

VAT ON DIGITAL GOODS AND SERVICES FROM OVERSEAS AND THE RESUMING OF TRIAL PROCEEDINGS AND TAX COURT SERVICES



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Published every two weeks, DDTC Newsletter provides a summary of key tax law changes, both the current modifications and changes in taxation regulations, particularly those pertaining to domestic policies.

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VAT ON DIGITAL GOODS AND SERVICES FROM OVERSEAS AND THE RESUMING OF TRIAL PROCEEDINGS AND TAX COURT SERVICES

VAT for the Utilization of Intangible Taxable Goods and/or Taxable Services from Overseas Through PMSE

The government has issued a regulation on the imposition of Value Added Tax (VAT) on intangible taxable goods (*Barang Kena Pajak/BKP*) and taxable services (*Jasa Kena Pajak/JKP*) from outside the customs area (overseas) which are carried out via Trade Through Electronic Systems (*Perdagangan Melalui Sistem Elektronik/PMSE*).

The abovementioned regulation refers to the Minister of Finance Regulation No. 48/PMK.03/2020 concerning Procedures for the Appointment of Withholders, Withholding and Deposit, and Reporting of Value Added Tax on the Utilization of Intangible Taxable Goods and/or Taxable Services from Outside the Customs Area within the Customs Area through Trade through Electronic Systems ([MoF Reg. 48/2020](#)).

Promulgated on 5 May 2020, this regulation will come into force on 1 July 2020 and implement the provisions of Article 6 paragraph (13) point a of Government Regulation in Lieu of Law No. 1 of 2020 concerning State Financial Policies and Financial System Stability to Address the Corona Virus Disease (Covid-19) Pandemic and/or to Counter Threats that Endanger the National Economy and/or Financial System Stability ([Perppu No. 1/2020](#)) which mandates the imposition of VAT on PMSE activities.

VAT on the utilization of intangible BKP and/or JKP from outside the customs area shall be withheld, deposited, and reported by PMSE business players appointed by the Minister of Finance as withholders. A PMSE business player refers to an individual or entity conducting business in the PMSE sector.

PMSE business players may take the form of foreign traders, overseas service providers, foreign PMSE providers (PPMSE), and/or domestic PPMSE. PPMSE refers to a business player that provides electronic communication facilities used for trade transactions.

Foreign traders or service providers, on the other hand, are individuals or entities that reside or domiciled outside customs areas that carry out transactions with buyers within customs areas through electronic systems.

In further detail, the utilization of intangible BKP from outside the customs area through the PMSE on which VAT is imposed is categorized into 7 types. *First*, the

use or right to use copyright in the field of literature, art or scientific work, patents, designs or models, plans, secret formulas or processes, trademarks, or forms of intellectual/industrial property rights or other similar rights.

Second, the use or right to use industrial, commercial, or scientific tools/equipment. *Third*, the use of knowledge or information in the scientific, technical, industrial, or commercial sectors. *Fourth*, the use of additional or complementary assistance in relation to the use of the aforementioned rights.

Fifth, the use or right to use motion picture films, films, or videotapes for television broadcasts, or sound tapes for radio broadcasts. *Sixth*, the acquisition of all or part of rights that relate to the use or granting of intellectual/industrial property rights or other rights. *Seventh*, the use of digital goods.

This regulation defines digital goods as any intangible goods in the form of electronic or digital information, including goods that are the result of conversion or goods that are in electronic form, including but not limited to software, multimedia, and/or electronic data. On another note, the utilization of digital services from abroad will be subject to VAT.

Further, PMSE business players to be appointed as PMSE VAT withholders are those whose transactions with buyers of goods and/or recipients of services in Indonesia exceed a certain amount within 12 months.

Moreover, another criterion that may also be used to determine the appointment of a PMSE business player as a PPN PMSE withholder by the Minister of Finance is the amount of traffic or access exceeding a certain amount within 12 months.

The amount of transaction and traffic or access will be stipulated by the Director General of Taxes. Likewise, the authority to appoint a PMSE VAT withholder will be delegated from the Minister of Finance to the Director General of Taxes. The appointment as a PMSE VAT withholder will take effect as of the beginning of the following month after the date of the appointment decree.

PMSE business players appointed as withholders will be given an identification number as a means of tax administration. Moreover, PMSE business players that meet the criteria but have not been appointed as PMSE VAT withholders may submit a notification to the Director General of Taxes to be appointed as PMSE VAT withholders.

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Other than the withholder criteria, under this regulation, the government stipulates three criteria of buyers of goods or recipients of services that are subject to VAT. *First*, residing or domiciled in Indonesia. Buyers of goods or recipients of services are considered to meet this criterion if their correspondence or billing address is situated or located or within the Indonesian territory.

Further, buyers of goods or recipients of services are considered to reside or domiciled in Indonesia if the country selected upon registration on the website and/or available system and/or determined by the PMSE VAT withholder is Indonesia.

Second, making payments using debit, credit, and/or other payment facilities provided by institutions in Indonesia. *Third*, conducting transactions using Indonesian internet protocol addresses or telephone numbers with Indonesian telephone codes.

These three criteria are not necessarily accumulative. This implies that if one of the criteria is met, the buyers of goods or recipients of services will be subject to VAT. The applicable VAT rate is 10% of the value of money without VAT that is paid and withheld upon payment.

PMSE VAT withholders must produce VAT withholding slip in the form of commercial invoices, billing, order receipts, or similar documents, that states that VAT has been withheld and paid for. These documents are equivalent to a tax invoice.

Further, the PMSE VAT withholder is obliged to deposit the withheld VAT for each tax period no later than the end of the following month after the tax period ends. This VAT deposit is made electronically to an account in rupiah, United States dollars, or other foreign currencies stipulated by the Director General of Taxes.

The PMSE VAT withholder is subsequently required to report VAT that has been withheld and paid for quarterly for three tax periods. The report is submitted no later than the end of the following month after the quarterly period ends.

The quarterly report must at least contain information on the number of buyers of goods and/or recipients of services, the amount of payment, the amount of VAT withheld, and the amount of VAT paid for each tax period. The report is in electronic form and submitted through an application or system stipulated and/or provided by the Directorate General of Taxes (DGT).

Moreover, MoF Reg. 48/2020 authorizes the Director General of Taxes to request the PMSE VAT withholder

to submit a detailed report on PMSE VAT transactions for each period in one calendar year.

The detailed transaction report must at least contain information on the number and date of the VAT withholding slip, the amount of payment, and the amount of VAT withheld. The report must also include the name and taxpayer identification number (*Nomor Pokok Wajib Pajak/NPWP*) of the buyer of goods and/or recipient of services in the event that the VAT withholding slip lists the NPWP of the buyer of goods or recipient of services.

Ratification of Government Regulation in Lieu of Law No. 1/2020 as a Law

The government, together with the House of Representatives (*Dewan Perwakilan Rakyat/DPR*) has ratified Government Regulation in Lieu of Law (*Peraturan Pemerintah Pengganti Undang-Undang/Perppu*) No. 1 of 2020 in the DPR plenary meeting. This ratification is outlined in Law No. 2 of 2020 concerning the Ratification of Government Regulation in Lieu of Law No. 1 of 2020 concerning State Financial Policies and Financial System Stability to Address the Corona Virus Disease 2019 (Covid-19) Pandemic and/or to Counter the Threats that Harm the National Economy and/or Financial System Stability into a Law ([Law No. 2/2020](#)). This law has come into force as of 18 May 2020.

The general elucidation of [Law No. 2/2020](#) states that the Covid-19 pandemic has significantly disrupted economic activities and resulted in major implications for the economy of most countries around the world, including Indonesia. Indonesia's economic growth which is expected to fall by up to 4% or lower, depends on how long and how severe the spread of the Covid-19 pandemic affects or even paralyzes community and economic activities.

The disruptions to economic activities will have implications for changes in the state budget posture of the 2020 budget year, in terms of state revenue, state expenditure, and financing. State financial and fiscal policy responses are called for to address the risks of the Covid-19 pandemic. The implications of the Covid-19 pandemic have also resulted in the threat of a deteriorating financial system. Measures to address these implications may lead to macroeconomic and financial system instability in need of mitigations. Perppu No. 1/2020 was, thus, issued.

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As is known, Perppu No. 1/2020 also stipulates 4 taxation policies. *First*, the adjustments to income tax rates of domestic corporate taxpayers and permanent establishments (*Bentuk Usaha Tetap/ BUT*). *Second*, tax treatment on trading through electronic systems (*Perdagangan Melalui Sistem Elektronik/PMSE*). *Third*, the extension of the implementation of tax rights and fulfillment of tax obligations. Fourth, the granting of authority to the Minister of Finance to grant customs facilities in the form of exemption or relief of import duties to address the force majeure, recover, and strengthen the national economy.

Implementing Regulation for the National Economic Recovery Program

The government has issued implementing regulation for the national economic recovery program. These provisions are stipulated Government Regulation No. 23/2020 concerning the Implementation of the National Economic Recovery Program in the Context of Supporting State Financial Policies to Address the 2019 Corona Virus Disease (Covid-19) Pandemic and/or to Counter Threats that Harm the National Economy and/or Financial System Stability and Saving the National Economy ([Gov. Reg. 23/2020](#)). This regulation serves as an implementing regulation of Article 11 paragraph (7) of Perppu No. 1/2020.

The national economic recovery program (*Pemulihan Ekonomi Nasional/PEN*) aims to protect, maintain, and enhance the economic capacity of business players in doing business. This program is implemented under the following principles.

- i. The principle of social justice;
- ii. The greatest prosperity of the people;
- iii. Supporting business players;
- iv. Applying the prudence principle to policies, as well as good, transparent, accelerated, fair, and accountable governance as per statutory provisions;
- v. Not causing moral hazard; and
- vi. Distributing costs and risks among stakeholders according to their respective duties and authorities.

The government may implement the PEN through several measures. *First*, state equity participation (*Penyertaan Modal Negara/PMN*). The government may implement PMN on State-Owned Enterprises

(SOEs) and/or through designated SOEs. PMN is intended to improve the capital structure of SOEs and/or SOE subsidiaries affected by Covid-19 and enhance the business capacity of SOEs and/or SOE subsidiaries.

Second, the placement of funds. To implement the PEN program, the government may place funds to provide liquidity support to banks that carry out credit/financing restructuring and/or provide additional credit/working capital financing.

Funds are placed in participating banks. Participating banks are to meet several criteria, including: a commercial bank that is an Indonesian legal entity and at least 51% of its shares are owned by Indonesian citizens, banks categorized as healthy, and is among 15 banks with the largest assets.

Third, government investment. In implementing the PEN program, the government may make government investments. *Fourth*, to implement the PEN program, the government may provide guarantees. The guarantee may be provided directly by the government and/or through the appointed guaranteeing business entity.

Fifth, policy through state expenditure. The PEN program through state expenditure includes but is not limited to the provision of interest subsidies to eligible banking debtors, finance companies, and institutions channeling government credit programs.

The aforementioned banking debtor and finance companies must meet several requirements, i.e. being a micro business, small business, medium business, and/or cooperative with the highest credit ceiling of Rp 10,000,000,000, not on the national blacklist, included in the current performing loan category, and having a taxpayer identification number (*Nomor Pokok Wajib Pajak/NPWP*).

To finance the PEN program, the government may issue government securities (*Surat Berharga Negara/SBN*) purchased by Bank Indonesia on the primary market. The Minister who carries out government affairs in the financial sector is in charge of supervising and evaluating the implementation of the PEN program. Supervision and evaluation include monitoring, evaluation, and control. The evaluation results of the implementation of the PEN program will later be reported to the president.

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Automatic Extension of the Certificate of the Centralization of Location of VAT Payable

DGT automatically extends the validity of decrees on the centralization of location of VAT payable which ends at force majeure due to the corona virus disease 2019 (Covid-19) pandemic.

The automatic extension is outlined in [Announcement No. PENG-5/PJ.09/2020](#) concerning Announcement of the Extension of Decrees on the Centralization of Location of VAT Payable.

The extension is granted for decrees concerning the approval on VAT payable centralization for which the extension is to be notified in January 2020 to May 2020 at the latest, with the validity of the centralization ending in the March-July 2020 tax period.

However, if a taxable person for VAT purposes (*Pengusaha Kena Pajak/ PKP*) wishes not to extend the decree on the centralization of location of VAT payable, the PKP must submit written notification to the Head of the DGT Regional Office.

Implementation of Trial Proceedings and Administrative Services During the Prevention Period of Covid-19 Spread

The Tax Court has once again extended the prevention period of the corona virus disease (Covid-19) spread within the Tax Court.

This extension is outlined in the Chairperson of the Court Circular No. SE-09/PP/2020 concerning the Fourth Amendment to the Chairperson of Tax Court Circular No. SE-03/PP/2020 concerning the Guidelines for the Adjustments to Trial Proceedings and Administrative Services During the Prevention Period of the Corona Virus Disease 2019 (Covid-19) Spread within the Tax Court ([SE-09/2020](#)).

Under this regulation, the prevention period of the Covid-19 spread within the Tax Court formerly set from 17 March 2020 to 1 June 2020 has been revised to 17 March 2020 to 7 June 2020.

Despite the extended prevention period, this regulation stipulates that other provisions in the Chairperson of the Tax Court Circular No. SE-03/PP/2020 concerning the Guidelines for the Adjustments to Trial Proceedings and Administrative Services During the Prevention

Period of the Corona Virus Disease 2019 (Covid-19) Spread within the Tax Court ([SE-03/2020](#)) remain valid

The extended prevention period implies that trial proceedings in Jakarta, which were originally set to resume on 2 June 2020, shall be postponed to 8 June 2020. Trial Proceedings Outside Domicile (*Sidang Di Luar Tempat Kedudukan/SDTK*), however, will be held and subject to further provisions.

Changes in the implementation of trial proceedings are stipulated under the Chairperson of Tax Court Circular No. SE-10/PP/2020 concerning the Procedures of Trial Proceedings and Administrative Services during the Corona Virus Disease 2019 (Covid-19) Pandemic within the Tax Court ([SE-10/2020](#)).

Promulgated on 26 May 2020, this regulation has come into effect thereafter. This regulation concurrently revokes Chairperson of Tax Court Circular No. SE-07/PP/2020 concerning the Guidelines for Procedures of Trial Proceedings and Administrative Services during the 2019 Corona Virus Disease (Covid-19) pandemic within the Tax Court ([SE-07/2020](#)).

In addition to regulating when trial proceedings shall be held, the regulation sets forth the guidelines for trial proceedings and administrative services within the tax court during the Covid-19 pandemic.

The guidelines take into account measures to prevent the spread of Covid-19 within the tax court and protect all tax court judges, court clerks, employees, and service users.

This regulation outlines that four parties may be present in one courtroom at each hearing, namely:

- i. panel of judges/a single judge;
- ii. alternate registrar accompanied by a maximum of one alternate assistant secretary and one acting official;
- iii. the parties (appellant/suitor and appellee/defendant) of a maximum of two persons;
- iv. other parties subject to the approval of the panel of judges/single judge.

In addition, trial proceedings must be held with due regard to physical distancing between the panel of judges/single judge, alternate registrar, and the parties. The panel of judges/single judge, alternate registrar, and the parties are also required to wear masks, wash their hands using water/antiseptic liquid, and not to make any physical contact during trial proceedings.

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Moreover, documents and evidence presented before the panel of judges/single judge must comply with the procedures for preventing Covid-19 spread. This regulation also authorizes the panel of judges/single judge to stipulate other trial-related matters.

Similar to trial proceedings, appeal, and/or lawsuit services, requests for judicial review, information, and other letters may be submitted directly starting 8 June 2020. The same applies to the services of sending copies of tax court decisions and copies of the decisions on judicial reviews.

All administrative services must be carried out based on four conditions. *First*, taking into account the physical distancing between officers and service users.

Second, officers and service users are required to wear masks, wash their hands using water/antiseptic liquids, and not to make physical contact when services are provided. *Third*, the submission of documents must comply with guidelines for preventing the spread of Covid-19, for instance, the documents must be wrapped in plastic or sterilized.

Fourth, officers who inspect submitted documents are obliged to use masks, gloves, and/or use hand sanitizers.

Further, this regulation outlines that the tax court secretary, with the approval of the chairperson of the tax court, may arrange the schedule of the services, the number of officers, the maximum number of service users per day, and other matters needed for convenient services.

Moreover, the extension of the prevention period has resulted in an 83-day suspension of the deadline for direct appeals falling during that period. This suspension is longer than the previous regulation that stipulated a 77-day suspension.

The affirmation on the suspension is outlined in the Chairperson of Tax Court Circular No. SE-11/PP/2020 concerning the Explanation on the Deadline for the Submission of Appeals and Lawsuits Submitted Directly Based on Chairperson of Tax Court Circular No. SE-03/PP/2020 as Last Amended by [SE-09/PP/2020 \(SE-11/2020\)](#).

This regulation has come into force as of its promulgation date, 26 May 2020. This regulation concurrently revokes the Chairperson of the Tax Court Circular No. SE-08/PP/2020 concerning the Explanation on the Deadline for Appeals and LawSuits Submitted Directly based on Chairperson of the Tax

Court Circular No. SE-03/PP/2020 as Last Amended by SE-06/PP/2020.

Other than emphasizing the suspension period, SE-11/2020 provides elucidation on the prevention period of Covid-19 spread not being taken into account in the deadlines of direct filing of appeals and lawsuits to the Tax Court. These provisions conform to SE-03/2020 as last amended by SE-09/2020.

As per point 5 paragraph a of the SE-03/2020, if the submission deadline of direct appeals is in the period of prevention period of Covid-19 spread, the deadline will be deferred for the number of days of the prevention period of the Covid-19 spread.

Moreover, SE-11/2020 reiterates the prevention period of Covid-19 spread within the tax court from 17 March 2020 to 7 June 2020 or for 83 days. This implies that if the deadline for a direct appeal was originally in the prevention period of Covid-19 spread, it is subject to an 83-day suspension.

The appendix of this circular also outlines the details of the submission deadline for direct appeals. For instance, a direct appeal of which the submission deadline was on 17 March shall be suspended to 8 June 2020.

Next, as per point 6 paragraph a of SE-03/PP/2020, the direct filing deadline for lawsuits within the prevention period of Covid-19 spread will be suspended for no later than 14 days since the end of the prevention period of Covid-19 spread.

In the event that the direct filing deadline for lawsuits was originally within the prevention period of Covid-19 spread, it will be suspended for no later than 14 days since the end of the prevention period of Covid-19 spread or no later than 21 June 2020.

The provisions regarding other periods, such as the preparation period for trial proceedings, the implementation of trial proceedings, the filing of appeals by post, filing of lawsuits by post, and other stipulations continue to refer to all the provisions in SE-03/2020.

All circulars on trial proceedings and administrative services within the tax court are subject to periodical evaluations as per the Central Government/Regional Governments' directives or policies on the handling of Covid-19.

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