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Tax Facilities for Special Economic Zones

Sets the Standards and Beyond

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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.

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Tax Facilities for Special Economic Zones

Meet Our Experts



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The government has issued a regulation stipulating the organization of Special Economic Zones (*Kawasan Ekonomi Khusus*/KEK) and granted facilities and ease, including in the areas of taxes, customs, and excise. Provisions on the implementation of KEK and the provided facilities and ease are outlined in Government Regulation No. 40 of 2021 concerning the Implementation of Special Economic Zones (Gov. Reg. 40/2021).

Promulgated on 2 February 2021, Gov. Reg. 40/2021 has come into force thereafter. The enactment of Gov. Reg. 40/2021 simultaneously revokes the two former regulations, i.e. Government Regulation No. 1 of 2020 concerning the Implementation of Special Economic Zones (Gov. Reg. 1/2020) and Government Regulations No. 12 of 2020 concerning Facilities and Ease in Special Economic Zones (Gov. Reg. 12/2020).

KEK refers to an area with certain boundaries within the jurisdiction of the Unitary State of the Republic of Indonesia that is designated to carry out economic functions and entitled to certain facilities. KEK is developed through the preparation of areas to maximize industrial activities, exports, imports, and other economic activities with high economic value.

Consisting of 18 chapters and 166 articles, this regulation, broadly speaking, stipulates seven scopes in the implementation of KEK. The scope of the KEK implementation includes: (i) location, criteria, and businesses; (ii) proposal of the establishment of KEK; (iii) designation of KEK; (iv) construction and operation of KEK; (v) KEK institutions; (vi) KEK management; and (vii) facilities and ease.

Seven KEK implementation-related facilities and conveniences are provided. These facilities and conveniences include: (i) taxation, customs, and excise; (ii) traffic of goods; (iii) employment; (iv) immigration; (v) land and spatial planning; (vi) Business Licensing; and/or (vii) other facilities and conveniences. In further detail, taxation, customs, and excise facilities and conveniences are granted in 4 sectors.

***First,* facilities and conveniences in the field of income tax.** Business entities and/or business players investing in vital interests may be entitled to a reduction in corporate income tax on the income received or accrued from the conduct of vital interests. Vital interests refer to business sectors and their production chains which are the focus of KEK activities and stipulated by the National Council.

Business entities and/or business players that invest in vital interests but do not receive corporate income tax reduction facilities or invest in other interests may obtain income tax facilities in four forms, including:

(i) reduction in net income of no more than 30% of the total investment;

(ii) accelerated depreciation and amortization;

(iii) the imposition of 10% income tax on dividends, unless the rate according to the applicable tax treaty is lower; and

(iv) compensation for losses of 10 years.

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Provisions on the submission, decision, utilization, prohibition and penalties, and taxpayers' obligations related to the income tax facilities are regulated by minister of finance regulations. However, business entities/business players that have obtained corporate income tax reduction facilities cannot obtain these four forms of facilities and vice versa.

Moreover, income tax is not imposed on business entities that carry out land acquisition transactions for KEK; sale of land and/or buildings in KEK; and/or leases of land and/or buildings in KEK. Further, foreign nationals (Warga Negara Asing/WNA) who work in KEK and have become resident tax subjects with certain expertise may be entitled to the facility of being subject to income tax only on income received or accrued from Indonesia for four years.

***Second,* facilities and conveniences in the field of value added tax (VAT) or VAT and sales tax on luxury goods (STLGs)**. Seven supplies are entitled to the non-collection of VAT or VAT and STLGs facilities. The seven supplies that receive such facilities include:

(i) supplies of certain tangible taxable goods (*Barang Kena Pajak*/BKP) from Other Places within the Customs Area (*Tempat Lain Dalam Daerah Pabean*/TLDDP), free zones, and bonded storage to business entities and/or business players;

(ii) imports of certain tangible BKP into KEK by business entities and/or business players;

(iii) imports of consumer goods into tourism KEK by business entities and/or business players;

(iv) supplies of certain tangible BKP between business entities, between business players, or between business entities and business players;

(v) supplies of taxable services (*Jasa Kena Pajak*/JKP) and/or intangible BKP including land and/or building rental services in KEK by business players and/or business entities to other business players. This facility also applies to supplies of intangible JKP and/or BKP from business entities in the same KEK or other KEK;

(vi) supplies of certain JKP and intangible BKP by entrepreneurs from TLDDP or other than TLDDP to business entities/business players; and

(vii) utilization of intangible JKP and/or BKP from outside the customs area inside KEK by business entities and/or business players.

Moreover, imports and supplies of certain strategic BKP and JKP are exempted from VAT as per statutory provisions in the field of taxation. Furthermore, supplies of BKP and/or JKP originating from maintenance, repair, and overhaul (MRO) for ships and aircraft business players in KEK to TLDDP may be exempted from VAT or VAT and STLGs. There is also a VAT exemption facility on imports and supplies of certain strategic BKP and JKP. Further provisions on the procedures for the granting of facilities and conveniences in the field of VAT or VAT and STLGs are stipulated by minister of finance regulations.

***Third,* import duties, taxes on imports (Pajak Dalam Rangka Impor/PDRI) and excise.** Customs facilities and conveniences provided for business entities in KEK include exemptions from import duty and non-collection of PDRI on imports of capital goods for the construction or development of KEK.

In further detail, the customs facilities and conveniences provided for business players in KEK in the business sectors referred to in Article 9 paragraph (1) of Gov. Reg. 40/2021 which are still in the construction or development stage include: (i) exemption from import duties; and (ii) non-collection of PDRI on imports of capital goods.

On the other hand, customs and excise facilities and conveniences provided for business players in KEK in the business sectors referred to in Article 9 paragraph (1) of Gov. Reg. 40/2021 that have completed the construction or development stage include:

(i) exemption from import duties for consumer goods and non-collection of PDRI in tourism KEK;

(ii) deferral of import duties and non-collection of PDRI PDRI; and/or

(iii) exemption from excise, insofar as the goods constitute raw materials or auxiliary materials in the manufacture of final products which are not goods subject to excise.

On another note, there are facilities and ease in terms of import duties and PDRI related to the entry of goods to the location of business players in KEK. The provided facilities and conveniences vary depending on the origin of the goods. The entry of goods to the location of business players in KEK entitled to said facilities and conveniences are goods originating from: (i) outside the customs area; (ii) business players in other KEK; (iii) bonded storage outside the KEK; (iv) free trade zones and free ports; and/or (v) TLDDP.

There are also facilities related to the release of goods by business players in KEK bound for TLDDP to be imported for use. The facilities include a 0% import duty, insofar as the goods produced by the business player in the KEK have local contents of at least 40%.

Provisions on the procedures for the supervision and granting of import duty, PDRI, and excise facilities are regulated by minister of finance regulations.

***Fourth,* additional tax facilities in the tourism KEK.** These additional facilities are intended for business players in KEK whose businesses are engaged in tourism (tourism KEK). Business players in tourism KEK are given customs and/or excise facilities on the entry of capital goods and/or business raw materials. These facilities are provided for business players in the tourism KEK conducting business in the following 14 activities.

The fourteen activities include: provision of accommodation; meeting and conference centers; marina and/or special docks for tour boats; tourist airports; tourist transportation services; resort and residential development; food and beverage services; shopping centers; entertainment and recreation centers; education and/or training centers; sports centers and facilities; health centers; retirement centers; and/or other activities that support tourism as stipulated by the National Council.

Moreover, shops in the Tourism KEK may participate in the VAT refund scheme to individuals holding foreign passports as per statutory provisions in the field of taxation. Purchase of a house or residence constituting vital interests in the tourism KEK will also be given an exemption from STLGs and income tax on the sale of goods classified as luxurious. Further provisions shall be stipulated by minister of finance regulations.

In addition to the central government, Gov. Reg. 40/2021 also mandates regional governments to provide reductions, relief, and exemptions from regional taxes and/or retribution to business entities and/or business players in KEK. The regional tax and/or retribution incentives are given at a minimum in the form of a reduction in land and building transfer duty (*Bea Perolehan Hak atas Tanah dan Bangunan*/BPHTB) and a reduction in land and building tax (*Pajak Bumi dan Bangunan*/PBB). The reduction in BPHTB and PBB is given for a minimum of 50% and a maximum of 100%. Further provisions are stipulated by regional regulations.

Procedures for the Registration and Cancellation of Taxpayer Identification Numbers and Confirmation and Revocation of Taxable Persons for VAT Purposes for Government Agencies

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The government, on 31 December 2019, enacted the Minister of Finance Regulation No. 231/PMK.03/2019 concerning Procedures for the Registration and Cancellation of Taxpayer Identification Numbers, Confirmation and Revocation of Taxable Persons for VAT Purposes, as well as Tax Withholding and/or Collection, Remittance, and Reporting for Government Agencies (MoF Reg. 231/2019).

The Director General of Taxes, through the regulation, *ex officio* cancels the Taxpayer Identification Number (*Nomor Pokok Wajib Pajak*/NPWP) and/or revokes the Taxable Persons for VAT Purposes (*Pengusaha Kena Pajak*/PKP) confirmation of expenditure treasurers, revenue treasurers, and/or village treasurers. The cancellation of NPWP and revocation of PKP for government treasurers are carried out because they will be replaced by the issuance of new NPWP for all government agencies and/or the confirmation of government agency PKP. This implies that currently, NPWP and PKP on behalf of government treasurers no longer exist, but have instead been changed to be on behalf of government agencies.

To support the implementation of the provisions under MoF Reg. 231/2019, the Director General of Taxes has released the Director General of Taxes Regulation No. PER-02/PJ/2021 concerning Procedures for the Granting and Use of Government Agency Organizational Subunit Identity Numbers and Government Agencies' Tax Reporting Obligations (PER-02/2021).

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On another note, the regulation, taking effect from 18 February 2021, has been released to render convenience, simplicity, and certainty of tax law for government agencies with many implementing units thereunder in implementing tax rights and/or fulfilling tax obligations. This pertains to the government agencies' authority to delegate part of the authority for managing state or regional finances to the implementing units thereunder to take actions resulting in expenditures borne by the government expenditure and/or revenues, including to collect and remit taxes.

Through PER-02/2021, the Director General of Taxes affirms that all Government Agencies are required to register at the Tax Office (*Kantor Pelayanan Pajak*/KPP) or Tax Services, Dissemination, and Consultation Office (*Kantor Pelayanan, Penyuluhan, dan Konsultasi Perpajakan*/KP2KP) whose working area includes the government agencies' domicile according to actual conditions. The registration renders the granting of a government agency NPWP. In addition to registering independently, the Directorate General of Taxes may issue NPWP *ex officio* for government agencies as per statutory provisions in the field of taxation, based on data and/or information owned or obtained by the Directorate General of Taxes (DGT).

NPWP, either obtained through registration or *ex officio*, shall be used by budget users/proxy of budget users, payment order signatory officials, expenditure treasurers, revenue treasurers, and/or heads of village government financial affairs in implementing the rights and obligations of Government Agencies as tax withholding agents and/or collectors. This regulation also emphasizes that government agencies that have been given an NPWP, either through registration or *ex officio*, are obliged to carry out tax rights and/or obligations to the KPP where said government agencies are registered.

Fulfillment of tax obligations includes reporting on tax withholding and/or collection and remittance. The reporting of tax withholding and/or collection and remittance by government agencies is carried out using: Periodic Article 21 and/or Article 26 Income Tax Returns; Unification Periodic Tax Returns of government agencies; and/or Periodic VAT Returns for government agency PKP. However, in the event that the reporting application of Periodic Article 21 and/or Article 26 Income Tax Returns of government agencies and Unification Periodic Tax Returns of government agencies is not yet available, the reporting will continue to employ Periodic Tax Returns as per statutory provisions in the field of taxation.

Further, in the event that an agency gives authority to an implementing unit thereunder to take action and be accountable for the receipt of government revenues and/or expenditure borne by the expenditure budget, said government agency may appoint the implementing unit as an organizational subunit. Such organizational subunit may be appointed to exercise certain tax rights and obligations for and on behalf of the government agency.

Nevertheless, the responsibility for the implementation of tax rights and/or fulfillment of tax obligations by the organizational subunit remains with government agencies. In further detail, certain tax rights and obligations carried out by the organizational subunits include:

(i) tax withholding and/or collection;

(ii) the electronic issuance, correction, and/or cancellation of tax withholding and/or collection slips;

(iii) recording of tax invoice data received from partners and tax payment slips (*Surat Setoran Pajak*/SSP) on the collection of VAT and Sales Tax on Luxury Goods (STLGs);

(iv) establishment of billing codes and payment transactions or tax remittance via receiving banks and receiving post offices;

(v) submission of requests for overbooking for errors in tax payment or remittance made by organizational subunits performing the remittance; and/or

(vi) the implementation of rights and/or fulfillment of other tax obligations as stipulated by the Director General of Taxes which are carried out electronically.

Government agencies must register organizational subunits to the DGT to enable these organizational subunits to exercise certain rights and obligations. Registration is conducted online via the webpage provided by the DGT. Based on the registration, the DGT will issue the Organizational Subunit Identity Number.

The Organizational Subunit Identity Number consists of 19 digits. The first 15 digits represent the 15 digits of the government agency's NPWP, whereas the next four digits represent sequence codes. Government agencies may change the organizational subunit data online. The data changes are made in the event of any changes in name, address, person in charge/leadership, and/or the number of organizational subunits.

Two Draft Government Regulations in the Tax Sector

Meet Our Experts



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Through Presidential Decree No. 4 of 2021 concerning the Government Regulation Formulation Program (Pres. Decree 4/2021), the government stipulates 25 draft government regulations (*Rancangan Peraturan Pemerintah*/RPP). RPP was initiated by various ministries, including the Ministry of Finance, as listed in Appendix of Pres. Decree 4/2021.

Referring to the appendix, the Ministry of Finance initiates two RPPs in the field of taxation as follows.

First, RPP concerning the Second Amendment to Government Regulation No. 51 of 2008 concerning Income Tax from Construction Service Business Income. The main content in this draft regulation is that the Ministry of Finance plans to amend the final income tax rates on construction services.

To date, the final income tax rate on construction services is regulated by Government Regulation No. 51 of 2008 concerning Income Tax on Income from Construction Service Businesses (Gov. Reg. 51/2008) as amended by Government Regulation No. 40 of 2009 (Gov. Reg. 40/2009). Referring to the appendix of Pres. Decree 4/2021, the Ministry of Finance proposes changes in rates for construction service businesses, with details as shown in Table 1.

Second, RPP regarding Amendments to Government Regulation no. 80 of 2010 concerning Withholding Rates and Imposition of Article 21 Income Tax on Income Borne by the State Budget (*Anggaran Pendapatan dan Belanja Negara*/APBN) or Regional Budget (*Anggaran Pendapatan Dan Belanja Daerah*/APBD).

The main content in the draft government regulation is that the Ministry of Finance plans to amend the final Article 21 income tax rates on income borne by APBN and APBD. However, the income tax rate adjustment is not carried out on regular and regular monthly income in the form of honorarium or other compensation under whatever name borne by APBN or APBD.

The government regulation drafting program listed in Pres. Decree 4/2021 is set for a period of one year. Pres. Decree 4/2021 requires the RPP initiator to report on the progress of the realization of the formulation of the initiated RPP. The report is prepared quarterly and submitted to the Minister of Law and Human Rights.

The Minister of Law and Human Rights verifies and evaluates the progress report on the realization of the RPP formulation to be subsequently reported to the President. Presidential Decree 4/2021 has taken effect as of 8 March 2021.

Ease of Regional Business Licensing

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The government has issued Government Regulation No. 6 of 2021 concerning the Implementation of Regional Business Licensing (Gov. Reg. 6/2021). Effective from 2 February 2021, this regulation has

Table 1 Proposed Changes in Final Income Tax Rates for Construction Service Businesses in the Second Amendment RPP to Gov. Reg. 51/2008

No.	Types of Construction Services	Taxpayer	Current Rate	Proposed Rate Changes
1	Construction Work[1]	Service providers with qualifications of individual businesses[2] and small businesses	2%	1.75%
2	Construction Work	Service providers without business qualifications	4%	4%
3	Construction Work	Service providers other than those mentioned in numbers 1 and 2	3%	2.65%
4	Construction Consulting[3]	Service providers with business qualifications	4%	3.5%
5	Construction Consulting	Service providers without business qualifications	6%	6%

Notes:

1. Formerly referred to as 'contractors'.
2. In the former regulations, there was no term for 'individuals'.
3. Formerly referred to as 'construction planning'.

Source: Gov. Reg. 51/2008 as amended by Gov. Reg. 40/2009; Pres. Decree 4/2021

been released to provide swift, easy, integrated, transparent, efficient, effective, and accountable implementation of regional business licensing.

Gov. Reg. 6/2021 is also intended as the legal basis for integrating regional business licensing through electronic means based on the norms, standards, procedures, and criteria set by the central government. The quality of regional business licensing is improved to provide legal certainty in doing business, improve the investment ecosystem, and maintain accountable quality of licensing.

The scope of the implementation of regional business licensing stipulated under the government regulation includes: the authority to administer regional business licensing; implementation of regional business licensing; regional regulations and regional head regulations concerning business licensing; reporting on the implementation of regional business licensing; guidance and supervision; funding; and administrative penalties.

This regulation outlines that the central government, provincial government, and district/city governments shall exercise the authority to implement regional business licensing as per their respective authority based on statutory provisions.

The authority of the provincial government in implementing business licensing is delegated by the governor to the head of the provincial Investment and One-Stop Integrated Service (*Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu*/DPMPTSP). In contrast, the regency/municipal regional government authority in the implementation of business licensing is delegated by the regent/mayor to the head of regency/municipal DPMPTSP. The delegation of authority to DPMPTSP includes the implementation of business licensing which falls under the central government's authority but has been delegated to the governor or regent/mayor.

DPMPTSP refers to a regional apparatus with the task and function of administering government affairs in the investment sector which constitutes the regional authority. In providing business licensing services, DPMPSTP is obliged to apply the Management of Regional Business Licensing, which includes: implementation of services, management of public complaints, management of information, outreach to the community, consulting services, and legal assistance.

The business licensing service provided by DPMPTSP is free of charge. However, certain business licenses at DPMPTSP are subject to regional retribution as per statutory provisions. Certain types of permit retribution include retribution for building construction permits, retribution for permits for venues selling alcoholic beverages, retribution for routing permits, and retribution for fishery business permits. DPMPTSP, however, does not bear the target of local retribution revenues for certain licensing services it provides.

Ease of Ownership of Public Flats and Incentives for Developers

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The government has provided easy ownership of public flat units (*satuan rumah rusun*/sarusun) and incentives for developers of public flats and special flats. Said incentives are regulated under Government Regulation no. 13 of 2021 concerning the Establishment of Flats (Gov Reg. 13/2021).

The regulation constitutes an implementing regulation of the provisions of Article 51 and Article 185 b of Law No. 11 of 2020 concerning Job Creation. Promulgated on 2 February 2021, this government regulation has come into force thereafter.

Based on Article 73 paragraph (2) of Gov. Reg. 13/2021, the government provides ease of ownership of public flat units for society. One form of the provided ease is tax incentives as per statutory provisions.

People wishing to apply for the ease of ownership of public flat units must meet three requirements. Said three requirements include Indonesian citizenship, registered as a resident in one regency/city according to the location of the public flat unit, and having never received assistance and/or ease of house acquisition.

Moreover, incentives are granted to developers of public flats and special flats, and assistance and facilities are provided for the low-income population (*Masyarakat Berpenghasilan Rendah*/MBR). On a side note, flat developers refer to any person and/or government that carries out the development of housing and residential areas.

Next, MBR is defined as people with limited purchasing power, thus, requiring government support to obtain public flat units. General flats, on the other hand, refer to flats established to meet the housing needs of the low-income population, whereas special flats refer to flats established to meet special needs.

One of the tax facilities provided for the development of the flat units and MBR is tax incentives as per statutory provisions. As per Article 127 of Gov. Reg. 13/2021, tax incentives for housing developers are provided by local governments in the form of land and building tax of rural and urban areas (*Pajak Bumi dan Bangunan Perdesaan dan Perkotaan*/PBB-P2) relief. The procedures for the granting of these tax facilities, however, are not yet stipulated in detail in the provisions under Gov. Reg. 13/2021.

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