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DDTC
Sets the Standards and Beyond

The Criteria of Permanent Establishments and Tax Service Complaint Channels



ABOUT DDTC

DDTC is a research and knowledge based taxation institution and a center of a number of taxation activities units with high standards that serve as main references in the field of taxation.

Our firm consists of consultation services (DDTC Consulting), a center for review and research (DDTC Fiscal Research), taxation journals (DDTC Working Paper), a training center (DDTC Academy), a provider of tax law documents (DDTC Tax Engine), a library (DDTC Library), and taxation news portal (DDTC News).

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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Requirements for a Business to be Categorized as a Permanent Establishment

The Government has recently issued a new regulation pertaining to the criteria of a business to be categorized as a permanent establishment (*bentuk usaha tetap*/ BUT). Such criteria are set forth in the Minister of Finance Regulation No.35/PMK.03/2019 concerning the Determination of Permanent Establishments (MoF Regulation No. 35/2019).

The underlying reason for the issuance of MoF Regulation No. 35/2019 by the Government is to provide legal certainty for businesses in that this policy affirms the business sectors included in the permanent establishment category. The regulation which has come into force since 1 April 2019 regulates all business sectors carried out by non-residents (*subjek pajak luar negeri*/SPLN).

The regulation sets forth that a permanent establishment is a form of business used by a foreign individual or foreign entity to conduct business or activities in Indonesia. The criteria as a permanent establishment are divided into three groups, as below:

1. the existence of a place of business in Indonesia;
2. a fixed place of business; and
3. the place of business is used by a foreign individual or a foreign entity to run a business or conduct activities.

Article 5 paragraph (1) of MoF Regulation No. 35/2019 states that the place of business includes all types of places, spaces, facilities, or installations, including machinery or equipment, which are used by the foreign individual or entity to run businesses or conduct activities.

The regulation stipulates 12 forms of place of business, namely:

1. place of effective management;
2. a branch of the company;
3. representative office;
4. office building;
5. factory;
6. workshop;
7. warehouse;
8. space for promotion and sales;
9. mining and the extracting of natural resources;
10. the working area of oil and gas mining;
11. fisheries, farming, agriculture, plantation, or forestry; and
12. computers, electronic agents, or automated equipment owned, rented, or used by a foreign person or a foreign entity to run a business through the internet.

A place of business is deemed to exist regardless of whether the foreign person or foreign entity owns or rents or whether the foreign person or foreign entity has the legal right to use the place of business.

The next criteria as a permanent establishmet is a fixed place of business. A place of business is determined as a fixed place of business by the authority provided that it is used continuously and is in a certain geographical location.

Moreover, the place of business must be available for use hence the foreign person or the foreign entity has unlimited access. They also run businesses or conduct activities through such place of business.

The requirements regarding the place of business are not fulfilled in the event that the business place in Indonesia is solely used by the foreign person or foreign entity for storing data and/or managing data electronically. In addition, the requirements are also not fulfilled in the event that the foreign person or foreign entity has limited access to operating the place of business.

Additionally, there exist other forms of business which are considered as permanent establishments despite not fulfilling the three criteria. The regulation sets forth 4 types of forms of business considered as permanent establishments without having to meet the criteria, as below:

1. construction, installation or assembly projects;
2. the supply of services in any form by employees or other people provided that such supply is carried out for more than 60 (sixty) days in a period of 12 (twelve) months;
3. a person or an entity acting as an independent agent; and
4. an agent or an employee of an insurance company that is not established and does not domicile in Indonesia that receives insurance premium or bears risks in Indonesia.

Article 6 paragraph (1) of MoF Regulation No. 35/2019 stipulates that a business that meets the criteria, but only carries out preparatory or auxiliary activities is excluded from the definition of a permanent establishment for the implementation of a tax treaty (*perjanjian penghindaran pajak berganda*/P3B).

Preparatory activities are preliminary activities for the essential and significant activities to be ready to be carried out. On the oher hand, auxiliary activities

are additional activities that facilitate essential and significant activities.

Essential and significant activities comprise 4 activities, as below:

1. are the core business or activities;
2. are inseparable from the core business or activities;
3. directly generate income; or
4. use a significant number of assets or human resources.

Nonetheless, in the event that the foreign person or foreign entity conducts preparatory or auxiliary activities for other parties, the exemption provisions of the definition of a permanent establishment shall become invalid.

As affirmed in Article 4 paragraph (3), the definition of business or activities stipulated in MoF Regulation No. 35/2019 comprises everything that is conducted to obtain, collect, or maintain income

A foreign person or a foreign entity that runs a business or carries out activities through a permanent establishment is required to register to obtain a Taxpayer Identification Number (*Nomor Pokok Wajib Pajak*/NPWP). Such obligation commences when the foreign person or foreign entity conducts a business or conducts activities through a permanent establishment in Indonesia.

The registration is to be carried out no later than 1 (one) month after the commencement of business or activities through a permanent establishment in Indonesia. In case of a failure to do so, the Director General of Taxes may ex-officio issue a Tax Identification Number for the foreign person or foreign entity.

Except for small entrepreneurs whose scope is determined by the Minister of Finance, a foreign person or foreign entity that runs a business or carries out activities through a permanent establishment must report his business to be confirmed as a Taxable Entrepreneur (*pengusaha kena pajak*/PKP).

The obligation to report a business to be confirmed as a Taxable Entrepreneur is to be carried out no later than the end of the following month after the gross turnover and/or gross receipt exceeds the limits of small-scale businessmen of which the scope is determined by the Minister of Finance.

The Extension of Anti-Dumping Import Duties of Biaxially Oriented Polypropylene Imports from Thailand and Vietnam

The government has extended the imposition of anti-dumping import duties (*bea masuk anti-dumping*/ BMAD) on Biaxially Oriented Polypropylene (BOPP) imports from Thailand and Vietnam which have expired. This is set forth in the Minister of Finance Regulation No. 36 /PMK.10 /2019 (Mof Regulation No. 36/2019).

Formerly, the minister of finance stipulated the imposition of BMAD on BOPP imports through MoF Regulation No. 1/PMK.010/2017 concerning the Imposition of Anti-Dumping Import Duties on Biaxially Oriented Polypropylene Imports from Thailand and Vietnam.

Such action is taken as based on the results of investigations by the Indonesian Anti-Dumping Committee, dumping margins were still found for exporting companies/exporting producers from Thailand and Vietnam hence in case of revocation of BMAD, the applicant's losses will recur.

By definition, dumping is trading politics carried out by selling goods in foreign markets at lower prices than in the domestic market. To prevent losses from this practice, the government is required to apply BMAD.

This is also in accordance with the provisions of Article 2 paragraph (1) of Government Regulation No. 34 Tahun 2011 concerning Anti-Dumping Measures, Countervailing, and Trade Safeguard Measures, which states that other than being subject to import duties, imported goods may be subject to BMAD in the event that the export prices of imported goods are lower than their normal values and result in losses.

MoF Regulation No. 36/2019 sets forth two types of BOPP imports from Thailand and Vietnam that are subject to BMAD, namely:

1. BOPP in the form of films included in HS Code 3920.20.10; and
2. BOPP in the form of plates, sheets, foils, and other strips included in the HS Code ex. 3920.20.91 and ex. 3920.20.99.

The countries of origin and the names of the companies exporting and/or producing imported goods subject to the BMAD above and the amount of BMAD applied are as follows:

No	Origin of Country	Exporters/ Exporting Producers	Rate of BMAD in percentage (%)
1	Thailand	A.J. Plast Public Company Limited	Not Imposed with BMAD
		Other Companies	28.4
2	Vietnam	Formosa Industries Corporation	3.9
		Other Companies	3.9

BMAD is imposed as additional general import duty (Most Favored Nation) or additional preference import duty based on schemes of international goods trading agreement applicable in the event that the import is carried out from countries included in the schemes of international goods trading agreement and complies with the provisions thereof.

In the event that the provisions in the schemes of international goods trading agreement are not fulfilled, BMAD is imposed on the imports of countries included in the international goods trading agreement as additional general import duty (Most Favored Nation).

The BMAD rates in the above table apply fully to BOPP imports of which the import customs notification documents have obtained registration numbers from the Customs Office of the port of entry since this regulation takes effect. MoF Regulation No. 36/2019 comes into effect as of 19 April 2019 and is valid for 5 years thereafter.

The Obligation to Report Registration Data for Excisable Goods Entrepreneurs

The Directorate General of Customs and Excise (DGCE) of the Ministry of Finance has issued a new regulation regarding the obligation to report registration data of entrepreneurs of excisable goods (*Barang Kena Cukai*/ BKC). The new provision is the Director General of Customs and Excise Regulation No. PER-08/BC/2019 (PER 08/2019).

This regulation pertains to the submission of excisable goods entrepreneur registration data and application for the Code Numbers of Excisable Goods Entrepreneurs (*Nomor Pokok Pengusaha Barang Kena Cukai*/NPPBKC). PER 08/2019 stipulates that the submission of excisable goods entrepreneur registration data and NPPBKC application are carried out through the application system. In case of any changes in data, the process is also carried out through the system.

Further, after the above process, the application system will automatically provide a receipt to the person or entrepreneur in question. An example of the receipt format may be found in Appendix II of PER 08/2019.

However, DGCE also allows manual submission with forms. The written application for the manual submission will be followed up by customs officials by recording data. An example of the excisable goods entrepreneur registration data form is listed in Appendix I of PER 08/2019.

If excisable goods entrepreneurs have received NPPBKC before the implementation of the regulation, they will still be required to submit excisable goods registration data no later than 6 months since the regulation takes effect. Further, DGCE will conduct data research as a means of monitoring and evaluation. The research is conducted to check the conformity and accuracy of the excisable goods entrepreneurs data.

To conduct integrated data research on excisable goods entrepreneurs, DGCE officials may ask the excisable goods entrepreneurs to submit supporting evidence related to excisable goods entrepreneur registration data or changes to excisable goods entrepreneur registration data.

In addition, DGCE officials can also use information from internal units, relevant agencies, or other information. The research mechanism includes examining administrative documents to performing field inspections.

Registration data and its supporting evidence will be used to compile a database of excisable goods entrepreneurs. DGCE will also create a risk profile for excisable goods entrepreneurs based on the database. If there are findings of data mismatches, the risks of excisable goods entrepreneurs may be increased.

PER 08/2019 sets forth that DGCE officials may increase the risks of excisable goods entrepreneurs in the event that:

1. excisable goods entrepreneurs do not make changes to the excisable goods business registration data in the event there is a change in the excisable goods entrepreneur registration data;
2. the submitted excisable goods entrepreneur registration data is not in accordance with the results of administrative research and/or field inspection; and/or

3. excisable goods entrepreneurs do not submit supporting evidence related to excisable goods entrepreneur registration data or changes to excisable goods entrepreneur registration data.

The field inspection procedures and the format of field inspection reports must be in accordance with Appendix III of PER 08/2019. The regulation signed by the Director General of Customs and Excise has been effective as of its promulgation on 22 March 2019.

Tax Service Complaint Channels

Early this April, the Directorate General of Taxes (DGT) issued a new regulation pertaining to procedures for submitting complaints on tax services. The new provisions are contained in the the Director General of Taxes Regulation No. PER-07 / PJ / 2019 (PER 07/2019) which revokes the previous regulation, namely PER-02/PJ/2014 concerning the Procedures for Submitting Complaints on Tax Services.

Complaints on tax services (hereinafter: complaints) are information submitted by a complainant regarding alleged tax services that are not in accordance with the provisions of the legislation.

A complainant is defined as every person or another party who receives the authority to report information in connection with alleged tax services that are not in accordance with the provisions of tax laws and regulations.

The complainant may submit a complaint through complaint channels of the recipients of the complaints in accordance with the provisions of PER 07/2019 as described in the following table.

The submitted complaint must at least contain the following information:

1. the identity of the complainant, including Taxpayer Identification Number (*Nomor Pokok Wajib Pajak*/ NPWP);
2. the complainant's telephone number or email;
3. the identity of the reported party, namely a work unit or employee of a work unit suspected of providing tax services that are not in accordance with the provisions of tax laws and regulations;
4. description of the complaint, which includes, among others, the date of the tax service;
5. power of attorney, in the event that the complaint is authorized to another party; and
6. supporting evidence if needed.

A work unit is defined as a work unit within the DGT. A complainant who attends directly may submit a complaint using the sample form listed in the Appendix of PER 07/2019. On the other hand, complainants submitting complaints through the DGT website, twitter, and *Chat Pajak* are to comply with the provisions also listed in the same attachment.

No	Recipients of the Complaints	Complaint Channels
1	Information and Complaint Service Center (*Kantor Layanan Informasi dan Pengaduan*/ KLIP) of the DGT	*Kring Pajak*: Telephone (1500200) Mobile (021-1500200) Facsimile: 021-5251245 Email: pengaduan@pajak.go.id DGT Website: pengaduan.pajak.go.id Twitter: @kring_pajak *Chat Pajak* on pajak.go.id website
2	Directorate of Dissemination, Services, and Public Relation (*Direktorat Penyuluhan, Pelayanan, dan Hubungan Masyarakat*/ P2Humas) and other Work Units	By mail or personal attendance at Directorate of Dissemination, Services, and Public Relation and other Work Units.

The submission of complaints is to be conducted no later than 30 working days after the tax service is provided. Complaints submitted beyond the deadline are not considered as complaints.

The DGT must provide a response via the telephone to the complainant regarding the complaints received no later than 14 working days after the complaint is submitted. The complainant will obtain the information of Complaint Ticket Number upon the response.

Possible responses are the information that: 1) the complaint is declared complete if the requirements in PER 07/2019 are fulfilled; or 2) the complaint is declared incomplete in the event that the requirements are not fulfilled, thereafter the complainant is requested to complete the unfulfilled requirements.

The complainant is given time to complete his complaint no later than 30 working days upon the receipt of the response. In the event that the complaint is not completed within such period, the reporter is deemed to have revoked the complaint.

Next, the complaints that are declared complete are distributed by the Directorate of Dissemination, Services, and Public Relation to the 'unit that follows-up the

complaint', namely the work unit that handles or resolves complaints. The unit that follows-up the complaint is obliged to follow up and submit the results of the complaint follow-ups to the complainant no later than 30 working days after the complaint is received by the unit that follows-up the complaint.

Afterwards, the results of the follow-up will be confirmed to the complainant no later than 14 working days after the complaint is followed up. This provision shall take effect as of the stipulation date on 4 April 2019.

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