-194) that governs procedures of collection, remittance and reporting of Sales Tax and treatment of Value Added Tax (VAT) and/or Luxury-goods Sales Tax (LST) on first generation of Coal Contract of Work (CCoW) contractors. PMK-194 is dated 6 December 2012 and has been effective since 1 January 2013.

The first generation CCoWs are those agreements signed between PT Tambang Batubara Bukit Asam (now PT Bukit Asam Tbk or “PTBA”), the state-owned mining company and the Contractor prior to 1 April 1985. The existing contractors of first generation CCoWs are as follows: 1) PT Arutmin Indonesia, 2) PT BHP Kendilo Coal Indonesia, 3) PT Kaltim Prima Coal, 4) PT Kideco Jaya Agung, 5) PT Adaro Indonesia, and 6) PT Berau Coal (BC).

The fiscal regime of first generation CCoWs follows laws and regulations that were in place at the time the agreements were signed. However, taxation matters that are not governed in the CCoW should follow the prevailing tax laws and regulations.

PMK-194 reinforces Sales Tax on first generation of CCoW based on VAT Law No.8/1983. Previously, this Sales Tax obligation was only mentioned in each CCoW.

PMK-194 stipulates that the contractors must collect, remit and report Sales Tax on the utilisation of services. Particularly for BC, PMK-194 governs that BC must also collect, remit and report Sales Tax on the acquisition of goods.

The Sales Tax collection base is the sales price or reimbursement value. A list of the types of services and/or goods subject to Sales Tax along with the applicable Sales Tax rate is provided in PMK-194.

Sales Tax must be collected at the time of:

- a. the utilisation of services and/or acquisition of goods if the payment is made after the utilisation of services and/or acquisition of goods;
- b. the time of payment, if:
 - 1) the payment is made before the utilisation of services and/or acquisition of goods;
 - 2) the payment is made at the same time as the utilisation of services and/or acquisition of goods.

This timing of Sales Tax due date is similar with the timing applicable for VAT, i.e., at the delivery of services and/or goods or payment, whichever is earlier.

The contractors should remit the collected Sales Tax to the State Treasury and report it to the tax office using the designated Sales Tax return forms no later than the 15th day and the end of the following month after the end of the tax period, for payment and reporting respectively.

Sales Tax must be settled in Rupiah. Should the payment be made in a currency other than Rupiah, the tax due must be calculated using exchange rate applicable at the time of issuing VAT Invoice or commercial invoice. Standard format of Sales Tax return is attached in PMK-194.

As noted above, taxation matters that are not governed in the CCoW should follow the prevailing tax laws and regulations. PMK-194 also follows this provision. The Contractor's taxation rights and obligations that are not regulated in PMK-194 shall follow prevailing tax regulations, including General Tax Provisions Law No.6/1983 as lastly amended by Law No.16/2009, and its implementing regulations.

PMK-194 also stipulates that VAT and/or LST is not collected on the delivery of VAT-able goods and/or services by a VAT-able Entrepreneur to the contractors. A VAT Invoice is still required to be issued and stamped with a statement that VAT and/or LST is not collected based on PMK-194.

PMK-194 may create the following implications:

1. For CCoW contractors:
 - a) Increase in coal production costs as Sales Tax is not refundable.
 - b) Increase in administrative burden.
 - c) The contractors still need to identify the types of services and/or goods that are subject to Sales Tax since the list provided in PMK-194 is not specific. Further guidance may need to be obtained from the tax office regarding this matter.
2. For vendors: if the vendors have significant transactions with first generation CCoW contractors, they could possibly be in VAT overpayment position since no VAT will be charged to the CCoW companies.

We noted PMK-194 does not address the past issue regarding the offset of VAT and royalty payment that happened to the first generation CCoWs contractors.

New guideline to calculate Employment Income Tax

On 27 December 2012, the Director General of Tax (DGT) issued Regulation No.PER-31/PJ/2012 (PER-31) as new technical guidelines regarding withholding, remittance and reporting of Article 21 and/or Article 26 Income Taxes with respect to work, services and activities of individuals. PER-31 has been effective since 1 January 2013 and revokes the previous DGT Regulation No.PER-31/PJ/2009 as amended by Regulation No.PER-57/PJ/2009.

The procedures of tax calculation, remittance and reporting remain the same. PER-31 was issued to accommodate the new amount of non-taxable income (*Penghasilan Tidak Kena Pajak/PTKP*) based on MoF Regulation No.162/PMK.011/2012 as well as the new threshold of taxable income for daily, weekly and temporary employees based on MoF Regulation No.206/PMK.011/2012.

The new annual PTKP is Rp 24,300,000 for each individual and Rp 2,025,000 for each dependant. Please refer to TaxFlash No.11/2012 for details of the comparison of the new PTKP applicable from 1 January 2013 with the previous one.

Your PwC Indonesia contacts

Abdullah Azis
abdullah.azis@id.pwc.com

Adi Poernomo
adi.poernomo@id.pwc.com

Adi Pratikto
adi.pratikto@id.pwc.com

Ali Mardi
ali.mardi@id.pwc.com

Ali Widodo
ali.widodo@id.pwc.com

Anthony J. Anderson
anthony.j.anderson@id.pwc.com

Anton Manik
anton.a.manik@id.pwc.com

Antonius Sanyojaya
antonius.sanyojaya@id.pwc.com

Ay-Tjhing Phan
ay.tjhing.phan@id.pwc.com

Brian Arnold
brian.arnold@id.pwc.com

Engeline Siagian
engeline.siagian@id.pwc.com

Gadis Nurhidayah
gadis.nurhidayah@id.pwc.com

Hendra Lie
hendra.lie@id.pwc.com

Irene Atmawijaya
irene.atmawijaya@id.pwc.com

Ita Budhi
ita.budhi@id.pwc.com

Ivan Budiarnawan
ivan.budiarnawan@id.pwc.com

Laksmi Djuwita
laksmi.djuwita@id.pwc.com

Mardianto
mardianto.mardianto@id.pwc.com

Margie Margaret
margie.margaret@id.pwc.com

Michelle Mianova
michelle.mianova@id.pwc.com

Nigel Hobler
nigel.hobler@id.pwc.com

Paul Raman
paul.raman@id.pwc.com

Parluhutan Simbolon
parluhutan.simbolon@id.pwc.com

Ravi Gupta
ravi.r.gupta@id.pwc.com

Sutrisno Ali
sutrisno.ali@id.pwc.com

Suyanti Halim
suyanti.halim@id.pwc.com

Tim Watson
tim.robert.watson@id.pwc.com

Tjen She Siung
tjen.she.siung@id.pwc.com

Triadi Mukti
triadi.mukti@id.pwc.com

Yessy Anggraini
yessy.anggraini@id.pwc.com

Yuliana Kurniadjaja
yuliana.kurniadjaja@id.pwc.com

www.pwc.com/id

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