

Minister of Finance Issues Second Amendment to Technical Guidelines on Financial Information Disclosure

by Vincent

On 19 February 2018, the Minister of Finance (“**MoF**”) issued MoF Regulation No. 19/PMK.03/2018 (“**MoFR No. 19/2018**”) regarding the Second Amendment to MoF Regulation No. 70/PMK.03/2017 in respect of Technical Guidelines on Financial Information Disclosure for Tax Purposes (“**MoFR No. 70/2017**”). MoFR No. 19/2018 was promulgated and became effective on 19 February 2018. The second amendment under MoFR No. 19/2018 complements the MoF Regulation No. 73/PMK.03/2017 (“**MoFR No. 73/2017**”) regarding Amendment to MoFR No. 70/2017.



Pursuant to MoFR No. 70/2017 and MoFR No. 73/2017, the Directorate General of Taxation (“**DGT**”) has the authority to acquire access to financial information for tax purposes from financial service institutions (“**FSI**”). Such disclosure may be conducted through domestic disclosure of financial information mechanisms (national taxation purposes) or through Automatic Exchange of Information (“**AEoI**”). With regard to national taxation purposes, MoFR No. 73/2017 amends the minimum threshold for reported financial accounts managed by FSI from Rp200,000,000.00 (two hundred million rupiah) to Rp1,000,000,000.00 (one billion rupiah). This threshold applies to bank (financial accounts owned by an individual), the insurance sector, and the cooperative sector.

Such threshold is not applicable for capital markets, futures trading commodities, and financial accounts owned by entities. Under the MoFR No. 19/2018, financial accounts owned by individuals (who have passed away) which are regarded as reportable include inheritances that have not been shared.

As for AEoI purposes, financial accounts owned by entities and pre-existent before 1 July 2017, are required to conduct compulsory reporting in the event of having an aggregate balance in excess of USD250,000. There will be no minimum balance limits for financial accounts owned by entities which are opened after 1 July 2017. However, pursuant to MoFR No. 19/2018, an exception is granted for financial accounts that must be reported in one or more pre-existent financial accounts held by one entity with an aggregate balance/value of not more than USD250,000 on 30 June 2017, 31 December 2017, and 31 December of every subsequent calendar year.

Based on the regulations, the FSI is required to report the financial information for every financial account

which is regarded as reportable to DGT in accordance with the Common Reporting Standard (locally known as *Standar Pelaporan Umum* or “**CRS**”). Under the MoFR No. 19/2018, reports containing financial information for international agreement implementation shall also be prepared, based on CRS.

Additionally, MoFR No. 19/2018 added a self-certification requirement. The FSI is required to perform self-certification for the opening of certain financial accounts owned by an individual or entity. Such obligation shall be as follows:

- request for self-certification by the prospective financial account holder;
- performance of clarification of reasonableness on the abovementioned self-certification, including documentation compiled in accordance with anti-money laundering/-Know Your Client principles;
- determination of the country of domicile of the financial account holder based on self-clarification and the result of the reasonableness clarification.

President Issued Presidential Decree on Beneficial Ownership

by Vincent

On 1 March 2018, President Joko Widodo issued Presidential Decree No. 13 of 2018 regarding the Application of Principles of Corporate Beneficial Ownership in the Framework of Prevention and Eradication of the Criminal Acts of Money Laundering and Terrorism Funding. (“**PD No. 13/2018**”). PD No. 13/2018 was promulgated and became effective on 5 March 2018.

PD No. 13/2018 sets out the criteria in determining the beneficial owner of several institutions including limited liability companies, foundations, associations, cooperatives, limited partnerships, firms, and other forms of corporation (altogether defined here as the “**Corporation**”). For instance, the criteria of the beneficial owner of a limited liability company shall be as follows:

- owns more than 25% (twenty five percent) shares as stated in its articles of association;
- owns more than 25% (twenty five percent) voting rights as stated in its articles of association;
- obtains more than 25% profit or earnings of the limited liability company's profit or earnings annually;
- possesses the right to appoint, replace, or dismiss members of the board of directors and board of commissioners;
- possesses the authority or power to influence or control the limited liability company without having to obtain authorization from any party;
- obtains benefit from the limited liability company; and/or
- is the true owner of the fund for the ownership of shares of the limited liability company.

PD No. 13/2018 requires the Corporation to submit their respective benefi-



cial owners' identities to the authorities. The Corporation is also required to update the submitted information on an annual basis.

The Corporation determines their beneficial owners through the information obtained from the following documents:

- articles of association including its amendment and/or deed of establishment;
- Corporation establishment agreement;
- documents of general meeting of shareholders resolutions, foundation organ meeting documents, board meeting resolution documents, or member meeting documents;
- information from authorized institutions;

- information of private institutions that accept placement or transfer of funds in relation to the sale and purchase of shares of a limited liability company;
- information of private institutions that provide corporate benefits to the beneficiary owner(s);
- statement of the members of the board of directors, members of the board of commissioners, supervisors, administrators, and/or officials/employees of the Corporations that can be held true;
- documents owned by a Corporation or a party that indicates that the individual referred to is the true beneficial owner of the funds of a shareholding of a limited liability company;
- documents owned by the Corporation or any other party indicating that the individual referred to is the true owner of funds or other assets or participation in the Corporation; and/or
- other information that can be held accountable for its truth.

This enactment of PD No. 18/2018 is one of the commitments shown by the Government of the Republic of Indonesia in implementing the Automatic Exchange of Information as well as to fight tax evasion and tax avoidance.

Oil and Natural Gas Support Business Activities

by Monica Sonya Ginanti

In order to create an independent, transparent, competitive, efficient oil and natural gas industry and encourage the development of its national role and potential, the Minister of Energy and Natural Resources of the Republic of Indonesia (“**Minister**”) issued a new regulation on oil and natural gas support business activities. It is Regulation of Minister of Energy and Natural Resources of the Republic of Indonesia No. 14 of 2018 on Oil and Natural Gas Support Business Activities (“**the Regulation**”). The Regulation itself was issued in Jakarta on 21 February 2018.

Oil and natural gas business activities may be conducted by a company or a person. The company is defined as: (i) domestic investment company; and (ii) foreign investment company (“**Company**”). Meanwhile, a person as defined in the Regulation as: (i) individual; (ii) limited partnership; and (iii) firm which has certain skills to provide oil and natural gas non-construction services business activities (“**Person**”). Oil and natural gas business activities as defined in the Regulation are: (i) oil and natural gas construction services business; (ii) oil and natural gas non-construction services business; and (iii) oil and natural gas industry support business.

To develop and increase the capability of oil and natural gas support business, the Directorate General who is in charge of the supervision of oil and natural gas areas (“**Directorate General**”) will issue a Letter of Oil and Natural Gas Support Business Capability (“**Letter**”) for a Company or a Person. A Company or a Person shall register on an online system provided by the Directorate General. After the registration, a Company or a Person shall fulfill the terms and conditions determined by the Directorate General and declare the validity of the documents submitted.



The Directorate General will evaluate the documents submitted by the Company or the Person and if such documents are complete and valid, then the Directorate General will issue the Letter within 3 (three) business days.

The development and supervision of oil and natural gas support business will be conducted by the Minister i.e. the Directorate General. A Company or a Person who has obtained the Letter shall submit a report regarding the implementation of oil and natural gas support business to the Directorate

General every 6 (six) months once or anytime needed. The Directorate General also has the authority to impose administrative sanctions on the Company or the Person who does not fulfill the terms and conditions determined by the Directorate General, and declare the validity of the documents submitted. Administrative sanctions may be in the form of: (i) written warning; (ii) temporary suspension of Letter; and/or (iii) revocation of Letter.

Minister of Energy And Mineral Resources Regulation on the Procedures for Area Granting, Licensing and Reporting of Mineral and Coal Mining Business

by Galih Adi Prasetya

On 21 February 2018, the Ministry of Energy and Mineral Resources of the Republic of Indonesia issued Minister of Energy and Mineral Resources Regulation No. 11 of 2018 on the Procedures for Area Granting, Licensing and Reporting of Mineral and Coal Mining Business (“**Regulation No. 11/2018**”). The main objective of this Regulation is to codify and simplify the provisions regarding the procedures for conducting mineral and coal mining business, incorporating them into a single regulation. Furthermore, this Regulation is intended to enhance efficiency and effectiveness in conducting mineral and coal mining business.



Regulation No. 11/2018 governs several provisions that differ from previous regulations, such as:

- the preparation and authorization of Mining Permit Areas and Special Mining Permit Areas in Special Mining Areas (as stipulated in article 3 of Regulation No. 11/2018);
- the procedures for authorization of Nonmetal Mineral Mining Permit Areas and/or Rock Mining Permit Areas (as stipulated in article 14 and 15 of Regulation No. 11/2018);

- the procedures for authorization of Special Mining Permit Areas through a bidding process (as stipulated in article 30 and 30 (2) of Regulation No. 11/2018);
- the procedures for authorization of mining permits (authorization of Exploration Special Mining Permits in article 38 and 39 (4) of Regulation No. 11/2018; authorization of Production Operation Mining Permits specifically for haulage and sale in article 50 and 51 (1) of Regulation No. 11/2018; and authorization of Production Operation Mining Permits specifically for sale in article 57 of Regulation No. 11/2018; and
- the provisions for the submission of Annual Working Plan and Budgets Report in written format (as stipulated in article 77 of Regulation no. 11/2018).

Other than the aforementioned provisions, Regulation No. 11/2018 also introduces a new provision regarding the Information System of the Mineral and Coal Annual Working Plan and Budgets Report (“**Information System**”), to be arranged by the General Director on

behalf of the Minister of Energy and Mineral Resources. The purpose of this Information System is to integrate and synchronize the format and reporting processes of the Annual Working Plan and Budgets Report (as stipulated in article 93 of Regulation No. 11/2018). The Information System must be established by no later than 2 (two) years from the enactment of this Regulation (as stipulated in article 113 of Regulation No. 11/2018).

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