

Client Alert

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Tax for E-Commerce Trade to be Set in April

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Overview

Lately, taxing e-commerce has been a controversial topic of discussion within government bodies of Southeast Asia jurisdictions. The Indonesian government has been no exception. Minister of Finance, Sri Mulyani, has stated that the government wants to "level the playing field between businesses that operate online and those offline, which must add 10% Value Added Tax ("VAT") to the price of goods purchased"¹. In other words, the government aims to create equality between conventional businesses and e-commerce businesses in terms of taxation.

At the end of 2018, the government finally set out a new mechanism to turn that intention into reality. The government recently issued a guideline to impose taxes on online transactions done through e-commerce platforms/businesses following the newly issued regulation on taxation for e-commerce trade ("**New Regulation**")². This new regulation is set to come into force on **1 April 2019**.

While the new regulation gives more clarity on the tax treatment for online transactions through e-commerce platforms, it seems that it will lead to more challenges as well. Moreover, dissemination of government policy generally takes three months in practice, thus we may expect some issues during the implementation of this new policy.

The Key Provisions

We set out below the key provisions on tax and customs treatment for online purchase through e-commerce platforms:

Tax Treatment

The New Regulation does not stipulate a new tax for transactions through e-commerce platforms. The New Regulation provides guidelines to impose tax (i.e., VAT and Luxury Sales Tax) on transactions done through marketplace platforms.

¹ <https://asia.nikkei.com/Business/Technology/Business-cries-foul-over-plans-for-Indonesia-e-commerce-tax>

² Minister of Finance Regulation No. 210/PMK.010/2018 on taxation of trade transactions through electronic systems or e-commerce ("**New Regulation**"), which was signed on 31 December 2018.



The key definitions under the New Regulation are as follows:

- A platform is a medium in the form of application, website and/or other internet-based content services that is used to facilitate e-commerce.
- A marketplace is an electronic means of communication that is used for electronic transactions.
- A Marketplace Platform Provider is an individual, company or a permanent establishment having its address or domiciled or conducting business in the Customs Area, that provides a platform in the form of a Marketplace, including Over the Top in the field of transportation in the Customs Area.
- A Seller is an individual, company or a permanent establishment having its address or domiciled or conducting business in the Customs Area that enters into a transaction with a buyer through a platform provided by a marketplace platform provider.
- Service Provider is an individual, company or a permanent establishment having its address or domiciled or conducting business in the Customs Area that enters into a transaction with a customer through a platform provided by a Marketplace Platform Provider.

A Marketplace Platform Provider must have a taxpayer ID number³ and must be stipulated as a taxable entrepreneur for VAT purposes. Meanwhile, a Seller and a Service Provider can either have a taxpayer ID number or an identification number (*Nomor Induk Kependudukan/NIK*). In addition, a Seller and a Service Provider are only required to be stipulated as a taxable entrepreneur for VAT purposes if their turnover exceeds IDR 4.8 billion.

Under the New Regulation, a Seller and a Service Provider are required to pay their income tax in accordance with the Income Tax Law. If a Seller or a Service Provider is a taxable entrepreneur for VAT purposes, they are also required to collect VAT, issue tax invoices and submit a monthly VAT return. A Marketplace Platform Provider is also required to collect VAT, issue tax invoices and submit a monthly VAT return in relation to its Marketplace Platform Provider service and/or other taxable services and goods it provides.

In addition, a Marketplace Platform Provider is obliged to submit a recapitulation of transactions done by sellers and service providers through its platform to the Director General of Tax. The recapitulation is reported as an attachment of its monthly VAT return.

³ Indonesian term: *Nomor Pokok Wajib Pajak*



Customs Treatment

The imposition of import duty and import taxes⁴ is differentiated as follows⁵:

1. For import of goods through Marketplace Platform Providers that are registered in Customs, that:

- conducted through consignment mechanism (by postal service providers)
- has customs value up to FOB USD 1,500

then the tax treatment refers to the New Regulation

2. For import of goods through Marketplace Platform Providers, that:

- does not use a DDP scheme
- has customs value more than FOB USD 1,500

then the tax treatment refers to Ministry of Finance Regulation on import of consignment goods⁶ ("**Regulation 182**").

A Marketplace Platform Provider should register itself at the Customs Office where its import frequency is high. After securing Customs' Registration Approval, the Marketplace Platform Provider is obliged to⁷:

- submit an e-invoice for each shipment of goods
- submit an e-catalog, which consists of goods description, goods code, goods category, goods specification, price, seller's identity and country of origin
- use a DDP scheme⁸
- perform self-calculation of import duty and import taxes
- pay import duty and import taxes of the imported goods concerned

⁴ Import taxes consists of VAT, Income Tax Article 22 and Luxury Sales Tax.

⁵ Article 10 of New Regulation

⁶ Ministry of Finance Regulation No. 182 of 2016 as amended by Regulation No. 112 of 2018 on import of consignment goods ("**Regulation 182**")

⁷ Article 11 of the New Regulation

⁸ Delivery Duty Paid or DDP is international trade terminology that includes import duty and import taxes in the import value of goods listed in the platform.



Violation of certain obligations above may cause the Customs to suspend or revoke the Marketplace Platform Provider's Registration Approval⁹.

Further, the New Regulation and Regulation 182 set out a different duty imposition on imported goods. For instance, Regulation 182 provides that import of goods with customs value up to FOB USD 75 (in one day) will be exempted from import duty and import taxes¹⁰. Meanwhile the New Regulation does not provide an exemption threshold of import duty and taxes. Therefore, import through a Marketplace Platform Provider that is registered in Customs may generate more duty and taxes collection, because the tax treatment should refer to the New Regulation.

Impacts

No.	Tax Implication	Customs Implication
1.	<p>For Marketplace Platform Providers</p> <p>This New Regulation provides clarity in imposing tax on transactions done through a marketplace platform. However, it is unclear whether this New Regulation is only applicable for an Indonesian taxpayers or if the New Regulation also applies to foreign taxpayers (as per definition of Marketplace Platform Provider).</p> <p>This ambiguity is because there is no clear definition of conducting business in a Customs Area under the Indonesian regulation. Because there are no clear criteria for a taxpayer to be deemed as conducting business in Indonesia, it may lead to a broad interpretation.</p> <p>We are still waiting for updates on this matter.</p>	<p>For Marketplace Platform Providers</p> <p>It seems that there is an ambiguity with regard to the obligation to use a DDP scheme.</p> <p>It is said that at one point imports through Marketplace Platform Providers that do not use a DDP scheme will be settled by Regulation 182. On the other hand, it is said that Marketplace Platform Providers must use a DDP scheme; otherwise there will be a sanction in the form of revocation of the Marketplace Platform Provider's Registration Approval¹¹.</p>

⁹ Article 13 and 14 of the New Regulation

¹⁰ Article 13 of Regulation 182

The terminology in Indonesian language: *pembebasan bea masuk dan pajak dalam rangka impor tidak dipungut*.

¹¹ Article 14 paragraph (1) (a) of the New Regulation



<p>2.</p>	<p>For Marketplace Platform Providers</p> <p>The implementing regulations for:</p> <ul style="list-style-type: none"> reporting recapitulation of transactions through marketplace platform <p>will be further regulated in a Director General of Tax regulation.</p>	<p>For Marketplace Platform Providers</p> <p>The implementing regulations for:</p> <ul style="list-style-type: none"> registration of Marketplace Platform Provider submission procedure of e-catalogue and e-invoice suspension and revocation of Marketplace Platform Provider approval from Customs <p>are still absent.</p>
<p>3.</p>	<p>For End Customers</p> <p>If end customers purchase goods or receive services from a taxable entrepreneur for tax purposes, the transaction will be subject to 10% VAT.</p>	<p>For End Customers</p> <ul style="list-style-type: none"> may cause higher price, due to duty and tax collection (for purchase of goods through Marketplace Platform Providers registered in Customs) <p>For Customs Authority</p> <ul style="list-style-type: none"> may result in higher duty and import taxes collection (for purchase of goods through Marketplace Platform Providers registered in Customs) clear mapping on import of products, so the Customs may have a resource of price database for valuation purposes and product specification for classification purposes.



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