

Indonesia Requires Exporters to Retain 30% of Their Earnings from Export of Natural Resources Domestically



Starting from 1 August 2023, exporters of natural resources products, namely those generated from mining, plantation, forestry, and fishery businesses, must place at least 30% of the proceeds generated by them from the export of natural resources products (these proceeds are referred to as DHE SDA or *Devisa Hasil Ekspor dari Barang Ekspor Sumber Daya Alam*) in the country's financial system. This requirement is introduced under Government Regulation No. 36 of 2023 on Export Proceeds from Natural Resources Business Activities, Management, and/or Processing ("**Regulation**").

Despite Indonesia seeing an increased growth of the export of natural resources products, this growth has not been accompanied by a growth in DHE (*devisa hasil ekspor* or foreign exchange proceeds from export). This is because exporters often choose to keep their DHE offshore, citing a more competitive interest rate and convenience in operation as their reasons in doing so. As a result, Indonesia's rapid growth in exports is not reflected with proportional growth of DHE placed in domestic storages which may adversely affect the nation's profitability.

As we will discuss below, the government has adopted a "reward and punishment" approach in the Regulation by introducing incentives for exporters, as well as sanctions.

Application and Exemptions

Under the Regulation, at least 30% of DHE SDA must be placed in the country's financial system through an account (referred to as a special DHE SDA account in the Regulation). That 30% must remain in the DHE account for at least three months from the initial date of placement.

Exporters that will be affected under the Regulation are those who record DHE SDA of at least USD250,000 (or its equivalent in another currency) in their Exports Custom Notification (*Pemberitahuan Pabean Ekspor* or "**PPE**"). Exporters whose DHE SDA is below the foregoing threshold can still place their DHE SDA within the DHE account voluntarily.

DHE SDA can be placed in:

- (a) A specific DHE SDA account in the Indonesian Export Financing Institution (*Lembaga Pembiayaan Ekspor Indonesia* or "**LPEI**") or any bank that conducts foreign currency activities as approved by the OJK (Indonesia's financial services authority), including an offshore branch office of a bank whose central office is in Indonesia ("**SDA Bank**");
- (b) Any banking instruments;
- (c) Any financial instruments issued by LPEI; and/or
- (d) Any instruments issued by Bank Indonesia.

Knowing that exporters must have flexibility to use the DHE SDA that have been placed in the DHE SDA account or instruments and subject to the exporters satisfying the requirement to maintain 30% of the DHE SDA for at least three months, the Regulation allows exporters to use the funds in the DHE SDA account or instruments to pay export duties and other levies, outstanding loans, import, dividends, and other expenses for capital investment purposes.

If the above payments are conducted through escrow accounts, then the exporters are required to open an escrow account in LPEI and/or an SDA Bank. Likewise, exporters who have been using overseas escrow accounts must open an escrow account managed by LPEI and/or an SDA Bank.

While the scope of the Regulation is quite wide, exports that are carried out outside of the context of business activities that do not involve foreign exchange and trades in the form of barter will be excluded from the Regulation. The Regulation also exempts exporters whose PPE have obtained a registration number before 1 August 2023. These exporters will continue to be subject to the previous regime under Government Regulation No. 1 of 2019 on Export Proceeds from the Natural Resources Business Activities, Management, and/or Processing ("**2019 Regulation**"). Moreover, exporters who are being monitored by Bank Indonesia or OJK with respect to their obligations under the 2019 Regulation will be deemed to have fulfilled their obligations thereunder when the Regulation becomes effective.

Introduction of Incentives

To encourage exporters to place their DHE SDA in the DHE account, the Regulation introduces some incentives. First, the exporters will enjoy tax facilities on income generated from DHE SDA placed in LPEI and/or SDA Bank. Moreover, the exporters may also be named as exporters with good reputation based on the laws in the trade sector, which in turn would entitle them to privileges in the application and processing of licences for export and import.

The Regulation also regulates that incentives may be given to LPEI, the SDA Bank, and any exporter that places its DHE SDA in instruments issued by Bank Indonesia.

Relaxed Sanctions

Along with the Regulation, the government also issued Minister of Finance Regulation No. 73 of 2023 on the Imposition and Revocation of Administrative Sanctions for Violation of the DHE SDA Provisions (“**MOF Regulation**”). This MOF Regulation introduces a more lenient approach to sanctions by alleviating the monetary fines under the previous regulation. Now, exporters who fail to comply with the Regulation may be subject to an administrative sanction in the form of suspension of export services. Sanctions will apply to:

- (a) Exporters that fail to place their DHE SDA in a DHE account despite satisfying the USD250,000 (or its equivalent) threshold;
- (b) Exporters that fail to maintain 30% of their DHE SDA in the DHE account for at least three months; and
- (c) Exporters that fail to open or transfer their escrow account to an escrow account managed by LPEI or an SDA Bank.

Key Takeaways

It is hoped that the enactment of the Regulation will propel Indonesia’s economic development to be more in line with export of natural resources products, which continues to enjoy strong growth. For now, the government is focusing on four sectors, namely mining, plantation, forestry, and fishery as they are the largest contributors to the nation’s DHE SDA.

In light of the Regulation, exporters in the foregoing sectors must examine their business plan and make the necessary adjustment on, among others, their cash flow management. It may be the case that as a result of the Regulation, a portion of their DHE SDA that has been earmarked for business support must now be reserved for at least three months.

We expect that the government will issue further implementing regulations in the future to regulate, among others, the details of the incentives offered under this Regulation.

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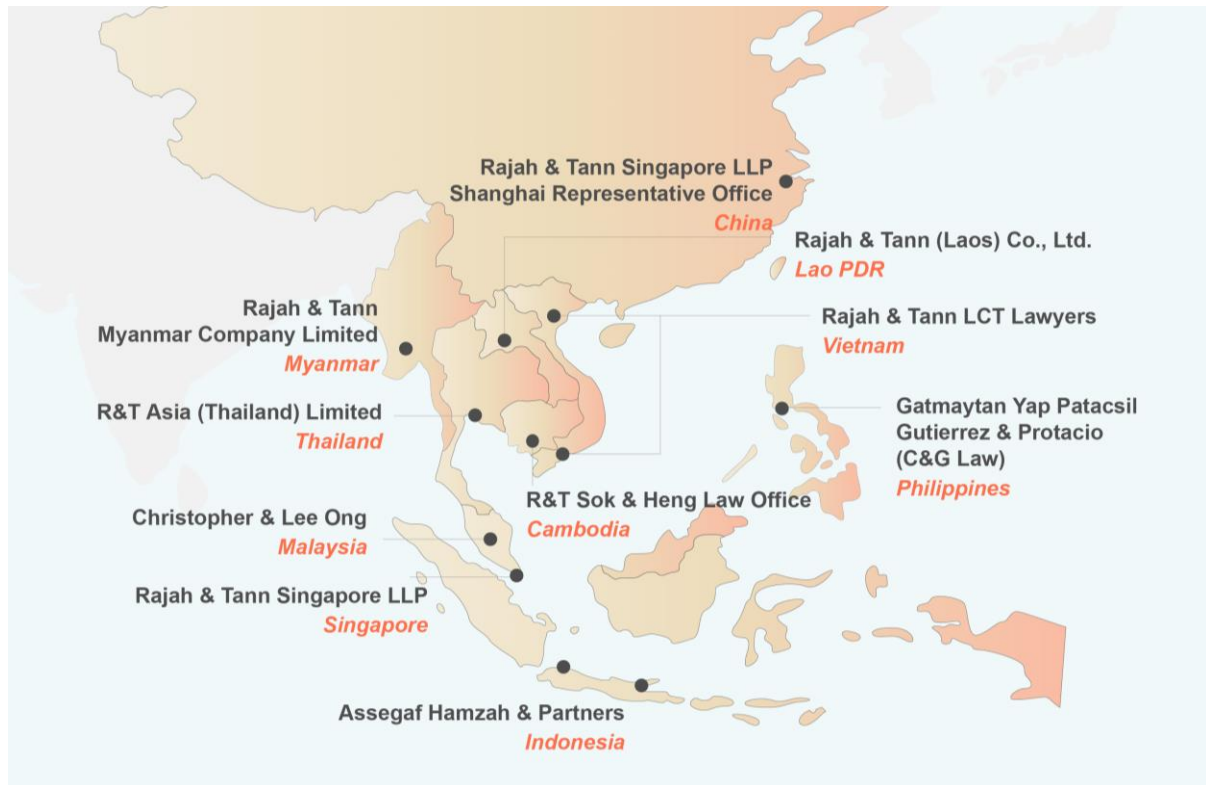
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