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Import and Export of Fuel: New Regulations

by Galih Adi Prasetya

In March 2019, the Minister for Trade enacted a new regulation to reconcile procedures relating to import and export of oil, gas and other fuel (the ***Regulation***).* The purpose of the Regulation is not only to bring together regulatory requirements relating to import/export of fuel but also to streamline administrative processes through the use of the online single submission system (the ***OSS system***). The hope is that the Regulation will help to maintain a sustainable fuel supply in Indonesia.

The Regulation requires that all licenses necessary for the import or export of oil, gas and other fuel must be carried out online through the OSS system including applications:

- to be designated as a Registered Exporter for oil, gas or other fuels;
- for Import and Export Approval for oil, gas or other fuels; and
- to obtain a ministerial recommendation to support the import/export business plans.

The Regulation also introduces new obligations on export/import of fuel, such as:

- a new classification for certain importers/exporters;
- requirements that licenses must have accompanying customs documents;
- new technical requirements in relation to the verification and testing of the fuel to be importer/exported;
- new provisions relating to the import/export of fuel by entities wholly or partially owned by the government; and
- special exemptions for certain categories for fuel.

Image source: automotive-fleet.com

Licenses granted prior to 22 March 2019 (the commencement of the Regulation) will remain valid until expiry, after which, the applicants must apply in accordance with the new Regulation.

*The Minister for Trade Regulation No. 21 of 2019 on the Export and Import Provisions for Oil, Gas, and other fuels.

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Foreigners: New Regulations on Doing Business in Indonesia

by Galih Adi Prasetya

The increasing number of cross-border business models in Indonesia has meant that more non-Indonesians are profiting from carrying out business in Indonesia. Generally, foreigners that carrying out business in Indonesia will be categorized as a Bentuk Usaha Tetap, otherwise known as a Permanent Establishment. This Permanent Establishment categorizatio1n can cover any form of business used by foreigners to carry out business in Indonesia.

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The Minister for Finance has issued a new regulation to clarify the procedures and obligations relating to the Permanent Establishment classification (the ***Regulation***).*

The Regulation expands the scope of those that may be classified as a Permanent Establishment to those that, with some exceptions:

- own a permanent place of business in Indonesia;
- engage in construction projects, installation, or assembly projects;
- engage in the provision of services for more than 60 (sixty) days within any 12 month period;
- act as agents; and
- act as insurance agents or employees of foreign insurance companies that sell insurance premiums in Indonesia or sell insurance premiums to those that reside, are domiciled or stay in Indonesia.

The Regulation has also updated several current statutory obligations on those classified as a Permanent Establishment, including the introduction of the obligation for foreigners who are subject to tax in Indonesia to obtain:

- a Taxpayer Registration Number; and
- confirmation that their business is categorized as a Taxable Entrepreneur in relation to the sale of any products to which value added tax applies.

*The Minister for Finance Regulation No. 35/PMK.03/2019 of 2019 on the Determination of Permanent Establishment.

Activity Reports for Offshore Loans and Risk Participation Transactions

by Margareth Nita Gunawan

On 1 March 2019, Bank Indonesia's Board of Governors issued Regulation 21*, revoking the Previous Regulation**. Regulation 21 is intended to improve the quality of information provided to the government, in the form of reports, on Indonesians' participation in offshore loans and similar transactions.

Regulation 21:

- regulates report types and sets out criteria for reports;
- introduces new categories of reports;
- sets out reporting procedures;
- lists report submission periods;
- sets out the procedures for report corrections;
- lists the government departments responsible for the supervision of reporting procedures;
- lists sanctions for breach of the obligations; and
- defines force majeure events that would excuse non-compliance.

Regulation 21 requires all eligible parties to submit to the relevant government authority reports outlining details of any Offshore Loans (*Utang Luar Negeri* - **ULN**) and/or Risk Participation Transactions (*Transaksi Partisipasi Resiko* - **TPR**).

In addition to the general reporting requirements, Regulation 21 specifies that the following entities that participate in OffShore Loans and/or Risk Participation Transactions must submit a report to Bank Indonesia:

- banks that either are headquartered in Indonesia, have a branch office in Indonesia or act as a coordinator for foreign banks. These types of report have no minimum value threshold;
- non-bank financial institutions, non-financial business entities, and other entities. These types of reports have no minimum value threshold in relation to

image source: www.etftrends.com

Offshore Loans and/or Risk Participation Transactions;

- individuals, in relation to any Offshore Loans exceeding USD 200,000 or its equivalent; and
- any surviving or successor company post-merger (or equivalent) with an eligible party.

Regulation 21 includes several types of reports that are essentially the same as those required under the previous legislation including:

- reports on primary ULN and/or TPR data;
- reports on ULN and/or TPR data recapitulations;
- plans and transactions relating to withdrawals and/or ULN and/or TPR payments; and
- the balance and any amendments to ULN and/or TPR; and
- reports on new ULN plans and/or their amendments.

Any report must include details of the instrument that created the loan or risk participation activity, including:

- loan agreements;
- debt securities (e.g., letters of credit, imports with banker's acceptance, etc.); and
- trade credits (e.g., down payments for goods or services which have not yet been handed over).

Any ULN carried out by banks which relate to interbank call money, time deposits, demand deposits (giro) and savings are not subject to the reporting obligation set out above.

Regulation 21 provides for different sanctions for breach for different categories of reporting parties. In particular, lesser sanctions for breach are provided for:

- reporting parties that are submitting reports for the first time since the enactment of Regulation 21;
- reporting parties that have recommended eligible activities after a one-year hiatus; and
- reporting parties that are submitting reports for the first time since the commencement of eligible activities.

All reports, including corrections and any supporting documents and/or written clarifications, can be submitted online to Bank Indonesia via: https://www.bi.go.id/lk-pbuv2.

*Bank Indonesia's Board of Governors has issued Regulation No. 21/4/PADG/2019 on Activity Reports for Foreign Exchange Traffic in the Form of Offshore Loans and Risk Participation Transactions.

**Circular of Bank Indonesia No. 15/16/DInt on Activity Reports for Foreign Exchange Traffic in the Form of Offshore Loan Realizations and Balances and Circular of BI No. 17/4/DSta on Activity Reports for Foreign Exchange Traffic in the Form of Offshore Loans Plans and Amendments to Offshore Loans Plans.

Import/Export Storage Facilities: New Regulations

by Stanley Patria Armando

The Director General of Customs has issued new regulations relating to the supervision of storage facilities used to store imported goods or goods for export (the ***Regulations***).* The Regulations describe two types of facilities, they are bonded storage facilities (**TPB**) and export/import (**KITE**) facilities.

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The purpose of the Regulations is to ensure proper supervision of those entities that operate TPB and KITE and to ensure regulatory compliance.

In relation to KITE facilities, the Regulations provide:

- import duty, value added tax and sales tax exemptions on stored imported luxury goods and on materials to be processed into, assembled into or installed on other goods for export purposes;
- a refund of any import duty paid on stored goods and/or materials to be processed into, assembled into or installed on other goods for export purposes;
- import duty, value added tax and sales tax exemptions on stored luxury goods for import purposes and on material or machinery used by small or medium size enterprises for export purposes.

The Regulations introduce self-monitoring obligations for operators of TPB and KITE facilities. These self-monitoring obligations include:

- reconciling hard copy and electronically stored inventories;
- reconciling customs notifications with electronically stored inventories; and
- other matters, as determined by the person in charge of the entity operating the TPB and/or the KITE facilities.

The Regulations provide that the Customs Office will carry out general monitoring of facilities. Failure to comply with regulatory provisions, as determined by the Customs Office, can lead to a range of sanctions varying in severity from recommendations up to revocation of licenses required to conduct business.

*Regulation No. PER-02 / BC / 2019 concerning Implementation of Monitoring and Evaluating on the Recipient of Bonded Zone Facilities and Ease of Import for Export Purpose Facilities.

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