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GR 44/2022

How the Harmonized Tax Regulations Law affects VAT and LST

Government Regulation No. 44/2022 (GR 44/2022) aimed to apply the Tax Regulations Harmonization (TRH) Law on Value Added Tax (VAT) and Luxury Goods Sales Tax (LST) came into force as enacted on 2 Dec. 2022. It nullified GR 1/2012, its proceeding counterpart, and all the amendments covered in Art. 5 of GR 9/2012. However, implementing regulations governed by GR 1/2012 and GR 9/2021, to the extent not conflicting with GR 44/2022, remain applicable.

What follows highlights several changes covered in GR 44/2022 which may be of interest to you.

Joint responsibility

Buyers and service recipients are jointly responsible for the payment VAT and LST due on the taxable goods they purchased or taxable services they received. This applies if the tax cannot be collected from the vendor or the service provider and they fail to prove they have paid the tax to them. Unlike the proceeding counterpart, GR 44 lets the buyer or the service recipient pay the tax using a tax payment slip. The Director General of Taxation (DGT) can also collect it using a tax underpayment assessment letter (SKPKB/SKPKBT).

The room to issue a tax underpayment assessment letter implies a potential tax audit given that a tax underpayment assessment letter, pursuant to Art. 13(1) of the 2021 Tax Administration Law (“UU KUP”), can only be issued based on a tax audit.

Further provisions on the procedures and the mechanism on the performance of the joint responsibility will be provided by a Minister of Finance (MoF) regulation.

Own use and free gift

When it comes to own use and free gift, the VAT law literally addresses only taxable goods. The implementing regulations, though, old and new alike, extend it to taxable services. GR 44/2022 is even more assertive than its predecessor. It addresses taxable goods and taxable services in two separate paragraphs, signaling deliberate intention to extend the concept of own use and free gift to taxable services.

GR 44/2022 goes beyond that. As regards own use, the purpose-based distinction between consumptive and productive usage provided by GR 1/2012 is crapped, implying all types of own use of taxable goods and taxable services are subject to VAT and/or LST without regard to the purpose. This differs from GR 1/2012 which sought VAT and LST mainly on consumptive own use. As to productive one, under GR 1/2022, VAT was only charged if the own use relates to a taxable delivery enjoying a VAT exemption or VAT-not-collected facility.

Further provisions regarding the boundaries and the procedures of own use and free goods are be provided by a MoF regulation.

Deliveries of taxable goods through an auction agency

A delivery of taxable goods through an auction agency, GR 1/2012 and GR 44/2022 alike, constitutes a taxable event. GR 44/2022 adds in the elucidation that the rule equally applies to assets foreclosed by a bank from a debtor due to their failure to pay debts.

Details of the procedures for the collection of the VAT and LST are to be elaborated on a MoF Regulation.

Specified amount of VAT due vs. "other-value" tax base

The VAT law has from the start allowed the use of "other value" ('*nilai lain*") as a basis to determine the VAT due on certain taxable deliveries in addition to the main stream consisting of selling prices, compensation, import values, and export values. This is followed by MoF regulations (PMK) stipulating the taxable deliveries for which the tax base is set at a specified other value such as PMK-75/PMK.03/2010 as amended by PMK-121/PMK.03/2015 (PMK 75). "Selling Prices or Compensation minus Gross Profit", for instance, is specified as the tax base for own use of taxable goods or taxable services under PMK 75.

The Tax Regulations Harmonization law ("UU HPP"), enacted in November 2021, introduced yet another way to determine the VAT due for certain taxable deliveries, i.e. VAT due at "a specified amount" ("*besaran tertentu*"). While further provisions are to be covered in a MoF regulation, the law limits the application of the rule to taxable enterprises that:

- generate revenues not exceeding a specified threshold;
- carry out certain business activities; and/or
- perform deliveries of certain taxable goods and/or taxable services.

Reiterating the newly established legislative provision, GR 44/2022 states that input tax attributable to taxable deliveries with VAT set at a specified amount is not creditable. The same rule applies to taxable goods and/or the taxable services enjoying a VAT exemption or VAT-not-collected facility. By comparison, input tax pertaining to taxable deliveries with VAT resting on "other value" as the tax base is fully creditable.

With regard to deliveries of taxable goods within a company (between branches or between a branch and the head office, vice versa), GR 44/2022 sets the specified amount of the VAT due to IDR0 (zero amount).

Applicable FX rates for VAT and LST

VAT and LST must be stated and settled in IDR. If a taxable event involving a transaction denominated in currencies other than IDR, the tax due shall be converted into IDR using the MoF-stipulated foreign exchange (FX) rate applicable at the time when the tax invoice or other documents equivalent to a tax invoice should be prepared. This differs from GR 1/2012 which required the use of the FX rate applicable at the time the tax invoice is made.

Referring to PER-03/PJ/2022, a tax invoice should be prepared at the following points of time:

- Upon the delivery of taxable goods or taxable services;
- Upon the receipt of payments taking place before the delivery of the taxable goods or taxable services;
- Upon the receipt of term payments pertaining to partial deliveries of works;
- Upon the export of taxable goods or taxable services;
- Other points of time in accordance with the VAT law and regulations.

Definition of "in the course of business or employment"

Reiterating the VAT law provision, GR 44/2022 states that deliveries of taxable goods or taxable services by a taxable enterprise ("PKP") within the Customs Area are subject to VAT if conducted "in the course of business or employment".

The law is silent about the meaning of "in the course of business or employment". GR 44/2022 clarifies that this includes operational and non-operational activities. Operational activities are those that generate the main revenues of the enterprise and any other activities but investment and funding. To the extent that the effect is to be reflected in the operating income (profit or loss), an activity qualifies as an operation activities. Any activities not qualifying as an operational activity are categorized as non-operational activities.

By way of example, GR 44/2022 explains that if a construction service company provides a construction service, that is an operational activity. If in addition it rents some parts of its office space, this is a non-operational activities.

In sum, the clarification implies that to the extent conducted in the Customs Area, all deliveries of taxable goods or taxable services by a taxable enterprise, without exception, are subject to VAT.

VAT rate change

The general VAT rate has been set at 11% since 1 April 2022 and to have increased to 12% by 1 January 2025. However, the government can change the rate, at no specific timeline, to a

minimum of 5% or a maximum of 15%. This should be done with a GR to be discussed and agreed with the House of Parliaments in the course of a state budget bill deliberation.

If there is a change in the VAT rate, GR 44/2022 provides, whether the old or the new rate should be used in a tax invoice or any document equivalent to it will depend on the following two factors:

- *The due date of the VAT*. Generally, VAT comes due at the time a taxable event takes place. Bear in mind, though, if a payment is made before the taxable delivery, the VAT is due at the payment date. GR 44/2022 provides detailed provisions regarding the due date of the VAT for different types of taxable events. The DGT can also stipulate "other times" as the due date if it is difficult to determine the actual due date strictly in accordance with the standard provisions or if so urging will create inequity;

- *The time when the tax invoice is made*. In principle, a tax invoice must be made when the VAT is due, which in most cases coincides with the corresponding taxable event. If a payment is made before the taxable delivery, a tax invoice must be made for the payment at the payment date. If a term payment is received for a partial delivery of in-stages work, a tax invoice must be made at the time of the payment receipt. A single tax invoice, though, can be made for the entire one-month deliveries of taxable goods or taxable services made to the same buyer of taxable goods or recipient of taxable services no later than the end of the month of deliveries. Late making of tax invoice, if still within three month of the specified date, will not affect the validity of the tax invoice but cause an administrative penalty at one percent of the tax base. However, making a tax invoice beyond three months of the specified date will not only trigger an administrative penalty. It will also render the tax invoice invalid.

Suppose the VAT rate is changed which is to take effect on a specified date (effective date). Then, the old tax rate must still be used to make a tax invoice for a taxable event of which:

- the VAT is due **before** the effective date; and
- the tax invoice is made **before** the effective date.

The new tax rate, on the contrary, should be used to make a tax invoice for a taxable event of which:

- the VAT is due **on or after** the effective date; and
- the tax invoice is made **on or after** the effective date.

Please contact us if you need further insight into GR 44/2022.

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