

Is the Returnable Packaging of Merchandise Entered into a Bonded Zone Constitute as a Delivery of Taxable Goods?

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Background

In carrying out business activities as an Entrepreneur in a Bonded Zone ("PDKB"), the management of tax and customs documents for the entry and exit of goods is a routine activity and is crucial.

The processing of the documents is important because as an Entrepreneur in a Bonded Zone, we are required to fulfill the requirements that have been set, both regulated through taxation provisions and customs provisions so that the PDKB which is a Taxable Entrepreneur ("PKP") can utilize the facilities provided.

Based on the Customs provisions stipulated in PER-19/BC/2018 as last amended by PER-9/BC/2021 regarding Amendments to the Regulation of the Director General of Customs and Excise Number PER-19/BC/2018 regarding Administrative Procedure of Bonded Zones ("PER-9 BC 2021"), **every delivery or entry of Taxable Goods into a Bonded Zone** carried out by a Taxable Entrepreneur must implement the following Tax and Customs provisions:

1. *“shall be obligated to prepare tax invoice, that is proven with document of approval for entry of goods to Bonded Zones in the form of Letter of Approval for Entry of Goods (SPPB) or Letter of Notification on Red Lanes (SPJM) owned by Bonded Zone Entrepreneur or PDKB before issuing tax invoice;*
2. *cannot use tax invoice unification; and*
3. *keep and maintain well in his place of business, books and records as well as documents related to entry of goods to Bonded Zones in accordance with statutory provisions in the tax sector.”*

Thus, how is the treatment of the entry and exit of returnable packaging containing Taxable Goods such as containers, wooden boxes, gas/liquid cylinders, equipment used for packaging and the like that are used to protect the quality and facilitate the transportation or transfer of Taxable Goods during the journey into the Bonded Zone? Is the entry and exit of returnable packaging considered as a delivery of Taxable Goods?

Tax and Customs Obligations

The following is an explanation of the Taxation and Customs aspects that must be implemented by both parties, namely the buyer of Taxable Goods (the party designated as the Bonded Zone) and the seller of Taxable Goods (the party located in another Place in the Customs Territory (TLDDP)), for the entry of packaging and the removal of packaging into and out of the Bonded Zone.

Legal Basis

In the provisions of the VAT and Sales Tax on Luxury Goods Law, the delivery of Taxable Goods (“BKP”) is defined as:

- a. transfer of right to Taxable Goods because of an agreement;
- b. assignment of Taxable Goods because of a leasing agreement and/or leasing business agreement;
- c. delivery of Taxable Goods to broker or through auctioneer;
- d. own use and/or granting free of charge of Taxable Goods;
- e. Taxable Goods in the form of stock and/or assets that according to the initial purpose are not for trade, still left at the

- moment of liquidation of company;
- f. delivery of Taxable Goods from head office to branch or vice versa and/or delivery of Taxable Goods inter branch; and
- g. delivery of Taxable Goods by Taxable Entrepreneur in the context of financing agreement that is conducted based on the shariah principles, in which the delivery is deemed directly from Taxable Entrepreneur to the parties that need Taxable Goods.

Based on the provisions of the VAT Law above, the delivery of Taxable Goods is considered to have occurred if one of the conditions mentioned above occurs. One of the conditions that requires a Taxable Entrepreneur to issue a Tax Invoice is the Delivery of Rights to Taxable Goods.

That according to the provisions of Article 31 paragraph (1) of PER-9 BC 2021, goods originating from Other Places in the Customs Territory ("TLDDP") entered to Bonded Zones shall be given exemption from Excise and/or non-collection of VAT or VAT and Sales Tax on Luxury Goods. The TLDDP mentioned as below:

- a. other place in customs territory;
- b. other Bonded Stockpiling Areas;

- c. Free Zones;
- d. special economic zones; and/or
- e. other economic zones stipulated by the Government,

That there is an exception to the provisions of Article 31 paragraph (1) of PER-9 BC 2021 above, namely Article 31 paragraph (2) of PER-9 BC 2021, in which provisions it is stipulated that if goods originating from the TLDDP are not included in the delivery of Taxable Goods, and/or the delivery is not carried out by Taxable Entrepreneur, then the said goods shall not be payable VAT or VAT and Sales Tax on Luxury Goods, and tax invoice shall not be issued.

Directorate General of Customs and Excise has asserted on the entry and/or exit of returnable packaging through Article 52 of PER-19 BC 2018, where the article stipulates that if the entry and/or exit of goods using reusable packaging (returnable package), it must be notified by a separate goods description.

On the other hand, the provisions for the entry and/or exit of returnable packaging are also regulated in the provisions of the Free Trade Zone, namely in Article 14 and Article 18 paragraph (1) letter c and paragraph (2) letter g of Minister of Finance

Regulation 173 of 2021 regarding Procedure for Payment, Settlement and Administration of Value Added Tax or Value Added Tax and Luxury Goods Sales Tax on The Delivery of Taxable Goods and/or Taxable Services from and/or to Free Trade Zone and Free Port, namely:

Article 14

- (1) *"The delivery of tangible Taxable Goods by Entrepreneur in KPBPB to purchasers in TLDDP as intended in Article 2 sub-article a sub-sub article 2 shall be subject to VAT.*
- (2) *In the event that tangible Taxable Goods delivered by Entrepreneur in KPBPB as intended in paragraph (1) constitutes tangible Taxable Goods categorized as luxury, the said delivery of tangible Taxable Goods shall be subject to VAT and Sales Tax on Luxury Goods."*

Article 18

- (1) *"Exempted from collection of VAT or VAT and Sales Tax on Luxury Goods as intended in Article 14 shall be:*
...
 - c. release of goods from KPBPB not constituting delivery of tangible Taxable Goods.**
- (2) *Release of goods constituting non delivery of tangible Taxable Goods as intended in paragraph (1) sub-paragraph c shall cover:*
...
 - g. release of tangible Taxable Goods in the form of returnable package in accordance with provisions of laws and regulations in the field of customs."**

Although the provisions stipulated in Minister of Finance Regulation 173 of 2021 above are the delivery of Taxable Goods / Taxable Services that occurs in Free Trade Zones and Free Ports, these provisions have the same spirit as the entry and/or removal of goods into and/or out of Bonded Zones, that returnable packaging is not a Delivery of Taxable Goods.

Conclusion

Based on whole explanations and provisions elaborated above, the following are the treatment of the entry and/or exit of returnable packaging used for the transportation or transfer of Taxable Goods.

1. Taxation Aspects

Based on the provisions of the VAT Law, as long as the transfer of returnable packaging into or out of the Bonded Zone does not involve the transfer of rights to the packaging, then the activity is not included in the transfer of Taxable Goods and there is no obligation for Taxable Entrepreneurs who transfer the packaging to issue Tax Invoices in accordance with the provisions of Article 31 paragraph (2) of PER-9 BC 2021. This can be supported by including a packaging ownership rights clause in the cooperation agreement between the two parties so that the ownership status of the packaging can be clearly determined.

2. Customs Duty Aspects

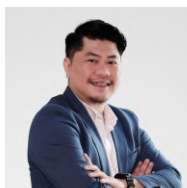
Based on Customs provisions, the entry and exit of packaging that is not a delivery of Taxable Goods and for which a Tax Invoice is not issued does not waive the PDKB's obligation to manage and store customs documents related to the entry and/or exit of packaging into and/or out of the Bonded Zone. Therefore, the PDKB is required to report the entry and exit of packaging in a separate description to the Directorate General of Customs and Excise.

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