

Tax News Flash

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The remapping of VAT facilities

Government Regulation No. 49 Year 2022 (“GR-49”) was issued to (re)confirm and clarify the VAT facilities that are still applicable after the implementation of the Harmonization of Tax Regulations Laws (“HPP Law”).

GR-49 contains new/updated provisions regarding the categories and classifications for VAT-able goods/services and their relevant VAT facilities. However, some provisions are basically compilations of existing guidance. GR-49 lays out three circumstances where VAT is not due/collected:

- i. VAT is not due for specific non-VAT-able goods/services;
- ii. VAT is exempt for certain VAT-able goods/services and strategic VAT-able goods/services; and
- iii. VAT is not collected for certain VAT-able goods/services and strategic VAT-able goods/services.

Input VAT which occurs with respect to the sale of non-VAT-able goods/services or with respect to the sale of goods/services that are exempt from VAT are not creditable under the common Output-Input VAT credit mechanism. However, Input VAT which occurs with respect to the sale of VAT-able goods/services subject to VAT-not-collected are creditable.

One notable point in GR-49 is the change to health, social, financial and insurance, education, public transportation, and outsourcing services. These were previously put in the non-VAT-able services category (in the former implementing regulations) but are now strategic VAT-able services that are subject to VAT exempt facility. The HPP law first introduced this recategorization. From an administrative perspective VAT entrepreneurs selling this category of VAT-able services may be required to issue and administer VAT invoices. Further administrative guidance is expected to be issued soon.

A high-level overview of the VAT facilities map (applicable as of the date of this publication) is discussed in the following table:

	Non-VAT-able goods/services	VAT-able goods/services of which sales are subject to VAT but are relieved under certain tax facilities	
Tax facility	N/A	VAT exempt	VAT not collected
Category of goods/services and its examples			
– Non-VAT-able goods/services	– Food and beverages offered in hotels, restaurants and the like that are subject to regional tax/retribution – Money, gold bars for state foreign exchange reserves		

	Non-VAT-able goods/ services	VAT-able goods/services of which sales are subject to VAT but are relieved under certain tax facilities	
– Certain VAT-able goods/services	N/A	<ul style="list-style-type: none"> – Vaccines, schoolbooks, etc. – Construction services for religious places, temporary shelter in the event of a natural disaster – Services that are subject to regional tax/ retribution (parking, arts and entertainment services) – Religious services and services provided by the Government 	
– Strategic VAT-able goods		<ul style="list-style-type: none"> – Capital goods, electricity (unless a household uses more than 6,600VA) – Clean water – Modest and rustic flats – Staple goods¹ (rice, salt, meat, egg) – Mining products² taken directly from the source (crude oil, natural gas, geothermal, minerals) – Imported goods by the Government for public use 	<ul style="list-style-type: none"> – Sea transport, air conveyance, trains – Gold bars, except for state foreign exchange reserves
– Strategic VAT-able services		<ul style="list-style-type: none"> – Health, social, financial and insurance, education, public transportation, and outsourcing services³ – Leasing modest and rustic flats 	<ul style="list-style-type: none"> – Services associated with sea transport, air conveyance, and trains
– International prevalence			Import of VAT-able goods exempt from import duties (Imported under the Masterlist facility [i.e., customs import duty exempted])
Require tax exempt certificate			
	No	<ul style="list-style-type: none"> – Certain VAT-able goods/ services: No – Strategic VAT-able goods: some require it, some don't – Strategic VAT-able services: some require it, some don't 	<ul style="list-style-type: none"> – Certain VAT-able goods/services: to be regulated in a separate Ministry of Finance ("MoF") regulation – Strategic VAT-able goods: to be regulated in a separate MoF regulation

¹ Formerly categorized as non-VAT-able goods.

² Formerly categorized as non-VAT-able goods, except for coal.

³ Formerly categorized as non-VAT-able services.

	Non-VAT-able goods/ services	VAT-able goods/services of which sales are subject to VAT but are relieved under certain tax facilities
		<ul style="list-style-type: none"> – Strategic VAT-able services: some required, some not – International prevalence: No
Invoice VAT must be issued on every sale		
	– No	<ul style="list-style-type: none"> – Certain VAT-able goods/services: No – Strategic VAT-able goods: some require it, some don't – Strategic VAT-able services: some require it, some don't
		<ul style="list-style-type: none"> – Certain VAT-able goods/services: to be regulated in a separate MoF regulation – Strategic VAT-able goods: to be regulated in a separate MoF regulation – Strategic VAT-able services: some require, some don't – International prevalence: N/A
Required to be reported in the VAT return		
	Yes	Yes
		Yes

GR-49 revokes the former implementing regulation on the import/sale of certain VAT-able goods/services subject to VAT exempt facility⁴, and the import/sale of strategic VAT-able goods/services subject to VAT exempt facility⁵. It also revokes the sale of clean water subject to VAT exempt facility⁶, and the import/sale of certain public transportation vehicles and associated services subject to VAT-not collected facility⁷.

GR-49 is effective retroactively from 1 April 2022. For transactions that occurred from 1 April 2022 to 11 December 2022 of which VAT due should not be collected (based on the new category), the respective VAT has been remitted by the seller:

- For VAT entrepreneur sellers:
 - The VAT remitted must be paid to the tax treasury; and
 - They must revisit the crediting of the Input VAT as explained above
- For VAT entrepreneur buyers: all Input VAT remitted by VAT entrepreneur sellers is creditable
- For non-VAT entrepreneur buyers: all Input VAT remitted by VAT entrepreneur sellers should be refunded. Further guidance is expected to be regulated in a separate MoF regulation.

KPMG notes:

In general, the changes in the categorization of VAT-able and non-VAT-able goods/services do not impact the VAT payable calculation. Business taxpayers must carefully pay attention to whether this change affects the administration of their VAT obligations, i.e., the administration of their VAT invoice, tax exempt certification, and VAT reporting. It is important to keep in mind that the basic principle of VAT Laws is to prioritize form over substance (unless otherwise stated). Please reach out to your KPMG contacts for any further guidance you may require in respect to this regulation.

⁴ Provisioned in the Government Regulation No. 146 Year 2000 and its amendment(s).

⁵ Provisioned in the Government Regulation No. 81 Year 2015 and its amendment(s).

⁶ Provisioned in the Government Regulation No. 40 Year 2015 and its amendment(s).

⁷ Provisioned in the Government Regulation No. 50 Year 2019.

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