

Indonesia: The implementing regulations for VAT applications and facilities under the HPP Law

In brief

On 7 October 2021, the Indonesian House of Representatives (DPR) passed Law No. 7 of 2021 on Tax Regulation Harmonization ("**HPP Law**"). The HPP Law stipulates that all of the implementing regulations of the HPP Law will be stipulated in a Government Regulation.

As regards VAT and Sales Tax on Luxury Goods, in December 2022, the Indonesian government issued several regulations as the implementing regulations of the HPP Law. This includes:

- a. Government Regulation No. 44 of 2022 on the Implementation of VAT on Goods and Services and Sales Tax on Luxury Goods ("**GR 44/2022**") on 2 December 2022

GR 44/2022 stipulates the general rule on VAT on Goods and Services and Sales Tax on Luxury Goods. GR 44 revokes GR 1/2012 and all VAT provisions set out in GR 9/2021.

- b. Government Regulation No. 49 of 2022 on the Implementation of VAT on Exemption from VAT and Non-Collection of VAT or VAT and Sales Tax on Luxury Goods on the Import and/or Delivery of Certain Taxable Goods and/or Delivery of Certain Taxable Services and/or Utilization of Certain Taxable Services from Outside the Customs Area ("**GR 49/2022**") on 12 December 2022

The HPP Law has amended the provision of non-VAT objects as set out in Article 4A of the VAT Law and stipulated the VAT facilities in Article 16B of the VAT Law. GR 49/2022 is the implementing regulation of Article 16B of the VAT Law and stipulates further the VAT facilities set out in the HPP Law.

In this alert, we discuss some of the provisions stipulated in GR 44/2022 and GR 49/2022.

In depth

A. **GR 44/2022 on the implementation of VAT under the HPP Law**

GR 44/2022 came into effect on 2 December 2022. With the issuance of GR 44/2022, Government Regulation No. 1 of 2012 ("**GR 1/2012**") and Article 5 of Government Regulation No. 9 of 2021 on Taxation Treatment to Support Ease of Doing Business ("**GR 9/2021**") have been revoked and are no longer valid. GR 44/2022 mainly provides confirmation and a detailed explanation of the provisions of the VAT rules under the HPP Law.

1. Jointly responsible for VAT obligations

Goods buyers or service recipients are jointly responsible for paying VAT and VAT on Sales Tax on Luxury Goods if the payable VAT cannot be charged to the goods sellers or service providers,



and the goods buyer or service recipient cannot show proof that the VAT has been paid to the seller or service provider. This provision was already in place before HPP Law. GR 44/2022 confirms that the underpaid VAT and VAT on Sales Tax on Luxury Goods can now be paid by buyers or service recipients using a tax payment slip, in addition to being collected through an underpayment tax assessment letter or "*Surat Keterangan Pajak Kurang Bayar (SKPKB)*".

2. Transaction between other parties and VAT collectors

Other parties (i.e., a seller, a service provider or a marketplace) can be appointed as VAT collectors to collect, pay and report VAT and VAT on Sales Tax on Luxury Goods if those other parties conduct or facilitate transactions (including electronic transactions) with VAT collectors that have been appointed under Article 16A of the VAT Law. The VAT and VAT on Sales Tax on Luxury Goods must be collected, paid and reported by the other parties as VAT collectors.

3. Confirmation of taxable goods and taxable services that are subject to VAT

- Under GR 44/2022, the delivery of taxable goods and/or taxable services is subject to VAT if it is conducted in the customs area by a taxable entrepreneur and the delivery is conducted in the context of business activities or their job (either operational or nonoperational activities).
- The delivery of rights on taxable goods due to an agreement (i.e., foreclosed assets from creditors to buyers) is considered a delivery of taxable goods and is subject to VAT. Foreclosed assets are defined as taxable goods taken over by a creditor based on mortgage rights, fiduciary guarantees, pawns or other similar arrangements.
- The transfer of taxable goods for the purpose of paid-up capital in return for shares as stipulated in Article 1A paragraph (2) letter d of the VAT Law includes the transfer of taxable goods for the purpose of paid-up capital to entities.
- GR 44/2022 sets out certain taxable events for which VAT is imposed on consignors and consignees under a consignment arrangement.

4. Delivery of collateral as nontaxable goods

Collateral as a guarantee of debts is not considered taxable goods. Collateral under Sharia financing transactions is also not considered taxable goods and is not subject to VAT if the collateral is returned to the party who initially delivered it. The types of Sharia financing transactions under the elucidation of GR 44/2022 include the delivery of taxable goods on Sukuk issuance and the delivery of taxable goods on a commodity trading scheme based on Sharia principles on commodity exchanges.

5. Imposition of a "certain amount" or "*besaran tertentu*" as a VAT rate and input VAT treatment

A taxable entrepreneur may collect and report the VAT that is payable in a "certain amount" (calculated using a certain formula) if the taxable entrepreneur's gross turnover does not exceed a certain value, the taxable entrepreneur conducts certain business activities (i.e., conducts transactions through third parties, has difficulties administering input VAT and has a complex business process) and/or the taxable entrepreneur delivers certain taxable goods and/or taxable services. The input VAT that is related to the delivery of taxable goods and/or services that use a "certain amount" cannot be credited.

6. Change in the applicable VAT rate

If there is a change in the applicable VAT rate, the previous rate applies when VAT is payable prior to the effective date of the change in the VAT rate, or the VAT invoices or other equivalent documents are made prior to the effective date of the change in the VAT rate. The new VAT rate



applies from the effective date of the change in the VAT rate, or when the VAT invoices or other equivalent documents are issued on or after the effective date of the change in the VAT rate.

B. GR 49/2022 on VAT facilities

GR 49/2022 came into effect on 12 December and sets out in detail the types of goods and services that can obtain VAT facilities in the form of (a) exemption or (b) non-collection as set out in Article 16B paragraph (1) of the VAT Law, which were previously regulated under several tax regulations.

a) VAT exemption facility

1. The import and/or delivery of certain taxable goods and taxable services that are exempt from VAT

This facility applies to certain taxable goods and/or services including polio vaccines to implement the National Immunization Week or "*Pekan Imunisasi Nasional (PIN)*" program and COVID-19 vaccines, academic textbooks, holy books, religious textbooks, taxable goods and services received by certain government institutions on national disaster relief, and certain construction services delivered by contractors (including construction to build worship places and building allocated for the victim of natural and non-natural national disaster).

An exemption letter or "*Surat Keterangan Bebas (SKB)*" is not required to enjoy this facility. The seller cannot credit the input VAT on the delivery of taxable goods and/or services that are exempt from VAT.

2. The import and/or delivery of strategic goods that are exempt from VAT

Strategic goods under GR 49/2022 include machines and factory equipment that produce taxable goods, electricity, liquefied natural gas, and mining and drilling products (i.e., crude oil, natural gas, geothermal, etc.). Mining products are excluded from the list of goods that are not subject to VAT under Article 4A of the HPP Law and are also not listed in Article 16B of the HPP Law. GR 49/2022 confirms that the applicable facility for the imposition of VAT on mining products has changed from non-collection to exemption. GR 49/2022 also introduces new strategic goods, including presidential vehicles, consumption sugar and compressed natural gas.

Subject to the types of goods, an exemption letter or "*SKB*" is required to enjoy this facility. The seller cannot credit the input VAT on the delivery of strategic goods that are exempt from VAT.

3. The delivery of strategic services within the customs area and/or the use of strategic services from outside the customs area in the customs area that are exempt from VAT

The types of strategic services that fall under GR 49/2022 are set out mainly in Article 16B of the VAT Law. These services include medical health services, financial services, insurance services, educational services, social services, and air and water public transportation services. Further, GR 49/2022 introduces additional strategic services that are exempt from VAT, including non-advertisement broadcasting services, public house rental services, postal services, public phone services and money transfers through postal services.



4. Subject to the types of services, an SKB is required to enjoy this facility. The seller cannot credit the input VAT on the delivery of strategic services that are exempt from VAT.

b) VAT non-collection facility

1. The import and/or delivery of strategic goods, delivery of strategic services and/or the use of strategic services from outside the customs area in the customs area in which the VAT is not collected
 - Strategic goods and services under GR 49/2022 include the following:
 - Airplanes, trains and ships imported and used by certain institutions
 - Gold bars other than for the benefit of the country's foreign exchange reserves
 - Services received by national commercial shipping companies (i.e., ship rental services and ship maintenance and repair services)
 - Services received by national commercial air transportation business entities (i.e., airplane rental services and airplane maintenance and repair services)
 - Maintenance and repair services for trains
 - The seller can credit the input VAT on the delivery of strategic goods and/or strategic services in which the VAT is not collected if it fulfills the requirements on tax credit under the prevailing tax laws and regulations. The detailed rules will be regulated in the Minister of Finance regulation.
2. The import of taxable goods that are exempt from import duty in which the VAT and Sales Tax on Luxury Goods is not collected
 - Such taxable goods under GR 49/2022 include gift items for public worship, charity, social and cultural purposes by certain bodies or institutions, goods for the purposes of scientific research and development, coffins or other packages containing corpses or ashes, goods for special needs, etc.
 - The VAT facility above is granted without using a non-collection certificate or "*Surat Keterangan Tidak Dipungut*".

Transitional period

The facilities under GR 49/2022 apply retroactively from 1 April 2022 to 12 December 2022. If the VAT has been collected and paid prior to the issuance of GR 49/2022, the seller still needs to pay the VAT to the state treasury, and the input VAT on the delivery that obtains VAT exemption facilities cannot be credited. However, the input VAT that obtains VAT non-collected facilities can be credited. The buyer that is the taxable entrepreneur can credit the input VAT.

Actions to consider

When considering the regulations above, please note that:

- The above government regulations provide guidance and explanations for implementing the VAT rules under the HPP Law. Some of the provisions in GR 44/2022 and GR 49/2022 are general in nature.



You must carefully consider whether these regulations affect your business and closely monitor the issuance of Minister of Finance regulations that will stipulate a further detailed rule.

- If your business conducts the delivery and/or import of certain taxable goods and/or services that are set out in GR 49/2022, VAT facilities may apply. Please note that certain deliveries or imports of taxable goods or services need an exemption letter to enjoy the VAT facility. You may need to identify which VAT facility is applicable to your business.

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