

# Tax News Flash

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## New customs obligations on import software products and other digital goods

The government recently issued Regulation of the Minister of Finance ("PMK") No.190/PMK.04/2022 ("PMK-190") which concerns the release of imported goods-for-use. The regulation was set forth on 14 December 2022 and became effective on 14 January 2023. PMK-190 was issued to refine the previous regulation, PMK No. 228/PMK.04/2015.

There are new rules in PMK-190 which are very crucial for any company that imports intangible goods such as software or digital products that are transmitted electronically. It regulates the procedures on how customs obligations are settled for the import of these intangible goods.

Any company which imports intangible goods must pay attention to the following customs and tax obligations:

1. Submit an import of goods notification ("PIB") form any time intangible goods are imported into the country. This must be done no later than 30 days from the date of payment.
2. Pay the import duty and tax relating to importation ("PDRI") which consists of Value Added Tax ("VAT"), Sales Tax on Luxury Goods ("STLG"), and Income Tax Article 22 on Imports (*PPh Pasal 22 Impor*). This needs to be done before submitting the PIB.

Software and digital goods are classified in HS Code Chapter 99 (Heading 99.01). Below are the details of the HS Code for software and digital goods along with their import duty and PDRI rates.

HS Code	Description of good	Import duty	Import VAT	Sales Tax on Luxury Goods	Income Tax Article 22 on Imports	
					With API*	Without API*
99.01	Software and other digital product transmitted electronically.					
9901.10.00	– Operating system software	0.00%	11.00%	Not applied	2.50%	7.50%
9901.20.00	– Application software	0.00%	11.00%	Not applied	2.50%	7.50%
9901.30.00	– Multimedia (audio, video or audio visual)	0.00%	11.00%	Not applied	2.50%	7.50%
9901.40.00	– Supporting or driver data, including design for machinery system	0.00%	11.00%	Not applied	2.50%	7.50%
9901.90.00	– Other software and digital product	0.00%	11.00%	Not applied	2.50%	7.50%

\*API = Angka Pengenal Impor (Importer identification number)

**Notes.**

1. *Software and other digital goods transmitted electronically referred to in heading 99.01 are those that are not related to machines or devices that have been or will be imported.*
2. *Software and other digital goods transmitted electronically related to machines or devices that have been or will be imported are classified with such machines or devices.*

**Subheading note.**

1. *Tariff line 9901.40.00 covers only software that is a renewal or update of said software for machines or devices that have already been imported.*

**Sources:**

*VAT Law, PMK No. 26/PMK.010/2022, PMK No. 34/PMK.010/2017 as lastly amended by PMK No. 41/PMK.010/2022*

The settlement of customs obligations on intangible goods imported for use is supervised through a customs audit. This process will likely catch companies with API that meet the criteria for being subject to a customs audit.

**KPMG notes:**

- PMK-190 was issued to optimize the supervision and service of imported goods-for-use and to accommodate the regulations for the import of digital goods. Therefore, companies must be aware of their obligation to submit a PIB, pay their import duties, and pay the PDRI for the import of intangible goods such as software and digital goods. This obligation is also applicable with regard to purchasing software by downloading it over-the-air (“OTA”).
- It is unclear whether a company which has paid the Offshore VAT on the utilization of intangible taxable goods from offshore in Indonesia should also pay the Import VAT. Therefore, there is potential double VAT on the import of intangible goods. We expect that the Indonesian Tax Office (“ITO”) will issue further clarifications on this matter.
- There is no clear confirmation on whether Import VAT should also be paid and included in the PIB for the purchase of intangible goods if done by trade through an electronic system (“PMSE”) if the e-commerce VAT was collected by a foreign e-commerce VAT collector.
- Companies have an obligation to withhold Income Tax Article 26 on payments to a foreign company for the use of intangible goods in Indonesia. Besides PMK-190, there is an additional income tax obligation for companies to pay Income Tax Article 22 on Imports of intangible goods. It can be credited by companies with their annual corporate income tax.
- If there are royalty payments which meet three cumulative requirements (i.e., (i) paid or should be paid by buyers directly or indirectly, (ii) represent the sales requirements for imported goods, and (iii) are related to imported goods which contain intellectual property rights (such as patents, trademarks and copyrights)) they must be added into the customs value as a part of the calculation for the payment of import duties and PDRI.
- Apply for an API as this will reduce the cash flow for Income Tax Article 22 on Imports payments whenever this is commercially feasible.

Please reach out to your KPMG contacts for any further guidance you may require in respect to this regulation.

# Contact us

## **KPMG Advisory Indonesia**

### **Tax Services**

33<sup>rd</sup> Floor, Wisma GKBI  
28, Jl. Jend. Sudirman  
Jakarta 10210, Indonesia  
**T:** +6221 570 4888  
**F:** +6221 570 5888

### **Abraham Pierre**

### **Head of Tax Services**

[Abraham.Pierre@kpmg.co.id](mailto:Abraham.Pierre@kpmg.co.id)

[kpmg.com/id](http://kpmg.com/id)

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