

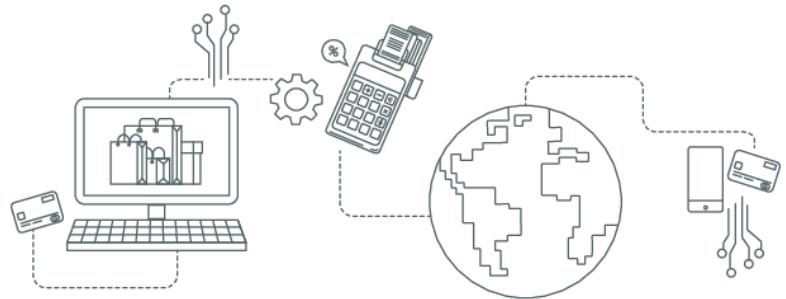
REVISION OF FINAL TAX FOR CONSTRUCTION SERVICES

RSM INDONESIA CLIENT ALERT – 16 MARCH 2022

On 21 February 2022, Government Regulation No. 9 Year 2022 (GR-9) was issued to amend the final tax rates on construction service businesses that were previously regulated by Government Regulation No. 51 Year 2008 jo Government Regulation No. 40 Year 2009 concerning Income Tax on Income from Construction Service Business (GR-51 jo GR-40). The stated reason for the amendment is to assist development of the construction sector, especially when considering the impacts of COVID-19.

WHEN IS GR-9 EFFECTIVE?

GR-9 takes effect on 21 February 2022. Please refer to the last page for the transitional provisions.



WHAT SERVICES ARE SUBJECT TO GR-9?

Construction Services are subject to GR-9. Construction Services comprise Construction Consulting Services and Construction Work. Businesses providing these services are then classified as per the table below, where these classifications follow those in the related laws and regulations (including the Law on Construction Services). These classifications are then used to determine the final tax tariff.

Classification of Construction Service Business	Sub-classification	Type of Activities
Construction Consulting Services	General consulting service	All or part of activities covering the assessment, planning, design, supervision and management of construction for a building ¹ .
	Specialist consulting service	
Construction Work	General construction work	Activities that cover the erection/construction, operations ("pengoperasian") ² , maintenance, demolition and restoration/reconstruction of a building.
	Specialist construction work	
Integrated Construction Work	No sub-classification	Covers the combination of construction consulting services and construction work including the merger of service function within a merged model for planning, procurement and the construction (EPC) as well as a merged model for planning and construction (Design & Build).

¹ In the context of construction, it is understood that "building" (*bangunan*) is not limited to a vertical structure such as an office, apartment, bridge or power plant. Rather it refers to anything resulting from construction activities. For example, a toll road is also considered a "building". However, GR-51 jo GR-40 stated the object of the construction services was the creation of a structure or other physical form ("bangunan atau bentuk fisik lain"), and therefore it is not clear if GR-9's use of only the word "bangunan" is intended to reduce the scope of services subject to final tax on construction.

² We understand that "pengoperasian" within the public works/construction sector refers to the operation of equipment and machines that support construction, including the installation and/or operation of construction equipment.

WHAT ARE THE NEW RATES OF FINAL TAX?

The comparison of the rates of final tax for relevant construction service businesses per GR-9 and per GR-51 jo GR-40 is as follows:

GR-51 jo GR-40 (to 20 February 2022)			GR-9 (start 21 February 2022)	
No	Type of construction business	Final Tax rate	Type of construction business	Final Tax rate
1	Construction implementation service providers (construction contractors) that have a small-scale business qualification (SBU ³ Kecil)	2%	Construction work service providers that have a SBU Kecil or work competency certificate for individual entrepreneur	1.75%
2	Construction implementation service providers (construction contractors), including integrated work providers, that do not have a business qualification (SBU)	4%	Construction work service providers that do not have SBU or work competency certificate for individual entrepreneur	4%
3	Construction implementation service providers (construction contractors), including integrated work providers, other than service providers mentioned in (1) and (2) (i.e., covers providers that have SBU for middle scale or large-scale business)	3%	Construction work services providers other than the service providers mentioned in (1) and (2) (i.e., covers providers that have SBU for middle scale business, large scale business or specialist)	2.65%
4	Construction planning or construction supervision service providers that have SBU	4%	Construction consulting service providers that have SBU or work competency certificate for individual entrepreneur	3.5%
5	Construction planning or construction supervision service providers that do not have SBU	6%	Construction consulting service providers that do not have SBU or work competency certificate for individual entrepreneur	6%
6			Integrated construction work providers that have SBU	2.65%
7			Integrated construction work providers that do not have SBU	4%

³ SBU are issued by the relevant certification agency/body as regulated by the Ministry of Public Works & Housing or the Ministry of Energy & Minerals Resources.

HOW IS THE FINAL TAX CALCULATED AND WHEN?

The object for the final tax is the value of the construction services contract. That is, it is the amount recorded, or that should be recorded in the contract. This will include the supply of materials that are part of a construction work contract.

Similar to GR-51 jo GR-40 any exchange rate gains or losses that arise from construction service business activities are included in the calculation of the value of the construction service contract that is subject to final tax.

Until most withholding tax, the final tax is calculated at the time of payment. The object for withholding will be the amount of the payment (excluding VAT). No final tax is due until there is a payment by the service user.

The final tax should be withheld by the service user if the user is appointed as a tax withhold. Therefore, all companies, other corporate bodies including permanent establishments (PE), and some individuals should withhold final tax when paying for construction services.

In other cases, such as a service user that is a non-resident (and without a PE), the construction services provider must self-withhold at the time of receipt of the payment from the service user.

The final tax must be paid to the State Treasury:

- No later than the 10th day of the month after the month the income tax is due to be withheld (if the payment is made by the service user); or
- No later than the 15th day of the month after the month of payment is received by the service provider (if the service user is not a withhold).

In addition, the Final Tax Returns should be reported to the Indonesian Tax Authority no later than the 20th day after the month of withholding tax or receipt of payment.

CORPORATE INCOME TAX IMPLICATIONS

Construction services income that is subject to final tax is not subject to further corporate income tax. However, other income (that is not final taxed) remains subject to corporate income tax. Therefore:

- The construction services provider will need to identify the final and non-final taxed income and related expenses, make fiscal corrections for the final taxed income and related expenses, and only claim tax deductions for expenses related to non-final taxed income.
- Only tax losses arising from expenses for non-final taxed income can be carried forward.

Branch profits tax of 20% will still apply if the construction services provider is a PE.



TRANSITIONAL PROVISIONS

For contracts signed prior to 21 February 2022:

- If the payment for a part of, or the whole contract occurs before the issuance of GR-9, the tax treatment and final tax rate shall follow GR-51 jo GR-40.
- If the payment for a part of, or the whole contract occurs on 21 February 2022 or thereafter, the tax treatment and final tax rate shall follow the provisions of GR-9.

All provisions of GR-51 jo GR-40 and any implementing regulation remain applicable as long as these do not conflict with the provisions of GR-9.

RSM NOTES:

1. Individual entrepreneurs providing construction services will be subject to final tax and not Article 21 income tax. The rate will depend on whether the individual has a work competence certificate or not.
2. PE can utilize an applicable tax treaty to reduce the rate of branch profits tax from 20% to the rate specified in that tax treaty.
3. Unlike GR-51 jo GR-40, an explicit re-evaluation/potential sunset clause is included in GR-9. The implementation shall be evaluated after 21 February 2025 by the Minister of Finance. As a consequence, it is possible that income from construction services will no longer be subject to final tax after that evaluation. It is not clear if this is a statement of intention/advance warning that construction services income will definitely become subject to ordinary income tax in 2025.
4. GR-9 deletes the provision that tax paid or payable abroad on income from other countries which is received or earned by service providers can be credited in accordance with the Income Tax Law. It is not clear if this is deleted because it is already regulated in the Income Tax Law or if a new consequence is intended regarding the income earned from other countries.

For further information please contact:

RSM INDONESIA

Plaza ASIA Level 10
Jl. Jend. Sudirman Kav.59
Jakarta 12190
P: +62 21 5140 1340
E: inquiry@rsm.id
www.rsm.id