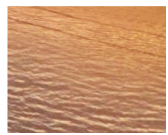


PwC Indonesia Legal Alert

September 2023 / No. 19



Foreign Exchange Export Proceeds from Business, Management, and/or Processing of Natural Resources ^{P1}

Foreign Exchange Export Proceeds from Business, Management, and/or Processing of Natural Resources

On 12 July 2023, the Government of Republic Indonesia issued GR No. 36 of 2023 regarding Foreign Exchange Export Proceeds from Business, Management, and/or Processing of Natural Resources (“**GR 36/2023**”), which has been effective as of 1 August 2023. This GR 36/2023 stipulates new stricter requirements for exporters of natural resources to deposit their foreign exchange export proceeds (*Devisa Hasil Ekspor dari Barang Ekspor Sumber Daya Alam* – “**DHE SDA**”) in the Indonesian financial system. GR 36/2023 aims to:

- a. encourage sources of financing for economic development;
- b. encourage investment and working capital financing for the acceleration of natural resource downstreaming;
- c. increase investment and export performance from the business, management and/processing of natural resources; and
- d. support the realization of domestic macroeconomic and financial market stability.

To implement GR 36/2023, Bank Indonesia and the Minister of Finance (“**MOF**”) issued the following regulations which further regulates the requirements relating to DHE SDA:

- a. Bank Indonesia Regulation No. 7 of 2023 regarding Foreign Exchange of Export and Foreign Exchange of Import Payment (“**BI Regulation 7/2023**”);
- b. Decree of Minister of Finance No. 272 of 2023 regarding the Stipulation of Types of Natural Resource Export Goods with the Obligation to Deposit Foreign Exchange Export Proceeds into the Indonesian Financial System (“**MOF Decree 272**”);
- c. Regulation of Minister of Finance No. 73 of 2023 regarding Imposition and Revocation of Administrative Sanctions for Violation of Provisions on Foreign Exchange Export Proceeds from Business, Management and/or Processing Activities of Natural Resources (“**PMK 73/2023**”); and
- d. Regulation of Members of Board of Governors of Bank Indonesia No. 4 of 2023 regarding Foreign Exchange Proceeds of Export and Import Payment (“**PADG 4/2023**”).

Pursuant to GR 36/2023 in conjunction with BI Regulation 7/2023, exporters of natural resources (*Sumber Daya Alam* or “**SDA**”) must deposit or place its DHE SDA into a special account opened at (i) Indonesian Export Financing Agency (*Lembaga Pembiayaan Ekspor Indonesia* or “**LPEI**”), and/or banks conducting activities in foreign exchanges (“**DHE SDA Special Account**”).¹

Criteria of SDA exporters subject to the deposit obligation

The obligation to deposit or place DHE SDA in the DHE SDA Special Account is applicable to SDA exporters with the following criteria:

- a. have a DHE SDA with an export value of at least USD250,000 (or its equivalent) in its Export Customs Notice (*Pemberitahuan Pabean Ekspor* – “**PPE**”);
- b. exporters of commodities in mining, plantation, forestry, and fishery sectors with types of commodities as determined under MOF Decree 272.²

GR 36/2023 in conjunction with BI Regulation 7/2023 further stipulate that exporters with an export value of less than USD250,000 (or its equivalent) may deposit/place its DHE SDA into the DHE SDA Special Account on voluntary basis. For such exporters, the DHE SDA Special Account shall be opened at foreign exchange banks.

Additionally, GR 36/2023 also provides that the deposit/placement of DHE SDA is not required for the following:

- a. export that is conducted not for the purpose of carrying out business activities as set out in the provisions of laws and regulations in the trade sector, in which there is no foreign exchange traffic; or
- b. trade compensation (*imbal dagang*) in the form of barter in accordance with the provisions of laws and regulations.

Procedure of DHE SDA deposit/placement

The DHE SDA must be deposited by the exporters of natural resources to the DHE SDA Special Account no later than the end of the third month following the registration of the exporters’ PPE. DHE SDA Special Account opened in banks may be in the form of checking account (*rekening giro*), saving account, or other accounts that may be used to make transactions. SDA exporters may open more than one DHE SDA Special Account at LPEI and/or banks conducting activities in foreign exchanges (including at a different bank). Pursuant to PADG 4/2023, exporters may open a new account or use an existing account as the exporter’s DHE SDA Special Account.

Furthermore, **at least 30%** of the DHE SDA must remain in one of the following financial instruments for at least 3 months since it is being deposited:

- a. the same DHE SDA Special Account opened at the LPEI or at a foreign exchange bank;
- b. banking instruments, i.e, foreign exchange time deposit;
- c. financial instruments issued by LPEI, i.e, promissory note in foreign exchange;

¹ Pursuant to Article 18 of BI Regulation 7/2023, DHE SDA is required to be deposited in the DHE SDA Special Account opened at LPEI for export transactions by LPEI’s debtors. In the event that the DHE SDA is received in the form of cash domestically, the SDA exporters must deposit the DHE SDA into a DHE SDA Special Account opened at banks conducting activities in foreign exchanges.

² MOF Decree 272 revoked MoF Decision No.744/KM.4/2020 by adding 260 items categorized as DHE SDA.

- d. financial instruments issued by Bank Indonesia, i.e. conventional open market operation term deposit in foreign exchange in Bank Indonesia; and/or
- e. other instruments as stipulated by Bank Indonesia.

Additionally, according to BI Regulation 7/2023, any transfer to or receiving of funds to the DHE SDA Special Account must be informed by the SDA exporters to the LPEI and/or the relevant bank.

Use of deposited DHE SDA and incentives

Pursuant to BI Regulation 7/2023, DHE SDAs deposited and/or placed in the banking and financial instruments mentioned above have several benefits for the exporters, among other things, funds deposited into a DHE SDA Special Account could be used for a forex swap transaction between the exporters and banks, and may also be used by the exporters as a loan security (in rupiah currency). Furthermore, they also can be used by banks as underlying transaction for hedging swap transaction between banks and Bank Indonesia.

Furthermore, according to GR 36/2023, DHE SDAs deposited and/or placed in the DHE SDA Special Account can be used by exporters for the payment of export duty and other levies in export sector, loan, import, profits/dividends, and/or other needs for investment (i.e. transfer of DHE SDA to other party). The use of DHE SDAs deposited and/or placed in the DHE SDA Special Account must be conducted by taking into account the requirement to deposit and/or place at least 30% of the DHE SDA in the DHE SDA Special Account for at least 3 months.

Pursuant to BI Regulation 7/2023, Bank Indonesia may provide incentives for DHE SDAs that are deposited in the DHE SDA Special Account placed on:

- a. the term deposit of conventional open market operation in a foreign currency at Bank Indonesia; and/or
- b. the instruments issued by Bank Indonesia.

The Government also provides incentives for the exporters and to the income arising from the financial instruments by reducing the final tax on the interest.

Sanctions

Based on GR 36/2023, upon failure of the exporters of natural resources to conduct the certain obligations based on the monitoring and supervision by Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) and Bank Indonesia, administrative sanctions in the form of export services/facilities suspension may be imposed. This includes for:

- a. failure to deposit DHE SDA on special accounts;
- b. failure to deposit DHE SDA of at least 30% of their export proceeds and below 3 months; and/or
- c. failure to create an escrow account on or transfer overseas escrow account to LPEI and/or certain banks conducting activities in foreign exchanges.

Furthermore, PMK 73/2023 stipulates that OJK and/or Bank Indonesia may revoke the administrative sanction imposed on an exporter if the outstanding obligations have been fulfilled.

This Legal Alert is only intended to give an overview of several amended provisions and regulations related to employment. It may not cover all updates related to employment. Please do not hesitate to contact us if you need more detailed advice or have specific questions.

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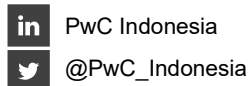
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