TaxFlash

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New procedures to implement tax facilities for government projects financed by foreign grants or loans

On 18 October 2024, the Minister of Finance ("MoF") issued PMK-80[1] to update the procedures for applying for the Value-Added Tax ("VAT")/Luxury-goods Sales Tax ("LST") and Income Tax facilities for government projects financed by foreign grants/loans, revoking KMK-239 and its amendments[2]. Although the facilities given under GR-42[3] include Import Duty facilities, this update only covers the procedures for VAT/LST and Income Tax facilities.

PMK-80 provides more certain procedures by defining each relevant party and their roles as well as introducing certain documents to be used to validate the eligibility of the tax facilities. The parties and documents introduced in this regulation are as follows:

- Grant/Loan Recipient (i.e. government ministries and institutions) and Grant/Loan Forwarding Recipient (i.e. Regional Government receiving the passed-on grant/loan from the Grant/Loan Recipient). Hereinafter, these parties are collectively referred to as "Implementing Agency".
- Grant/Loan Provider (i.e. foreign party/creditor providing the grant/loan to the government).
- Registration Number (i.e. decree of registration number of the grant/loan agreement issued under the foreign grant/loan procurement regulations).
- Main Contractor Certificate (i.e. document to validate the Main Contractor's eligibility to enjoy the tax facilities).
- Taxable Goods/Services Registration Proof (i.e. document to validate the taxable goods and services' eligibility to enjoy the VAT/LST facilities).
- Non-Collection Certificate (*Surat Keterangan Tidak Dipungut/"SKTD"*) for VAT/LST facilities.
- Certificate of Income Tax Facility for the Main Contractor.

This TaxFlash will only highlights the significant key points stipulated in PMK-80.

[1] MoF Regulation No.80 Year 2024 ("PMK-80") dated and effective from 18 October 2024
[2] MoF Decree No.239/KMK.01/1996 ("KMK-239") as lastly amended by MoF Decree No.486/KMK.04/2000
[3] Government Regulation No.42 Year 1995 ("GR-42") dated 30 November 1995 and effective from 1 April 1995

Tax facilities

Whilst the Income Tax facility for the Main Contractor remains the same (i.e. borne by the government), PMK-80 differentiates the facilities related to the non-collection of VAT/LST depending on the parties who will receive the taxable goods/services, as follows:

a) Implementing Agency can enjoy VAT/LST facilities on the following transactions:
   - acquisition of taxable goods/services;
   - import of taxable goods (including via Bonded Logistics Centres);
   - utilisation of taxable services/intangible taxable goods from outside the customs area within the customs area.
b) Main Contractor can enjoy VAT/LST facilities on the following transactions:
   - import of taxable goods (including via Bonded Logistics Centres);
   - utilisation of taxable services/intangible taxable goods from outside the customs area within the customs area.
c) Grant Provider can enjoy VAT/LST facilities on the acquisition of taxable goods/services from Main Contractor.

Qualifying grants/loans

To qualify for the tax facilities, the grants (in the form of money and/or goods/services) and loans must:

- be documented in agreements, contracts, and/or similar documents; and
- have obtained a Registration Number.

Main Contractor Certificate and Taxable Goods/Services Registration Proof

For the Main Contractor to be eligible to enjoy the tax facilities, the Implementing Agency must submit a Notification of Main Contractor for each agreement and each Main Contractor as the basis for issuing a Main Contractor Certificate.

Once the Main Contractor Certificate is issued, the Implementing Agency must register the taxable goods/services to the Director General of Taxes (DGT) to obtain the Taxable Goods/Services Registration Proof to enjoy the VAT/LST facilities.

The Notification of Main Contractor and registration of taxable goods/services are applied to the DGT by submitting:

✓ a completed form that includes information such as Registration Number, agreement/contract number, identity of the parties involved, and the relevant taxable goods/services; and
✓ supporting documents, i.e. grant/loan agreement documents including the overview of the grant/loan.

The DGT will issue the Main Contractor Certificate or Taxable Goods/Services Registration Proof once they have validated that all requirements have been fulfilled. Otherwise, a rejection letter will be issued within five working days from the application submission.

SKTD

The VAT/LST not collected facilities can be enjoyed if the SKTD is available prior to the VAT/LST due date.

The SKTD application is submitted by the parties who will use the facilities, either the Implementing Agency or the certified domestic Main Contractor. Specifically for the Grant Provider, the submission is conducted by the Implementing Agency where SKTD will be issued for the Grant Provider. The procedures, required information, as well as supporting documents are mainly similar to the application for Taxable Goods/Services Registration Proof.

For non-resident Main Contractors with no Permanent Establishment ("PEs") in Indonesia, the Main Contractor Certificate and the Taxable Goods/Services Registration Proof are already considered equivalent to SKTD.

The SKTD is valid from:

- the date of issuance until 31 December of the calendar year in which the SKTD is issued – if the SKTD application is submitted between January and November; or
- the date of issuance until 31 December of the following calendar year – if the SKTD application is submitted in December.

VATable Entrepreneurs must use one SKTD for each VAT Invoice when delivering taxable goods/services to a qualifying Implementing Agency and Grant/Loan Provider.

The qualifying Implementing Agency or Main Contractor is required to include the SKTD number in the customs declaration document of imported goods.

Income Tax facilities requirements

Main Contractors can enjoy the Income Tax borne by the government facility if they:

1. Have a Certificate of Income Tax Facility; and
2. Submit an Income Tax facility realisation report and attach it to the Annual Income Tax Return ("AITR") (exception applies for a Main Contractor who is subject to Final Income Tax – the Monthly Income Tax Return is considered as the Income Tax facility realisation report).

The Certificate of Income Tax Facility is applied by the Main Contractor to the DGT with mainly similar procedures, required information, as well as supporting documents as the application for the Main Contractor Certificate. The certificate is valid from the date of issuance until the completion date of the government project as stated in the agreement, which may be amended if there is a period amendment in the agreement.

The Income Tax facility realisation report must be submitted at the latest by the AITR submission deadline for the relevant fiscal year along with the detailed calculation. The maximum late submission where the tax facility can still be enjoyed is by:

- the end of November of the following fiscal year – for Non-Final Income Tax
- the end of the next month after the Monthly Income Tax Return deadline – for Final Income Tax.

This facility is not applicable to the profit after tax ("PAT") of a PE Main Contractor whose PAT is not reinvested in Indonesia.

Procedures for final-taxed Main Contractor

The Income Tax borne by government facility for final-taxed Main Contractor is applied to:

✓ For money grant/loan – the withholding tax by the Implementing Agency; and/or
✓ For goods/services grants – the income tax due which is self-remitted and reported by the Main Contractors in their Monthly Income Tax Return.

Procedures for non-final-taxed Main Contractor

The Income Tax borne by the government facility for non-final-taxed Main Contractor is applied by way of withholding tax exemption on payment of income from the Implementing Agency or on Article 22 withholding tax exemption by the Foreign Exchange Banks and the Directorate General of Customs and Excise on the import of goods carried out by the Main Contractor. These exemptions are applicable if the Main Contractor has obtained an SKTD prior to the import of goods or a Certificate of Income Tax Facility prior to receiving the income.

Bookkeeping for partially qualifying income

The Main Contractor must maintain separate bookkeeping if the tax facility is only applicable to a portion of their income, whereby joint costs must also be allocated proportionally. Any loss will be compensated in the next year's qualifying income. Only a loss at the end of the project can be compensated against non-qualifying income.

Other provisions

All procedures will be conducted electronically once the system is ready. PMK-80 also stipulates provisions such as replacement, revocation, and cancellation of issued certificates. In addition, PMK-80 provides transitional provisions for qualifying income in 2024, earned/received prior to 18 October 2024 (for non-final-taxed income) and received after 18 October 2024 (for final-taxed income).

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