

TaxFlash



Related party criteria for tobacco manufacturers for excise purposes

Excise rates applicable for tobacco manufacturers are classified based on the type and production volume of tobacco products. For a group of related party manufacturers, the applicable excise rate will be calculated based on the manufacturers' total production volume, indicated by total reservation of excise band.

The Minister of Finance (MoF) has initially determined the scope of related party between tobacco manufacturers for excise purposes through the issue of Regulation No.191/PMK.04/2010 (PMK-191) in 2010. On 12 April 2013, the MoF issued Regulation No.78/PMK.011/2013 (PMK-78) to re-determine the same matter and to revoke Article 21A of PMK-191.

PMK-78 stipulates the following aspects that may cause manufacturers to be deemed as having a related party:

- a. Capital participation;
- b. Key management;
- c. Use of raw materials subject to excise (i.e. sliced tobacco) obtained from another manufacturer that owns 10% or more of the manufacturer (buyer) shares; and/or
- d. Family relationship by blood or marriage in a straight or lateral descendant line up to two degrees (new criteria in PMK-78).

Related party rules under PMK-78 are more stringent than regular related party rules for income tax purposes stipulated in Article 18 (4) of the Income Tax Law No.36/2008 (Income Tax Law). In regard to capital participation, Income Tax Law stipulates that a related party is deemed to exist if a taxpayer has direct or indirect capital participation of at least 25% with another taxpayer (the same threshold was then adapted in PMK-91). PMK-78 now sets out the following related party conditions based on the capital participation aspect:

- a. A manufacturer has direct or indirect capital participation of at least 20% with another manufacturer;
- b. A manufacturer has direct capital participation of at least 20% with two or more manufacturers;
- c. There are two or more manufacturers and at least 20% capital of each is owned by the same party;
- d. A manufacturer has capital participation of at least 10% and has become the major shareholder of another manufacturer;
- e. A manufacturer has capital participation of at least 10% and has become the major lender of another manufacturer; or
- f. A manufacturer is the guarantor of another manufacturer for loan purposes.

PMK-78 also sets out clearer conditions regarding the following key management criteria:

- a. A commissioner or a director of a factory also has the same position at another factory at the same time;
- b. A manufacturer has majority voting rights at another manufacturer's board of directors and board of commissioner meetings;
- c. A manufacturer has become a commissioner or director of another manufacturer at the same time; or
- d. There is a certain employee of a manufacturer who has the authority to control financial and operational policies of another manufacturer at the same time.

All tobacco manufacturers must declare having or not having any related party circumstances to the Head of Customs and Excise Office at the latest ten working days after the effective date of PMK-78 on 11 June 2013. Manufacturers that do not submit this declaration will be subject to an audit by the Customs and Excise Office.

The Head of the Regional Customs and Excise Office or Director General of Customs and Excise (DGCE) will issue a Decision Letter on Related Party Determination based on:

- a. A manufacturer's declaration as a related party to other manufacturer(s) accompanied by supporting documents; or

- b. A review by a Customs and Excise official on the indication of related party that proves that a related party does indeed exist between the manufacturers.

Procedures and standard formats of related party declarations as well as review procedures by Customs and Excise officials are also provided in PMK-78.

If related party circumstances no longer exist, a manufacturer may request the revocation of its related party status by submitting a request letter and supporting documents to the Head of Regional Customs and Excise Office or DGCE, upon which a decision will be made subject to a review process.

The new excise rules are effective starting from the determination date of related party status, and at the latest starting from 11 June 2013.

Procedure of import duty borne by government for certain industries in 2013

Earlier in 2013, the MoF released several regulations to enable 17 industry sectors to obtain a customs concession in the form of the Import Duty Borne by the Government (*Bea Masuk Ditanggung Pemerintah/BM DTP*). Please refer to our TaxFlash No.03/2013 and No.07/2013 for our discussions of those regulations.

On 11 April 2013, the DGCE issued the following implementing regulations that stipulate detailed procedures regarding BM DTP for 17 industry sectors.

No.	DGCE Regulation No.	Title
1	PER-2/BC/2013	Plastic packaging, plastic sheets, biaxial oriented polypropylene film, cast polypropylene film, household appliances and/or furniture made from plastic, plastic sacks, plastic threads, plastic tarp, and/or geo textile
2	PER-3/BC/2013	Carpets and/or rugs
3	PER-4/BC/2013	Alkyd resin, unsaturated polyester resin, amino resin, pigment, phthalate, solution acrylic/synthetic latex, and/or plasticizer

No.	DGCE Regulation No.	Title
4	PER-5/BC/2013	Ballpoint pens
5	PER-6/BC/2013	Artificial fertilizers
6	PER-7/BC/2013	Motor vehicle components
7	PER-8/BC/2013	Production and/or repair of freight carrier, passenger carrier, electric/diesel train, bogie and electric train components
8	PER-9/BC/2013	Production of certain parts and/or installation of large equipment
9	PER-10/BC/2013	Equipment and/or components for heavy construction industry made from iron and steel, pressed containers and tanks made from metal, and machinery for agriculture and the forestry industry
10	PER-11/BC/2013	Steam turbines for power plants
11	PER-12/BC/2013	Ship production and/or repair
12	PER-13/BC/2013	Electronic products and/or components
13	PER-14/BC/2013	Telecommunication equipment
14	PER-15/BC/2013	Fiber optic cables
15	PER-16/BC/2013	Toner
16	PER-17/BC/2013	Smart cards in the form of plastic cards, security cards, electronic cards and cellular phone cards
17	PER-18/BC/2013	Infusion package and/or infusion medicine

Companies in any of the areas mentioned above should submit an application, complete with a “Draft Master List”, along with a recommendation letter from a related government agency (e.g. Ministry of Industry, Food and Drug Control Agency/BPOM,

Ministry of Transportation). A completed application must be submitted to the DGCE along with the following documents:

1. A copy of Customs Registration Number (*Nomor Identitas Kepabeanan/NIK*);
2. A copy of Tax Identification Number (*Nomor Pokok Wajib Pajak/NPWP*);
3. A copy of Importer Identification Number (*Angka Pengenal Importir/API*);
4. A copy of Article of Association;
5. Original of Import Plan (*Rencana Impor barang/RIB*), approved and signed by the Director General of Manufacturing of the Ministry of Industry, along with the softcopy version; and
6. A copy of Business License legalised by the relevant authority or by showing the original document to Director of Customs Facility or authorised officer.

DGCE’s procedures in regard to BM DTP are the same for all the 17 industries and are similar to the previous year’s procedures. The key difference is that the DGCE now provides automatic approval to taxpayers applying for BM DTP through electronic media.

Standard forms for the BM DTP application, Import Plan, BM DTP stamp and Import Realisation are attached to the DGCE’s regulations above.

New tax return forms

A. Value Added Tax (VAT) Returns

On 12 April 2013, the Director General of Tax (DGT) amended regulations regarding VAT returns through the issue of regulations No.PER-10/PJ/2013 (PER-10) and No.PER-11/PJ/2013 (PER-11). PER-10 regulates VAT returns applicable for VAT-able Entrepreneurs (*Pengusaha Kena Pajak/PKP*) who use the calculation guidance of crediting Input VAT, while PER-11 is applicable for other PKPs.

There is no substantial change to the tax returns forms compared to the previous regulations. This amendment is made in accordance with the new VAT invoice (*Faktur Pajak/FP*) numbering system as regulated in DGT Regulation No.PER-24/PJ/2012 *juncto* Regulation No.PER-08/PJ/2013. Please refer to our TaxFlash No.13/2012 and No.07/2013 regarding this new FP numbering system.

These new VAT return forms will be effective from June 2013 tax period.

B. Article 21 and/or 26 Income Tax Returns

The DGT has also released new forms for Article 21 and/or 26 Income Tax returns through the issue of Regulation No.PER-14/PJ/2013 (PER-14) on 18 April 2013, revoking the previous DGT Regulation No.PER-32/PJ/2009. This amendment provides easier reference for taxpayers in filling out the tax returns, as well as helping tax officers in reviewing the returns during the tax audit or verification process. However,

PER-14 does not stipulate substantial changes in the content of the tax returns.

These new income tax return forms will be effective from 1 January 2014.

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