



MANDATORY DEPOSIT OF FOREIGN EXCHANGE EXPORT PROCEEDS DERIVING FROM NATURAL RESOURCES

Overview

On 10 January 2019, the Indonesian Government enacted Government Regulation No. 1 of 2019 on Export Proceeds from the Exploitation, Management, and/or Processing of Natural Resources ("GR 1/2019"). The regulation is purported to maintain the continuity of development as well as the enhancement and tenacity of the national economy from foreign exchange derived from natural resource exports (*Devisa Hasil Ekspor Sumber Daya Alam*/ "DHE SDA") entering the Indonesia financial system. GR 1/2019 provides the mandatory arrangements for the deposit and use of proceeds from exports of natural resources from Indonesia. In return, according to some news, the Indonesian Government will grant certain incentives for exporters which comply with GR 1/2019 in the form of a deduction from the tax on fixed deposit interest which will be provided under a Bank Indonesia Regulation.

Following the issuance of GR 1/2019, Bank Indonesia issued its regulation No.21/3/PBI/2019 regarding Export Proceeds from the Exploitation, Management, and/or Processing of Natural Resources ("PBI 21"). This regulation is one of the implementing regulations that must be issued within seven days of the issuance of GR 1/2019.

The following are the GR 1/2019 highlights:

- a. **Mandatory Deposit of DHE SDA:** GR 1/2019 obliges Indonesian exporters to deposit their natural resource export proceeds in a Foreign Exchange Bank in Indonesia licensed by the Financial Services Authorities (*Otoritas Jasa Keuangan*/"OJK") ("Foreign Exchange Banks"). PBI 21 further explains that a 'Foreign Exchange Bank' here includes a branch office of a foreign bank in Indonesia, and excludes an overseas office of a bank that is headquartered in Indonesia.
- b. **DHE SDA Deposit time limit:** export proceeds must be deposited in a special account ("**Special Account**") at the Foreign Exchange Banks at the latest at the end of the third month following the filing of the relevant Customs export notification (*Pemberitahuan Pabean Ekspor*).
- c. **Supervision by the Authorities:** the Indonesian Government appears to demonstrate its seriousness about enforcing GR 1/2019 by imposing sanctions for non-compliance with GR 1/2019 which include a fine, an export ban and finally, the revocation of the business license. The Indonesian Government has 3 (three) main principal supervisors of compliance with GR 1/2019 : the Ministry of Finance, Bank Indonesia and OJK.

Main Provisions

1. Types of Goods subject to GR 1/2019

GR 1/2019 applies to DHE SDA from the mining, plantation, forestry and fisheries sectors. However, the details of the goods exports subject to GR 1/2019 will be provided separately in a Decree of the Minister of Finance which has not been issued yet.

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2. Mandatory Deposit

DHE SDA must be deposited in a Special Account managed by a Foreign Exchange Bank. They must be deposited by the end of the third month following the filing of the relevant Customs export notification. GR 1/2019 does not specifically require the DHE SDA to be converted into Indonesian Rupiah or set a minimum period for which the DHE SDA must remain deposited in the Special Account.

While still deposited in the Special Account, exporters can still use DHE SDA for the following purposes:

- a. the payment of Customs and other duties related to exports;
- b. loan repayments (under loan agreements);
- c. payments for imports;
- d. distributing profits/ dividends; and/or
- e. other purposes specified in Law No. 25 of 2007 on Investment.

Exporters must submit supporting documents evidencing that their DHE SDA will be used for the above purposes.

If the DHE SDA are used through an escrow account, the escrow account must also be maintained in a Foreign Exchange Bank. If an exporter already has an overseas escrow account before the issuance of GR 1/2009, the exporter must move its overseas escrow account to a local escrow account in a Foreign Exchange Bank within 90 (ninety) days of GR 1/2019 coming into effect.

Under PBI 21, certain exemptions apply for DHE SDA of the Government that is received through Bank Indonesia or DHE SDA that is received in cash. Further PBI 21 allows the Special Account to be in the form of current account, saving or other type of accounts. An exporter may open more than one Special Account in one or more Foreign Exchange Banks.

3. Supervision

GR 1/2019 names 3 (three) principal authorities to supervise compliance:

- a. The Ministry of Finance: responsible for the supervision of goods exporting activities;
- b. Bank Indonesia: responsible for the supervision of deposits of DHE SDA in the Indonesian financial system and the use of DHE SDA by the exporters and Foreign Exchange Banks in Indonesia;
- c. OJK: responsible for the management of escrow accounts in Foreign Exchange Banks in Indonesia.

4. Sanctions

Under GR 1/2019 the sanctions for non-compliance are administrative fines, followed by an export ban and/or the revocation of the business license, if exporters fail to:

- a. deposit the DHE SDA in the Indonesian financial system;
- b. use their DHE SDA in accordance with GR 1/2019; and/or
- c. open/transfer their overseas escrow accounts to local escrow accounts in Foreign Exchange Banks.

GR 1/2019 only provides an outline of the Indonesian Government's intention to "control" and benefit from DHE SDA. This intention was expressed in the Indonesian Government's 16th Economic Reform Package back in November 2018. Stakeholders can expect further implementing regulations on the impact of this export proceeds policy. We can also expect incentives for exporters who comply with this policy to be provided in future regulations.

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