Client Alert
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Onshoring Export Proceeds: New Implementing Regulations

Recent developments

The Government has issued new implementing regulations on retaining export proceeds onshore, to implement Government Regulation No. 1 of 2019 on Export Proceeds from Exploitation, Management and/or Processing Activities of Natural Resources (**GR 1/2019**) - see our previous client alert.

Key implications

Although these new implementing regulations confirm that there is no minimum period within which to deposit the Export Proceeds in Indonesia or to convert foreign currencies into Rupiah, they clearly reflect the Government's intention to ensure and monitor sustainable foreign exchange reserves sourced from the natural resources sector. Further details are also provided on the types of goods that are subject to this obligation, applicable sanctions for non-compliance and requirements to provide underlying reasons along with the relevant supporting documents to supervise activities in the Proceeds Account.

What's new

The implementing regulations are as follows:

- BI Regulation No. 21/3/PBI/2019 on Receipt of Export Proceeds from Exploitation, Management and/or Processing Activities of Natural Resources (**PBI 21/2019**)[1]
- MOF Regulation No. 98/PMK.04/2019 on Administrative Sanctions in the form of Fines for Breach of Requirements relating to Export Proceeds from the Exploitation, Management and/or Processing Activities of Natural Resources (**PMK 98/2019**)[2]
- MOF Decree No. 1523/KM.4/2019 listing the Natural Resources Export Goods that are Subject to the Obligation to Deposit Export Proceeds in the Indonesian Financial System (**KMK 1523/2019**)[3]

[1] PBI 21/2019 was officially published in BI's website on 16 May 2019. However, it came into force when it was promulgated on 18 January 2019.
[2] PMK 98/2019 came into force on 1 July 2019.
[3] KMK 1523/2019 came into force on 1 July 2019.

- Members of Board of Governors Regulation No. 21/15/PADG/2019 on Receipt of Export Proceeds from Exploitation, Management and/or Processing Activities of Natural Resources (**PADG 21/2019**)[4]

We set out below a brief discussion on each regulation.

PBI 21/2019

GR 1/2019 requires export proceeds from the sale of natural resources to be parked onshore in a special account with an FX Bank (**Proceeds Account**). PBI 21/2019 clarifies that this obligation is not applicable to Export Proceeds that are: (i) owned by the Government and received through BI, or (ii) received in cash (banknotes or coins) domestically.

PBI 21/2019 clarifies that exporters may open more than one Proceeds Account in more than one FX Bank by providing supporting documents and a statement letter that states that the applicant is an exporter.

Under PBI 21/2019, FX Banks need to ensure that applicants applying for Proceeds Accounts are valid exporters. The FX Banks also need to ensure the Proceeds Account are flagged in their internal systems, and ensure that any incoming funds are only sourced from Export Proceeds[5].

GR 1/2019 also provides that Export Proceeds must be received no later than the end of the third month after the registration of the relevant export customs declaration. PBI 21/2019 goes on to stipulate that a longer period is allowed for the receipt of Export Proceeds that are sourced from usance L/Cs or term L/Cs, consignment (*konsinyasi*), open accounts (*pembayaran kemudian*), and/or collection accounts. Funds from these sources must be received no later than 14 calendar days after the payment due date.

The amount of Export Proceeds received in the Proceeds Account must be consistent with the export value[6]. If the value of those proceeds differs from the export value by more than the allowable limit, the exporters will be required to provide documents justifying the difference.

PBI 21/2019 provides that any transfer from a Proceeds Account can only be conducted for specific purposes[7]. For transfers greater than US$100,000, exporter must also submit the relevant supporting documents to the FX Bank for the FX Bank to carry out the transfer. If the registered value of the export customs declaration is more than (or equivalent to) US$10,000, the exporters must also provide the FX Bank with the following:

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[4] PADG 21/2019 came into force on 19 July 2019.

[5] If the incoming funds are not sourced from Export Proceeds, the exporters must relocate the funds from the Proceeds Account.

[6] i.e., the FOB (*free on board*) export value as mentioned in the export customs declaration.

[7] i.e., to pay export duties and other export-related levies; to repay loans; to acquire imported goods; to pay dividends and in relation to other investment purposes under Article 8 of the Investment Law - see our previous client alert.

- information on each incoming fund transfer and/or outgoing transfer through the Proceeds Account
- information set out in the relevant export customs declaration for the Export Proceeds

BI is responsible for ensuring compliance with these requirements, and is entitled to appoint third parties to investigate such compliance. Failure to comply (either by exporters or FX Banks) is subject to administrative sanctions[8], including written warnings, fines, export prohibitions and/or the revocation of business licenses (as applicable).

PMK 98/2019

Under this PMK, the MOF has specified sanctions for breach of the obligations set out in GR 1/2019:

- If the exporters do not deposit Export Proceeds in the Proceeds Account within the timelines set out above, administrative fines may be levied at 0.5% of the Export Proceeds not deposited.
- If exporters use Export Proceeds in the Proceeds Account for any purpose other than the permitted ones, fines equal to 0.25% of the Export Proceeds will be levied on those amounts.
- If payments are made for a permitted use, but are not made through an FX Bank, the applicable administrative sanction will be the postponement of the export related customs services (in effect, curtailing those services).

The head of the customs office will determine the sanctions to be imposed on exporters based on the BI or OJK investigations.

KMK 1523/209

Under KMK 1523/2019, the MOF has stipulated for which goods Export Proceeds need to be deposited in the Indonesian financial system. These include coal, minerals, and oil and gas. Click on this link for a list of those goods.

PADG 21/2019

PADG 21/2019 more comprehensively elaborates the provisions of PBI 21/2019, and includes definitions of undefined terms used in PBI 21/2019 and case study examples of how the provisions are to be implemented in practice.

Further details are also provided on the determination of the payment due date of L/Cs, consignment, open accounts and collection accounts that is later than the end of the third month after the registration of the relevant export customs declaration.

[8] Including under BI Regulation No. 18/10/PBI/2016 on Supervision of Foreign Exchange Traffic Activities of Banks and Customers.

As an example, in the case of payment through L/C, the payment due date must be in accordance with the tenor of the L/C. Accordingly, if an importer opens an L/C under which payment is due 180 days after the shipment date of the goods listed in the bill of lading, and the relevant shipment date is 10 July 2019, the payment due date is 6 January 2020. Since the funds must be received in the Proceeds Account no later than 14 calendar days after the payment due date, the Export Proceeds are required to be deposited in the relevant FX Bank no later than 20 January 2020.

Conclusion

While this suite of new regulations does not introduce any new concepts with regards to the treatment of Export Proceeds, it does further signal the Government's determination to 'bank' Export Proceeds in Indonesia, and provides further, useful, clarification to exporters in this regard.

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