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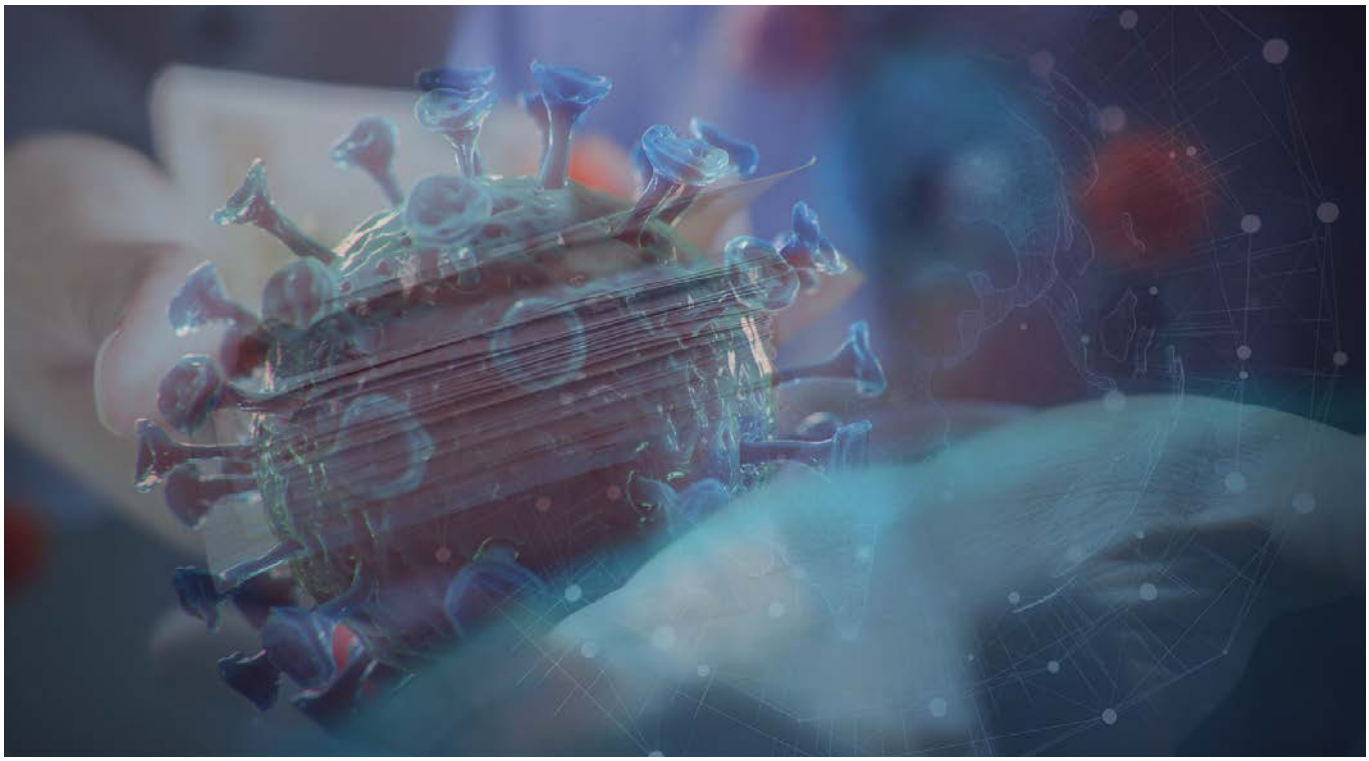
Additional Covid-19-Related Tax Incentives and Technical Guidelines for the Appointment of E-Commerce VAT Withholders

Sets the Standards and Beyond



ABOUT DDTC

DDTC is a research and knowledge based taxation institution and a center of a number of taxation activities units with high standards that serve as main references in the field of taxation.

Our firm consists of consultation services (DDTC Consulting), a center for review and research (DDTC Fiscal Research), taxation journals (DDTC Working Paper), a training center (DDTC Academy), a provider of tax law documents (Perpajakan.id), a library (DDTC Library), and taxation news portal (DDTC News).

ABOUT DDTC Newsletter

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.

Contents

Addition of Article 25 Income Tax Installment Discounts and Income Tax Incentives for Construction Services

The government has increased the amount of Article 25 Income Tax installment reduction for taxpayers in certain sectors that are affected by the Corona Virus Disease 2019 (Covid-19) pandemic. Moreover, the government has added a new type of incentive for taxpayers affected by Covid-19, i.e. final Income Tax Borne by the Government (*Ditanggung Pemerintah*/DTP) for certain construction services.

The increase in the amount of the Income Tax Article 25 installment reduction and the addition of the types of incentives are outlined in the Minister of Finance Regulation No. 110/PMK.03/2020 concerning Amendments to the Minister of Finance Regulation No. 86/PMK.03/2020 concerning Tax Incentives for Taxpayers Affected by the Corona Virus Disease 2019 Pandemic (MoF Reg. 110/2020).

Under the regulation that took effect on 14 August 2020, the government increases the amount of Income Tax Article 25 installment reduction from 30% to 50% of the installment payable amount.

Similar to the former regulation, the Income Tax article 25 installment reduction incentive applies to taxpayers engaged in 1,013 certain business fields, companies that obtain import facilities for export purposes, as well as companies in bonded zones.

On another note, a new incentive in the form of final Income Tax DTP for certain construction services is aimed at taxpayers that receive the Acceleration Program for Irrigation Water Use (*Program Percepatan Peningkatan Tata Guna Air Irigasi*/P3-TGAI). Taxpayers that receive P3-TGAI refer to P3A, GP3A, and/or IP3A that carry out P3-TGAI as stipulated by the Commitment-Making Officer (*Pejabat Pembuat Komitmen*/PPK) and legalized by the Head of the Major River Basin Organization (*Balai Besar Wilayah Sungai*/BBWS) or River Basin Organization (*Balai Wilayah Sungai*/BWS) of the Ministry of Public Works and Public Housing.

In further detail, P3-TGAI refers to a program of repairing, rehabilitating, or improving irrigation networks based on the participation of farming communities implemented by P3A, GP3A, and/or IP3A.

Water User Farmer Association (*Perkumpulan Petani Pemakai Air*/P3A) refers to an irrigation management institution that serves as a forum for farmers using water in a service area/tertiary plot or village and is democratically established by water-using farmers, including local irrigation management institutions.

Next, the Federation of Water User Farmer Associations (*Gabungan Perkumpulan Petani Pemakai Air*/GP3A) is an institution consisting of a number of P3A that agree to work together to utilize irrigation water and irrigation networks in secondary block service areas, a combination of several secondary blocks, or one irrigation area.

Conversely, the Water User Farmer Central Association (*Induk Perkumpulan Petani Pemakai Air*/IP3A) refers to an institution consisting of a number of GP3A that agree to work together to utilize irrigation water and irrigation networks in the primary block service area, a combination of several primary blocks, or one irrigation area.

DGT Releases the Implementing Regulation of MoF Reg. 110/2020

The Director General of Taxes has issued Circular No. SE-47/PJ/2020 concerning Guidelines for Implementation of Minister of Finance Regulation No. 86/PMK.03/2020 concerning Tax Incentives for Taxpayers Affected by the Corona Virus Disease 2019 Pandemic as amended by the Minister of Finance Regulation No. 110/PMK.03/2020 (SE-47/PJ/2020).

This circular has been released in connection with the promulgation of the Minister of Finance Regulation No. 110/PMK.03/2020 concerning Amendments to the Minister of Finance Regulation No. 86/PMK.03/2020 concerning Tax Incentives for Taxpayers Affected by the 2019 Corona Virus Disease Pandemic (MoF Reg. 110/2020).

MoF Reg. 110/2020 stipulates the provisions on the additional reduction of Article 25 Income Tax installments. Taking effect since 14 August 2020, this MoF Reg. also adds a new type of incentive, i.e. the final Income Tax borne by the government (*Ditanggung Pemerintah*/DTP) on certain construction service income.

In further detail, 12 scopes are stipulated under SE-47/2020. *First,* the definitions. *Second,* the procedures for the granting of Article 21 Income Tax DTP incentives. *Third,* the procedures for the granting of final Income Tax DTP incentives for taxpayers with certain business turnover as per Gov. Reg. 23/2018.

Fourth, procedures for the granting of final Income Tax incentives on income from construction services DTP. *Fifth,* procedures for Article 22 Import Income Tax exemptions. *Sixth*, the procedures for the reduction of Article 25 Income Tax installments. *Seventh,* the provisions on the resubmission of notification of the use of Article 21 Income Tax DTP incentives, application for a Certificate of Article 22 Import Income Tax Exemption (*Surat Keterangan Bebas*/SKB), and/or notification of the use of Article 25 Income Tax installment reduction incentives.

Eighth, procedures for the submission of reports on the realization of the use of Article 21 Income Tax DTP incentives, final Income Tax DTP, Article 22 Import Income Tax exemptions, and/or reduction of Article 25 Income Tax installments. *Ninth,* procedures for preliminary return of VAT overpayment.

Tenth, the provisions related to business classification (*Klasifikasi Lapangan Usaha*/KLU) codes entitled to Article 21 Income Tax DTP incentives, Article 22 Import Income Tax exemptions, reduction of Article 25 Income Tax installments, and preliminary return of VAT overpayment.

Eleventh, the provisions related to Import Facility for Export (*Kemudahan Impor Tujuan Ekspor*/KITE) companies, bonded zone operators, bonded zone entrepreneurs, and entrepreneurs within bonded zones that are also operators within bonded zones (*Penyelenggara di Kawasan Berikat*/PDKB) entitled to tax incentives.

Twelfth, procedures for the supervision on the utilization of Article 21 Income Tax DTP incentives, final Income Tax DTP, Article 22 Import Income Tax exemptions, reduction of Article 25 Income Tax installments, and preliminary return of VAT overpayment.

Compared to SE-43/2020, the most significant change lies in the section outlining the procedures for the granting of final Income Tax incentives on income from the construction service DTP business. SE-47/2020 reiterates that the final Income Tax on construction services DTP is only granted to taxpayers that receive the Acceleration Program for Irrigation Water Use (*Program Percepatan Peningkatan Tata Guna Air*/P3-TGAI).

The final Income Tax incentive for construction services DTP shall be granted as of the promulgation of MoF Reg. 110/2020 on 14 August 2020 until the December 2020 Tax Period. On another note, SE-47/2020 requires final Income tax withholders on construction services to prepare the Tax Payment Slip (*Surat Setoran Pajak*/SSP) or printout of billing codes affixed with a stamp or inscription "FINAL INCOME TAX ON CONSTRUCTION SERVICES IS BORNE BY THE GOVERNMENT AS PER MoF REG. NO. 86/PMK.03/2020".

The SSP or printed billing code is subsequently stored and administered by the tax withholders. Furthermore, withholders are required to report the SSP or printed billing code that is affixed with the stamp or inscription in the Periodic Article 4 paragraph (2) Income Tax Return.

In the event that the tax withholders uses Article 4 paragraph (2) Income Tax e-SPT application as the means of submitting tax returns, the recorded State Revenue Transaction Number (*Nomor Transaksi Penerimaan Negara*/NTPN) code is replaced by the billing code starting with the number 9.

For instance, if the billing code is 123456789012345, the NTPN column in the e-SPT is filled in with 9123456789012345. On the other hand, the amount of rupiah is filled in with the value of the final Income tax on construction services DTP.

Conversely, if the tax withholders have already deducted the final Income Tax on income from construction services received by the P3-TGAI recipient taxpayer since the promulgation of MoF Reg. 110/2020, a tax refund may be applied for the withheld income tax that should not otherwise be payable. The application for a tax refund may be submitted by the P3-TGAI recipient taxpayer to the Tax Office (*Kantor Pelayanan Pajak*/KPP) where the P3-TGAI recipient taxpayer is registered.

Promulgated on 14 August 2020, SE-47/2020 came into effect thereafter. With the enactment of SE-47/2020, the Director General of Taxes Circular No. SE-43/PJ/2020 concerning the Implementation Guidelines for Minister of Finance Regulation No. 86/PMK.03/2020 concerning Tax Incentives for Taxpayers Affected by the Corona Virus Disease 2019 Pandemic (SE-43/2020) is revoked and declared invalid.

Guidelines for the Appointment of E-Commerce VAT Withholders

The Director General of Taxes has released a regulation as the implementation guidelines for the appointment of Trade Through Electronic Systems (*Perdagangan Melalui Sistem Elektronik*/PMSE) Value Added Tax (VAT) withholders.

The implementation guidelines are outlined in the Director General of Taxes Circular No. SE-44/PJ/2020 concerning the Implementation of the Appointment of Value Added Tax Withholders for the Utilization of Intangible Taxable Goods and/or Taxable Services from Outside the Customs Area within the Customs Area through Trade Through Electronic Systems (SE-44/2020).

This circular is aimed at providing guidelines in the appointment of PMSE VAT withholders formerly stipulated under the Minister of Finance Regulation No. 48/PMK.03/2020 concerning Procedures for the Appointment of Withholders, Withholding, Remittance, 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/P2020).

On another note, SE-44/2020 has been issued in connection with the enactment of the Director General of Taxes Regulation No. PER-12/PJ/2020 concerning the Threshold of Certain Criteria for Withholders and Appointment of Withholders, Withholding, Remittance, 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 the System Electronics (PER-12/2020).

Both MoF Reg. 48/2020 and PER-12/PJ/2020 regulate the appointment of PMSE business actors as PMSE VAT withholders. There are, however, no technical guidelines regarding this matter. For this reason, the government deems it is necessary to prepare a director general of taxes circular as the implementation guidelines for the appointment of PMSE VAT withholders.

SE-44/2020 is expected to render an orderly tax administration with due regard to the appointment of PMSE VAT withholders. Enacted on 30 July 2020, this regulation has also been released to develop relevant and accurate PMSE VAT withholder data and/or information.

Moreover, this regulation has been issued to provide convenience and excellent service to PMSE VAT withholders with due regard to international best practices. SE-44/2020 outlines guidelines for the appointment of PMSE VAT withholders in 6 scopes.

First, the definitions. As a regulation that serves as implementation guidelines, the scope of definitions outlined under SE-44/2020 is more diverse. SE-44/2020, for example, also outlines the definitions of tax identification number card, tax identification number, and the PMSE portal.

Second, general provisions. This section confirms the general provisions for the appointment of PMSE VAT withholders formerly regulated under MoF Reg. 48/2020 and PER-12/2020. These general provisions range from the authority of the appointment, the threshold of certain criteria, to the revocation of the appointment.

Third, the appointment of PMSE business actors as PMSE VAT withholders. This section explains the procedures for appointing PMSE VAT withholders, ranging from the appointment basis to the issuance of tax identification numbers for PMSE business actors.

Fourth, account activation and updates of PMSE VAT withholder data. This section describes the procedures for account activation and online updating of the PMSE portal. These provisions were formerly regulated and required under Article 8 paragraph (1) of PER-12/2020.

Fifth, notification of PMSE VAT withholder data changes. This section details the procedures for data changes if the data and/or information of PMSE VAT withholders within the DGT database differs from the actual situation.

Sixth, the revocation of the appointment of PMSE VAT withholders. Formerly, Article 6 paragraph (1) of PER-12/2020 outlined that the Director General of Taxes could revoke the appointment of PMSE business actors as PMSE VAT withholders upon failure to meet certain predetermined criteria.

Moreover, to clarify the position of the parties transacting within PMSE, SE-44/2020 provides guidelines on the roles as well as examples of PMSE transactions. Elucidation of the roles and examples of PMSE transactions is listed in Appendix 11 of SE-44/2020.

Changes to Provisions on VAT and/or SLTGs Exemptions for Representatives of Foreign Countries and International Bodies

Exemptions from Value Added Tax (VAT) and/or Sales Tax on Luxury Goods (SLTGs) can now be granted to international bodies under certain agreements. Said agreements refer to agreements in certain forms and

names that are prepared in writing and render rights and obligations between the Indonesian government and international bodies.

The renewal of the provisions on VAT and/or SLTGs exemptions is outlined in Government Regulation No. 47 of 2020 concerning the Granting of Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods Exemptions to Representatives of Foreign Countries and International Bodies and Their Officials (Gov. Reg. 47/2020).

This regulation shall be valid in 60 days as of 18 August 2020. The enactment of this regulation simultaneously revokes the former regulation, i.e. Government Regulation No. 47 of 2013 concerning the Granting of Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods Exemptions to Representatives of Foreign Countries and International Bodies and Their Officials (Gov. Reg. 47/2013).

Under the former regulation, VAT and SLTGs exemptions were only granted to international bodies on the basis of reciprocity. Nevertheless, to align with Article 16B of the VAT Law, the granting of VAT and/or SLTGs exemptions to international bodies and their officials is now based on international agreements or international practice.

In further detail, agreement-based VAT and/or SLTGs exemptions are granted to international bodies as well as officials of international bodies whose agreements contain provisions on the granting of VAT and/or SLTGs exemptions.

However, if there is no agreement between the Indonesian government and international bodies or such an agreement contains no provisions on VAT and/or SLTGs exemptions, the granting of exemptions may be based on international practice.

An example of international practice is an international body that carries out projects in several countries, including Indonesia. In the event that within one of these countries, the international body is entitled to the VAT and/or SLTGs exemption facilities, the international body may be provided with such facilities on the basis of international practice.

The granting of VAT and/or SLTGs exemptions based on the international agreement or practice is stipulated by the Minister of Finance. The granting of VAT and/or SLTGs exemptions may be stipulated after obtaining considerations and recommendations from the State Secretary Minister.

In providing recommendations concerning VAT and/or SLTGs exemptions, the State Secretary Minister takes into account the minimum purchase requirement, reasonableness, and appropriateness of the quantity and type of goods. Next, based on the recommendations from the State Secretary Minister, the Minister of Finance may issue a VAT and/or SLTGs Exemption Certificate (*Surat Keterangan Bebas*/SKB).

As Gov. Reg. 47/2020 comes into effect, international bodies that have received exemptions or VAT and/or SLTGs refunds will still be granted with these exemptions until the enactment of the minister of finance decree concerning their VAT and/or SLTGs exemptions.

Moreover, through Gov. Reg. 47/2020, the government emphasizes the provisions on the minimum purchase requirement of transactions exempted from VAT and/or SLTGs for representatives of foreign countries and their officials.

This regulation outlines that representatives of foreign countries and their officials may be granted with VAT and/or SLTGs exemptions based on the principle of reciprocity. The VAT and/or SLTGs exemptions are granted for transactions equal to or above the minimum purchase requirement stipulated by the foreign country or the minimum purchase requirement set by the Minister for Foreign Affairs.

The minimum purchase requirement stipulated by a foreign country applies if the minimum purchase requirement set by the Minister for Foreign Affairs is lower than that stipulated by the foreign country.

The minimum purchase requirement set by the Minister for Foreign Affairs, however, applies if it is higher than that stipulated by the foreign country.

In essence, the minimum purchase requirement of transactions that are granted with VAT and/or SLTGs exemptions depends on the provisions of the foreign country and the Minister for Foreign Affairs. The applicable minimum purchase requirement, however, is the higher of the stipulations set by the foreign country or the Minister for Foreign Affairs.

This regulation also elucidates that in the event that Indonesia does not have a representative office in a certain country, VAT and/or SLTGs exemptions may be granted for representatives of foreign countries and their officials that are currently in Indonesia based on the principle of reciprocity.

Under the former regulation, the exempted minimum purchase requirement was not explained in detail. However, the memory of the elucidation of Article 3 paragraph (2) of Gov. Reg. 47/2013 outlined that

in the application of the principle of reciprocity, the Ministry of Foreign Affairs may take into account various aspects based on the treatment of a country towards representatives of the Republic of Indonesia and its officials within that country.

One example of a factor worthy of consideration is the application of minimum purchase requirement of goods or services, excluding VAT, stipulated by a country to obtain tax facilities within said country.

The DGT Releases Implementation Guidelines of Gov. Reg. 23/2018

The Director General of Taxes has issued Circular No. SE-46/PJ/2020 concerning Guidelines for the Implementation of Government Regulation No. 23 of 2018 concerning Income Tax on Income from Businesses Received or Earned by Taxpayers with Certain Gross Turnover (SE-46/2020).

The circular has been released to provide guidance in the implementation of Government Regulation No. 23 of 2018 concerning Income Tax on Income from Businesses Received or Earned by Taxpayers With Certain Gross Turnover (Gov. Reg. 23/2018).

As the guidelines for implementing Gov 23/2018, the circular is expected to establish uniformity in the implementation of Gov. Reg. 23/2018, confirm the implementation of several provisions under Gov. Reg. 23/2018, and outline the procedures for implementing Gov. Reg. 23/2018.

This is because the implementation of the provisions under Gov. Reg. 23/2018 and the Minister of Finance Regulation No. 99/PMK.03/2018 concerning the Implementation of Government Regulation No. 23 of 2018 concerning Income Tax on Income from Businesses Received or Earned by Taxpayers with Certain Gross Turnover (MoF Reg. 99/2019) requires further confirmation and instructions.

Enacted on 18 August 2020, the regulation covers nine scopes. *First,* the details of taxpayers that receive or earn income subject to final Income Tax as per the provisions under Gov. Reg. 23/2018.

Second, the details and confirmation of the types of income subject to final Income Tax according to the provisions under Gov. Reg. 23/2018. *Third,* details of the procedures for submitting notification for taxpayers that choose to be subject to Income Tax based on the general provisions of Income Tax.

Fourth, details and confirmation of income tax treatment for certain corporate taxpayers in the form of limited partnerships or firms. *Fifth,* an explanation of the final income tax treatment based on Gov. Reg. 23/2018 for corporate taxpayers in the form of banks, people's credit banks, savings and loan cooperatives, microfinance institutions, loan-giving institutions, and/or entities that carry out pawning businesses.

Sixth, the details of the provisions on the treatment of final Income Tax as per Gov. Reg. 23/2018 which has been withheld or remitted by the taxpayers themselves, for whom the cancellation and/or revocation letters of Certificates have been issued.

Seventh, the elucidation and confirmation of compensation for losses for taxpayers that receive or earn income that is subject to Income Tax under Gov. Reg. 23/2018. The compensation for losses only applies to taxpayers that employ the provisions under Gov. Reg. 23/2018 and perform bookkeeping.

Taxpayers, however, may only apply for this compensation for income that is not subject to final Income Tax. On the other hand, losses on income that is the object of Gov. Reg. 23/2018 cannot be compensated. In addition, to be able to compensate for losses on income that is not subject to Final Income Tax, several conditions are to be met.

One of such requirements is that taxpayers must keep separate books between income subject to Income Tax based on the general provisions of Income Tax and income subject to final Income Tax.

Eighth, the details of the provisions on the calculation of Article 25 Income Tax installments for taxpayers that receive income subject to Income Tax under Gov. Reg. 23/2018 and also receive income subject to Income Tax based on the general provisions of Income Tax.

Ninth, other matters that need to be emphasized with regard to the imposition of final Income Tax based on Gov. Reg. 23/2018. Other matters emphasized under this regulation include the affirmation of the obligation to have a Taxpayer Identification Number (TIN), the remittance method, and the treatment of transactions that are objects of final Income Tax based on Gov. Reg. 23/2018 and have already been withheld as per general provisions of income tax by other parties.

Enacted on 18 August 2020, this regulation simultaneously revokes SE-42/PJ/2013 and SE-32/PJ/2014 concerning the Confirmation of the Implementation of Government Regulation No. 46 of 2013.

Imposition of BMTP on Imports of Ceramic Tiles from India and Vietnam

The government has officially imposed Safeguard Import Duties (*Bea Masuk Tindakan Pengamanan*/ BMTP) on imports of ceramic tile products from India and Vietnam. The imposition of BMTP is outlined in the Minister of Finance Regulation No. 111/PMK.010/2020 concerning Amendments to the Minister of Finance Regulation No. 119/PMK.010/2018 concerning the Imposition of Safeguard Import Duties on Imports of Ceramic Tile Products (MoF Reg. 111/2020).

Under the former provisions, i.e. the Minister of Finance Regulation No. 119/PMK.010/2018 concerning the Imposition of Safeguard Import Duties on Imports of Ceramic Tile Products (MoF Reg. 119/2018), India and Vietnam were included in the list of countries exempted from BMTP on imports of ceramic tile products.

Based on the Indonesian Trade Safeguard Committee's evaluations on the domestic industry in December 2019, however, the imposition of BMTP on imports of ceramic tiles has not been effective. The ineffective imposition of BMTP on imports of ceramic tiles is due to the significant surge in imports of ceramic tiles from India and Vietnam.

For this reason, based on the evaluation results of the Indonesian Trade Safeguard Committee and Article 9.1 of the World Trade Organization Agreement on Safeguards and Article 90 of Government Regulation No. 34 of 2011 concerning Antidumping Measures, Countervailing Measures, and Trade Safeguard Measures (Gov. Reg. 34/2011), the Minister of Trade has decided to exclude India and Vietnam from the list of countries exempted from BMTP on imports of ceramic tile products.

On another note, valid in seven working days as of 24 August 2020, this regulation adds provisions related to the examination of Certificate of Origin documents. Certificate of Origin refers to documents that must be submitted by importers from countries that are exempted from the imposition of BMTP on imports of ceramic tile products.

This regulation stipulates that the examination of certificates of origin from countries that have trade cooperation with Indonesia is carried out based on the Minister of Finance Regulation on Examination of Certificate of Origin in the Framework of Imposing Import Duty Tariffs on Imported Goods Based on International Agreements.

In contrast, the examination of Certificate of Origin from a country that does not have trade cooperation with Indonesia shall be carried out based on the provisions stipulated by the Minister in charge of trade affairs.

Unloading and Storage of Imported Goods

The Minister of Finance has issued policies related to the unloading and storage of imported goods. The policies of unloading and storage imported goods are outlined under the Minister of Finance Regulation No. 108/PMK.04/2020 concerning the Unloading and Storage of Imported Goods (MoF Reg. 108/2020). This ministerial regulation comes into force thirty days as of its promulgation date.

Under this regulation, a carrier is defined as a person or its proxy that is responsible for the operation of the means of transport carrying goods and/or people. A carrier is authorized to carry out the contract of carriage and issue documents for the transportation of goods. The ministerial regulation outlines two main issues, i.e. the unloading and storage of imported goods.

The provisions on unloading relate to four aspects. *First,* the unloading of imported goods from means of transport must be performed in the customs area or another place after obtaining permission from the head of the customs and excise office that supervises said other place.

Imported goods are unloaded after the carrier submits the inward manifest and obtains the registration number and date. The same applies if the imported goods are in the form of means of transport.

In light of the unloading of imported goods, customs and excise officials may perform risk-management-based selective supervision. Having carried out the supervision, the official concerned will prepare an unloading supervision report.

Second, unloading at a place other than the customs area. Unloading at other places may also be carried out if the following requirements are met.

(i) The imported goods are of a special nature with due observance of their characteristics, size, and/or shape which prevent them from being unloaded in the Customs Zone.

(ii) The imported goods are transhipped.

(iii) There are technical problems in the customs area, such as unavailability of equipment for unloading or damage to the equipment used for unloading.

(iv) There is congestion which is stated in writing by the port operator.

(v) Unavailability of the customs area.

To be able to unload at another place, the carrier must first submit an application to the head of the customs and excise stating the reasons for unloading imported goods at another place. The application shall be accompanied by transport documents and a plan of the unloading location and layout of the unloading place at another place. The application and supporting documents are submitted through the Service Computer System (*Sistem Komputer Pelayanan*/SKP).

Third, imported goods from means of sea transport to other means sea of transport may be unloaded outside the port. Imported goods unloaded from sea means of transport to other sea means of transport must be brought to the customs area through a designated route or another place after obtaining permission from the head of the customs and excise office that supervises said other place.

The unloading is carried out in the event that the means of transport cannot dock directly to the pier. Unloading must be preceded by an application submitted by the carrier to the head of the customs and excise office through the SKP. A letter of approval or rejection will be issued by the head of the customs and excise office no later than one working day after the application is received in full.

Fourth, imported goods may be unloaded directly to other means of transport without storing them at the Temporary Storage (*Tempat Penimbunan Sementara*/TPS) located in the port area. Imported goods may be unloaded insofar as they have obtained approval for the release of the goods and/or have certain shapes, nature, and characteristics that render them technically impossible to be stored at the TPS within the port area.

Imported goods in the form of liquid, gas, or other bulk goods may be unloaded through pipelines, conveyor belts, and/or other unloading equipment connected from means of sea transport, means of land transport, or storage areas.

In the event that the means of transport is in an emergency, the carrier may first unload the imported goods. As such, the carrier must report this matter immediately to the nearest and the of destination and submit an inward manifest for the goods being transported.

Further, this regulation outlines the provisions on the storage of imported goods. Imported goods of which the customs obligations have not been completed may be stored at TPS or other places that are treated the same as TPS after obtaining permission from the head of the customs and excise office. For imported goods in the form of means of transport, storage is declared to have been carried out after the means of transport has been unloaded. Customs and Excise Officials may perform risk-management-based selective supervision on the storage of imported goods.

The period for storing imported goods at TPS is in accordance with the applicable provisions concerning TPS or other places that are treated the same as TPS, i.e. no later than 30 days as of the date of storage. In the event that the imported goods are stored past such a period, the goods are not controlled and stored at the customs storage.

Next, the storage of imported goods in other places is treated the same as TPS insofar as the following five points are fulfilled cumulatively or optionally. *First,* the imported goods are of a special nature with due observance of their nature, size, and/or shape which prevents them from being stored at the TPS. *Second,* there are technical obstacles at the TPS, such as the unavailability of equipment for storage or damage to the equipment used for storage.

Third, there is congestion at the port. *Fourth,* the unavailability of TPS. *Fifth,* the imported goods are imported by importers recognized as Authorized Economic Operators (AEO) or importers designated as Main Customs Partners (*Mitra Utama*/MITA).

The procedures for storing imported goods in other places that are treated the same as TPS begin with the submission of an application to the head of the customs and excise office. Such an application must state the reasons for storing in another place that is treated the same as the TPS and be attached with a plan of the storage location and layout. However, imported goods that have already obtained export approval are exempted from the provisions on filing an application.

Approval or rejection of the application may be issued no later than one working day after the application is received in full and there is no field research or after the field research is carried out. Approval of storage may also be issued periodically within a maximum period of thirty days.

TPS entrepreneurs are required to submit a list of stored imported goods in the form and period as per the statutory regulations on TPS. Information on the storage list covers the number of packages, the type of packaging, and/or the number of bulk goods that have been stored. The storage list is submitted via SKP no later than 24 hours after the storage is completion. In the event that the storage list is not submitted within that period, the importer will be subject to sanctions and application for storage in other places that are treated the same as TPS will not be further processed.

If at the time of unloading, there is a difference between the number of imported goods and the inward manifest customs declaration, two provisions will apply. *First,* the carrier is obliged to pay the shortage of import duties and taxes on imports on imported goods that are not unloaded and subject to administrative sanctions as per statutory regulations, in the event that the unloaded imported goods are fewer than those notified.

Second, the carrier is obliged to pay administrative sanctions as per statutory regulations in the event that the number of imported goods unloaded is more than that declared. These two provisions are exempted if the carrier can prove that the mismatch in the number of imported goods is beyond its capabilities.

The carrier is responsible for import duty payable on imported goods unloaded at the Customs Area or other places. The TPS entrepreneur, however, is responsible for import duty payable on imported goods stored at the TPS. Further, the importer is responsible for import duty payable on imported goods stored at other places which are treated as equivalent to TPS.

Processing of Requests for the Implementation of MAP and the Implementation of MAP

The Director General of Taxes has issued a new regulation on the processing of requests for the implementation of Mutual Agreement Procedure (MAP) and the implementation of MAP. The MAP-related policies are outlined in the Director General of Taxes Regulation No. PER-16/PJ/2020 concerning the Processing of Requests for the Implementation of Mutual Agreement Procedure and the Implementation of Mutual Agreement Procedure (PER-16/2020).

The requests for the implementation of MAP can be submitted by Indonesian citizens through the Director General of Taxes, the Director General of International Taxation, or tax authorities of the Tax Treaty (*Perjanjian Penghindaran Pajak Berganda*/P3B) Partner through the competent authority of Treaty Partner. This regulation stipulates that resident taxpayers (*Wajib Pajak Dalam Negeri*/WPDN) may submit requests for the implementation of MAP to the Director General of Taxes in the event that they receive tax treatments by the tax authorities of the Treaty Partner that are not in accordance with the provisions of the Tax Treaty.

Tax treatment by the Director General of Taxes deemed not in accordance with the provisions of the Tax Treaty according to the WPDN consists of double taxation caused by transfer pricing adjustments and/or differences in the interpretation of the tax treaty provisions. The Director General of Taxes will follow up on the request for the implementation of MAP by conducting MAP negotiations with the competent authority of the Treaty Partner within the time limit specified in the Minister of Finance Regulation No. 49/PMK.03/2019 (MoF Reg. 49/2019).

In the event that the MAP negotiation period has been exceeded and the MAP negotiation has not produced mutual agreement, the Director General of Taxes will submit a notification regarding the termination of the implementation of MAP negotiation to the Competent Authority of the Tax Treaty Partner and the Applicant or WPDN related to the request for the implementation of MAP.

However, if the request for the implementation of MAP has not resulted in mutual agreement, the request for the implementation of MAP may be renewed. To respond to MAP requests, the Director General of Taxes establishes a discussion committee that is tasked with determining the negotiating position and/or scope of the MAP negotiation and/or whether or not the request for the implementation of MAP is approved.

Five conditions are to be met in the proposed request for the implementation of MAP. *First,* it is submitted in writing in Indonesian. *Second,* the request outlines the tax treatment by the Director General of Taxes which is not in accordance with the provisions of the Tax Treaty according to the WPDN. *Third,* submitted within the time limit as stipulated under the Tax Treaty. If such a time limit is not regulated in the Tax Treaty, the submission should be no later than three years as of the occurrence of the tax treatment which is not in accordance with the Tax Treaty provisions.

Fourth, signed by the WPDN or his representatives as referred to under Article 32 paragraph (1) of Law no. 6 of 1983 as amended by Law no. 16 of 2009. *Fifth,*

attached with evidence showing the occurrence of tax treatment by the Director General of Taxes that is not in accordance with the provisions of the Tax Treaty.

Requests for the implementation of MAP may be renewed insofar as the implementation of MAP negotiations by the Director General of Taxes and Competent Authority of Treaty Partners has resulted in an initial agreement contained in the minutes of meeting. The requests are submitted to the Director General of Taxes through the Director of International Taxation.

Moreover, the renewal of the request must be applied in writing by the competent authority of the Treaty partner and submitted at most once for each request for the implementation of MAP. The deadline for submission is six months prior to the expiration of the deadline for MAP negotiations.

With regard to the proposed request for the implementation of MAP, the Director General of Taxes will subsequently conduct a thorough examination on the fulfillment of the requirements for the submission of requests for the implementation of MAP and the conformity of the matters submitted. If the proposed request can be processed, the Director General of Taxes, through the Director of International Taxation, submits a written request for the implementation of MAP to the Competent Authority of the Treaty partner.

Furthermore, if the implementation of MAP negotiations results in mutual agreement, the Director General of Taxes will follow up by compiling and signing a decision letter on mutual agreement within a maximum of one month. The deadline commences from the receipt of written notification from the Treaty partner competent authority that the mutual agreement can be implemented and a written notification that the mutual agreement can be implemented is submitted to the Competent Authority of the Treaty partner.

When this regulation takes effect, requests for Implementation of MAP submitted prior to the enactment of MoF Reg. 49/2019 may be renewed. Promulgated on 11 August 2020, this policy came into effect thereafter.

Exemptions from VAT on Imports and/or Supplies of Certain Strategic Taxable Goods

The government has issued policies related to Value Added Tax (VAT) exemptions on imports and/or supplies of certain strategic taxable goods (*Barang Kena Pajak*/BKP). These policies are outlined in Government Regulation No. 48 of 2020 concerning Amendments to Government Regulation No. 81 of 2015 concerning Imports and/or Supplies of Certain Strategic Taxable Goods Exempted from Value Added Tax (Gov. Reg. 48/2020).

This regulation has been issued to provide legal certainty, increase the national electrification ratio, and accelerate the more efficient fulfillment of electricity needs. The exemptions will take effect on 24 August 2020.

Under this regulation, the government stipulates that liquefied natural gas (LNG) is BKP of which the imports and supplies are exempted from VAT. Input VAT related to the supplies of certain strategic BKP cannot be credited.

On another note, the government specifies that the imports and supplies of goods produced from marine and fishery businesses are exempted from VAT. In terms of imports and supplies of fish, the government currently regulates that fish heads, tails, and stomachs as well as fillets and other fish meat, whether fresh, chilled, or frozen, are exempted from PPN. However, this time the government exempts the imports and supplies of fresh or chilled fish in the form of milkfish, long-jawed mackerel, mackerel, tuna, and skipjack tuna, either with or without a head from the VAT exemption facility.

To obtain VAT exemptions either at the time of imports or supplies of LNG and marine and fishery products or other goods, the Certificate of VAT Exemption will not be required. Only the supplies and imports of machinery and factory equipment in one unit used to process BKP by Taxable Persons for VAT Purposes (*Pengusaha Kena Pajak*/PKP) that produce BKP are required to have the Certificate of VAT Exemption to enjoy the VAT exemption facility.

Provisions on Customs Areas and Temporary Storage

The Minister of Finance has issued new provisions on customs areas and temporary storage (*Tempat Penimbunan Sementara*/TPS). These provisions are stipulated under the Minister of Finance Regulation No. 109/PMK.04/2020 concerning Customs Areas and Temporary Storage (MoF Reg. 109/2020). Promulgated on 11 August 2020, this Ministerial Regulation shall come into force thirty days thereafter.

This regulation stipulates that areas in seaports, airports, or other places used for the traffic of imported goods and/or exported goods must be designated as customs areas. The customs area refers to a limited area for customs services and supervision.

To be designated as a customs area, an application is to be electronically submitted to the Minister of Finance through the Head of the Customs and Excise Office or the Head of the Prime Customs and Excise Office through the Directorate General of Customs and Excise's portal. If such a portal is not yet available, the application is submitted manually. The application must contain at least four things, including: the identity of the person in charge; management of seaports, airports, or other places; area location; and the boundaries and the exit or entrance to the area requested to be designated as a customs area.

In the event that the management of the seaport, airport, or other places is a business entity, the application shall be attached with a copy of the company's deed of establishment as a legal entity, business license from relevant agencies, proof of determination as a seaport or airport, proof of ownership and/or control of the area, recommendations from seaport or airport operators, written statement from seaport or airport operator, proof of confirmation as Taxable Person for VAT Purposes (*Pengusaha Kena Pajak*/PKP), and a drawing of the location plan.

However, an area can also be designated as a customs area without prior application. This stipulation of no prior application applies to other places, i.e. border areas and seaports, airports, or other places in the form of supporting areas designated for the traffic of imported goods and/or exported goods.

In the event that the customs area at a seaport or airport is insufficient to accommodate the volume of imported goods and/or exported goods and/or there is no special place to store certain goods, the supporting areas for seaports and airports can be designated as customs areas. The supporting areas are determined based on a written statement from the seaport or airport operators.

The customs area management must provide facilities and infrastructure for the implementation of customs services and supervision. These facilities and infrastructure may take the form of rooms used for services and administration, inspection, supervision, and storage of goods. Other facilities and infrastructure include closed circuit television (CCTV) cameras and scanning devices appropriate for the characteristics of imported or exported goods.

Goods other than imported goods and/or exported goods are prohibited from entering and/or being stored in the customs area, except for transshipment purposes, operational activities in the customs area, or other purposes. In the case of goods used for operational activities within the customs area, the customs obligations for these goods must first be settled.

The designation as a customs area can be revoked in the event of the following. *First,* there are no customs activities in the customs area for a continuous period of 12 months. *Second,* the customs area manager does not fulfill the stipulated provisions. *Third,* the customs area management is found guilty of committing a crime in the customs sector which has permanent legal force.

Fourth, the management of the customs area is declared bankrupt. *Fifth,* the customs area management submits a request for revocation. *Sixth,* based on a written statement from the operator of a seaport or airport port, a seaport or airport supporting area as a customs area is no longer required.

Further, this regulation regulates TPS. Temporary imported goods waiting to be released from the customs area may be stored at the TPS. In addition, temporary exported goods waiting for loading may be stored at the TPS.

Buildings and/or fields or other similar places used to store imported and/or exported goods must be designated as TPS. TPS may take the form of stockpiling fields, container yards, warehouses, and/or stockpile tanks.

To be designated as a TPS, the storage entreprenur submits an application for the designation of a building and/or field or other equivalent places as a TPS to the Minister of Finance. The application must at least contain the data on the identity of the person in charge of the TPS, the business entity that manages the TPS, the storage location, and the size of the area and/or capacity (volume) as well as the boundaries of the storage area for which the designation as a TPS is requested.

Goods stored at TPS must be differentiated between imported goods, exported goods, and goods from the customs area which are transported to other places in the customs area through outside the customs area. Hazardous goods, goods that may damage or affect other goods, and/or goods that require special installation or handling, must be stored in a special place. Moreover, empty containers must be stockpiled in a specific place.

Goods may be stored at TPS for a maximum of 30 days as of the storage date. In the event that the goods in a TPS are transferred to another TPS in the same customs area, the storage period is calculated as of the storage at the TPS of origin. If these goods arer moved to another customs area, the storage period is calculated as of the storage at the TPS in the other customs area.

This ministerial regulation adds new obligations for TPS entrepreneurs. Formerly, only three obligations were regulated. These obligations now cover seven points. *First,* providing and maintaining the place for physical inspection of goods. *Second*, providing and maintaining supporting facilities for physical inspection of goods in sufficient quantities adjusted to the volume of activities of stockpiling imported or exported goods.

Third, providing and ensuring the availability of loading and unloading workers to help lift and move goods to and from containers and unpack the goods. *Fourth,* providing and maintaining occupational health and safety facilities as per statutory provisions on work safety.

Fifth, providing an electronic Container Handover System (*Sistem Penyerahan Petikemas*/SP2) that is connected to the National Logistics Ecosystem (NLE) in the event that the TPS is located at a sea port. *Sixth,* providing and maintaining a scanner that is appropriate for the characteristics of imported or exported goods. *Seventh,* postponing the payment of storage fees at TPS for imported goods and/or exported goods declared as goods that are not controlled and goods controlled by the state and transferred to TPS.

Further, this ministerial regulation stipulates the temporary stockpiling of distribution centers. A distribution center TPS is a TPS with the main function of storing imported or exported goods for transshipment. While waiting to be released from the customs area to be transhipped out of the customs area, imported goods and/or exported goods can be stockpiled at the distribution center TPS.

In practice, the Head of the Customs Office may designate or stipulate a building, field, or other equivalent places designated as a TPS as a distribution TPS. The appointment as a distribution center TPS can be performed for all or part of the designated TPS locations. To be appointed as a distribution center TPS, the TPS entrepreneurs need to submit an application to the Head of the Customs and Excise Office.

In the application, the TPS entrepreneur must submit data on the identity of the person in charge, the location of the TPS to be designated as the distribution center TPS, and the size, area, volume, and boundaries of the TPS to be designated as the distribution center TPS. The application must also be attached with a Minister of Finance Decree (*Keputusan Menteri Keuangan*/KMK) regarding the designation as a TPS, proof of application of the online TPS application if the Customs Office has implemented such a system, flowchart of the goods movement system at distribution center TPS, and a plan of the distribution center TPS.

The application is subject to further review and if necessary, the Head of the Customs and Excise Office may also conduct a field inspection. The Head of Customs and Excise Office is obliged to response in the form of approval or rejection no later than two days after the application is received in full. Upon approval, the TPS becomes a distribution center TPS by the issuance of a designation letter. The designation las a distribution center TPS shall be valid until the expiry of the KMK concerning the desgination of the TPS.

Several facilities are provided by the Directorate General of Customs and Excise (DGCE) for distribution center TPS. First, the distribution center TPS may

perform simple jobs, such as attaching accessories and transportation labels. Second, the distribution center TPS may assemble and disassemble transhipped goods. *Third*, transhipped imported or exporter goods that are unloaded from the means of transport can be stockpiled directly at the distribution center TPS.

Fourth, changes can be made to containers of exported goods for transshipment. *Fifth,* direct loading of transhipped imported or exported goods may be conducted directly from the distribution center TPS to the means of transport. *Sixth,* there are other procedural facilities that may be granted as per the Head of the Customs and Excise Office's considerations.

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