

## VAT GOES DIGITAL: WHAT TO EXPECT?

The Government of Indonesia imposes Value Added Tax (VAT) on foreign intangible goods and services acquired through e-commerce by enacting Minister of Finance Regulation No. 48/PMK.03/2020 (“**MoF Regulation**”)<sup>1</sup>. As an implementing regulation, the Director General of Tax (“**DGT**”) issued Regulation No. PER-12/PJ/2020 (“**DGT Regulation**”)<sup>2</sup>. The MoF Regulation and DGT Regulation (collectively referred to as “**Regulations**”).



The application of VAT comes at a time of increasing demand and consumption of digital (intangible) products, content and services provided by foreign companies in Indonesia. Furthermore, the Regulations are designed to maintain national financial stability in light of Covid-19.

The Regulations essentially govern the following matters:

- a. Taxable objects imposed by VAT;
- b. Appointment of VAT collector; and
- c. VAT collection, deposition and reporting obligation.

### Taxable Objects Imposed by VAT

The objects imposed by VAT under the Regulations are limited to intangible goods and services acquired from a foreign seller/service provider and/or an electronic service provider through e-commerce. Such taxable objects include the utilization or the right to use of, among others:

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<sup>1</sup> Minister of Finance Regulation No. 48/PMK.03/2020 on the Procedure of Appointment of Collector, Collection, Deposit and Reporting of Value Added Tax on the Utilization of Intangible Taxable Goods and/or Taxable Services from Outside Customs Area within Customs Area through Electronic System Trading.

<sup>2</sup> Director General of Tax Regulation No. PER-12/PJ/2020 on Certain Criteria of Collector and Appointment of Collector, Collection, Deposit, and Reporting of Value Added Tax on the Utilization of Intangible Taxable Goods and/or Taxable Services from Outside Customs Area within Customs Area through Electronic System Trading.



- a. Copyright of literature, art or scientific work, patents, designs or models, plans, formulas or secret processes, trademark, or other intellectual/industrial property rights;
- b. Industrial, commercial or scientific equipment/ tools;
- c. Scientific, technical, industry or commercial knowledge or information;
- d. Reception, use, or the rights thereof of image recording and/or sound recording broadcasted/transmitted through satellite, cable, optical fiber or similar technologies;
- e. Motion picture films, films or video tapes for television broadcasts, or sound tapes for radio broadcasts; and
- f. Whole or partial acquisition of rights related to the use or granting of intellectual/industrial property rights or other rights as mentioned above.

With that in mind, the Regulations open possibilities for consumption of numerous digital products, such as: membership of foreign-based entertainment services, audio-visual content, purchase of foreign e-books through e-commerce (excluding education and religious books), mobile applications and games, computer software, video-conference services and computer network services – to be taxable with VAT.

The Regulations indicate that the amount of VAT for collection is 10% (ten percent) of the amount paid by the Indonesian purchaser.

### **Appointment of VAT collector**

The VAT under the Regulations is collected by a person/entity appointed by the DGT on behalf of the Minister of Finance, who conducts trading business through an electronic system, which includes: (1) foreign seller/service provider; and/or (2) electronic service provider with services utilized for the trade transaction.

However, not all entities that conduct electronic system-based trading would be appointed as a VAT Collector. Based on the Regulations, entities eligible to collect VAT must fulfill the following criteria (“**VAT Collector**”):

- a. Transaction value with an Indonesian purchaser exceeds IDR 600,000,000 (six hundred million Rupiah) in a year or IDR 50,000,000 (fifty million Rupiah) in a month; and/or
- b. Amount of traffic or access in Indonesia exceeds 12,000 (twelve thousand) in a year or 1,000 (one thousand) in a month.

An entity conducting electronic system-based trading that has not been appointed as a VAT Collector may voluntarily inform the DGT its intention to be appointed as a VAT Collector. The appointed VAT Collectors would then be given an identification number in the form of Certificate of Registration (*Surat Keterangan Terdaftar*) and Tax Identification Number Card by the DGT.

Currently, there are 6 (six) business entities that have been appointed as a VAT Collector, namely: Amazon Web Services Inc., Google Asia Pacific Pte. Ltd., Google Ireland Ltd., Google LLC., Netflix International B.V., and Spotify AB.

### VAT Collection, Deposition and Reporting Obligation

Whilst the VAT can be borne by the Indonesian purchaser, the collection, deposition and reporting obligation of the VAT shall be carried out by the VAT Collector, taking into account the following provisions:

OBLIGATION	TIME FRAME OF FULFILLMENT	REMARK
Collection	Upon payment by Indonesian purchaser.	Proof of collection in the forms of commercial invoice, billing, order receipt, or other similar documents indicating collection of VAT.
Deposition	At the latest by the end of the subsequent month following the end of each fiscal month ( <i>masa pajak</i> ).	<ul style="list-style-type: none"><li>- Conducted electronically through the state's account;</li><li>- May be deposited with Indonesian Rupiah (using the Ministry of Finance's exchange rate), United States Dollar, or other currencies as determined by the DGT.</li></ul>
Reporting	Quarterly for the period of 3 (three) fiscal months, at the latest by the end of the subsequent month following the end of the quarterly period.	<p>The report to the DGT should contain at least:</p> <ul style="list-style-type: none"><li>- Number of purchasers;</li><li>- Amount of payment (excluding the collected VAT);</li><li>- Amount of collected VAT; and</li><li>- Amount of deposited VAT.</li></ul>



Although the Regulations have been effective since 1 July 2020, the Director of Information Technology and Communication of the Directorate General of Tax informed that the reporting application was just recently finalized. Therefore, it is expected that the collection and reporting of the VAT should be implemented by August 2020.

## Our Insight

The Regulations mainly raise 2 (two) concerns, **namely imposable sanctions** and **future risks**.

*First*, VAT Collectors that fail to fulfill their collection, deposition and reporting obligations are imposable with administrative sanctions in the forms of:

- a. Tax penalty as determined by Indonesian law on VAT<sup>3</sup>; and/or
- b. Access termination after reprimand.

Whilst the sanction in point “a” is more difficult to implement, considering that the VAT Collectors do not reside in Indonesia, the sanctions in the forms of access termination and reprimand are more imposable.

Meanwhile, for entities eligible as a VAT Collector, but have neither been appointed nor volunteered as a VAT Collector, the Regulations do not impose any sanction for non-fulfillment of collection, deposition and reporting obligations of the VAT. However, with the high criteria of minimum transactions and traffic in place, such entities would most likely stand out to the DGT and will eventually be appointed as VAT Collectors.

*Second*, aside from VAT, there is also a discourse to impose income tax in Indonesia on a foreign businessperson’s income generated from an electronic transaction through its significant economic presence in Indonesia. However, the implementing regulation thereof is currently not in place, considering that it may entail double taxation. Therefore, a global consensus is required before its implementation.

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<sup>3</sup>Based on Government Regulation in lieu of Law No. 1 of 2020 on State Financial and the Stability of Financial System Policies for the Mitigation of Covid-19 Pandemic and/or to Deal with Potentially Harmful Threats to the National Economy and/or the Stability of the Financial System jo. Law No. 8 of 1983 as lastly amended by No. 16 of 2009 on VAT on Goods and Services and Tax on Sales of Luxury Goods

If you wish to assess your establishment's possibility of being appointed as a VAT Collector, or to seek further information regarding this matter, please do not hesitate to contact us.

*\*The author would like to acknowledge the contribution of our Junior Associate, Johanna Devi in preparing this legal alert.*



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