



SSEK INDONESIAN LEGAL CONSULTANTS

**COMPLIANCE WITH  
GOVERNMENT REGULATION  
NO. 1/2019**

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# PRESENTATION FEATURES

## WHAT WE WILL COVER TODAY

- Background on the Issuance of GR 1/2019
- Obligations of an Exporter Based on GR 1/2019
- Requirements to Open the Special DHE SDA Accounts
- Supervision and Sanction

# BACKGROUND ON THE ISSUANCE OF GR 1/2019

Before the enactment of Government Regulation No. 1 of 2019 on Export Proceeds from Exploitation, Management and/or Processing Activities of Natural Resources (“GR 1/2019”), Bank Indonesia (“BI”), through BI Regulation No. 13/20/PBI/2011, BI Regulation No. 14/25/PBI/2012 (all revoked), and **BI Regulation No. 16/10/PBI/2014** as amended by **BI Regulation No. 17/23/PBI/2015\***, has required foreign exchange proceeds deriving from the exports of natural resources export goods (“DHE SDA”) to be received through a domestic foreign exchange bank and reported to Bank Indonesia, without imposing any conditions for exporter to transfer out the DHE SDA from the domestic account.

In addition to the BI Regulations above, the Minister of Energy and Mineral Resources, through **MEMR Decree No. 1952/K/84/MEM/2018\*\***, requiring mining companies to use domestic L/Cs and repatriate all proceeds from mineral and coal export to domestic banking accounts or Indonesian banking branches abroad.

\* Regarding Receipt of Foreign Exchange Export Proceeds and Withdrawal of Foreign Exchange External Loans.

\*\* Regarding the Utilization of Domestic Banking or Indonesian Banking Branch Abroad for the Export of Mineral and Coal.

On November 16, 2018, the Coordinating Ministry of Economic Affairs announced the 16th Economic Reform Policy Package consisting of:

- The granting of tax holidays;
- The relaxation of the Negative Investment List; and
- **The Increase of Indonesia's export proceeds from the export of natural resources.**

On January 10, 2019, the Government of Indonesia issued GR 1/2019.

# FURTHER REGULATIONS ON DHE SDA

PBI 21/3/PBI/2019 regarding the Foreign Exchange Receipts from Exports from the Activities of Exploration, Management and/or Processing of Natural Resources, issued on January 18, 2019.

Minister of Finance Regulation No. 98/PMK.04/2019 regarding Tariffs on the Administrative Sanctions in the form of Fines and Procedures for the Imposition, Collection, and Deposit of Administrative Sanctions in the form of Fines for Violations of Foreign Exchange Proceeds from the Export of Natural Resources Exploitation, Management and/or Processing Activities, issued on July 1, 2019.

# Obligations of an Exporter Based on GR 1/2019

**MINING**

**PLANTATION**

**FORESTRY**

**FISHERIES**

DHE SDA in the above sectors needs to be placed into the Indonesian financial system in a special DHE SDA account in an Indonesian foreign exchange bank ("Forex Bank"). A Forex Bank must be licensed by OJK and does not include overseas branch offices of banks with head quarters in Indonesia.

SDA in a special DHE SDA account must be carried out no later than the end of the third month after the Registration of Export Declaration (*Pemberitahuan Ekspor Barang*).

The value of the deposited DHE SDA must be equal with the export value indicated in the Registration of Export Declaration.

**FUNDS DEPOSITED IN A SPECIAL DHE SDA ACCOUNT MAY ONLY DERIVE FROM:**

**DHE SDA**

**Funds from a disbursement of deposit and/or payment of deposit interest deriving from the DHE SDA Account owned by the same Exporter;**

**or**

**Funds from another DHE SDA Account owned by the same Exporter in the same or different bank.**

Such depository must be accompanied with supporting documents that could evidence that the funds are indeed DHE SDA, e.g., Registration of Export Declaration and export sales contract.

## EXCEPTIONS

This obligation does not apply to the following:

- DHE SDA owned by the government, which was received through BI; or
- DHE SDA received in cash domestically as supported by sufficient documentation.

## TAX INCENTIVE

Minister of Finance Regulation No. 212/PMK.03/2018:

1. **DHE SDA Account in USD:** (i) 10% for 1 month, (ii) 7.5% for 3 months, (iii) 2.5% for 6 months, and (iv) 0% for more than 6 months.
2. **DHE SDA Account in IDR:** (i) 7.5% for 1 month, (ii) 5% for 3 months, and (iii) 0% for 6 months and more.



# THE UTILIZATION OF DHE SDA

The DHE SDA placed in the Special DHE SDA account may only be used by the Exporter to conduct payment of the following, by attaching supporting documents:

- Export duties and other levies relating to export activity;
- Loans;
- Imports;
- Profit/dividends; and/or
- Other uses by investor based on the Capital Investment Law, among others:
  - purchase of raw and auxiliary materials, semi-finished or finished goods, or the replacement of capital goods in the framework of protecting the sustainability of the capital investment;
  - funding capital investments;
  - royalties or other payable fees;
  - payments for technical assistance;
  - payments for project contracts; and
  - payments for intellectual property rights.

# ESCROW ACCOUNT

In the event the DHE SDA payment is carried out through an escrow account, the exporter must create an escrow account at a Forex Bank. If an Exporter already has an offshore escrow account before the enactment of GR 1/2019, the Exporter must relocate the escrow account to a Forex Bank no later than 90 (ninety) days as of January 10, 2019.

## VALUE OF DHE SDA

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The value of the DHE SDA received in the special DHE SDA account must be in accordance with the export value, with the following exceptions:

- If the difference is  $\leq$  Rp.50,000,000 (or equivalent): it is considered as in accordance with the export value. No supporting documents required;
- If the difference is  $>$  Rp.50,000,000 (or equivalent) due to:
  - Differences of exchange rate, discounts/rebate (rabat), administration fees and/or other fees related to international trade, which at the maximum 10% of the export value; and/or
  - Toll manufacturing services, repair services, operational leasing or financial leasing, the difference in price, quality, composition, and quantity of goods.

It is considered as in accordance with the export value if the Exporter submits sufficient supporting documents.

The supplementary documents must be provided to the Forex Bank no later than the 5th day of the following month after the DHE SDA is received by the Exporter through the Forex Bank.

## VALUE OF DHE SDA

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- For mining goods, if the value of the DHE SDA is smaller than the export value because the difference in the price, quality, composition and quantity of goods is:
  - ✓ no more than 10% of the export value, then the value of the DHE SDA will be considered as in accordance with the export value; the Exporter is not required to submit supplementary documents; or
  - ✓ larger than 10% of the export value, then the value of the DHE SDA will be considered as in accordance with the export value if the Exporter submits sufficient supplementary documents (such as copy of the invoice, certificate of analysis, and SWIFT message).
- The value of the DHE SDA may be smaller than the export value due to a netting between the export invoice with the export obligation for payment of goods imported related to an export that involves only two parties (or more than two parties if they are within the same group). Netting must be supported by a statement letter to the Forex Bank and sufficient transaction evidence.
- If the value of the DHE SDA (received through a Forex Bank or received by cash) is smaller than the export value with the difference of  $\geq$  Rp.50,000,000 due to the importer's breach of contract, bankruptcy, or force majeure, the Exporter must submit sufficient supporting documents to the Forex Bank:
  - ✓ no later than the third month after the month of the Export Declaration registration; or
  - ✓ no later than 14 calendar days after the due date of the payment, for DHE SDA that is received through the payment of L/C usance, consignment, later payment, and/or collection of which the due date is more than or same with 3 months after the Export Declaration registration.

## **REPORTS**

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There are two types of reports that must be submitted by the Exporter to the Forex Bank:

- Report on the incoming and outgoing of funds from the DHA SDA Account; and
- Report on the information in the Registration of Export Declaration with respect to the DHE SDA received by Exporter.

Such reporting obligation only applies for Registration of Export Declaration with a value of more than US\$10,000 (or equivalent).

## ***REQUIREMENTS TO OPEN SPECIAL DHE SDA ACCOUNT***

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Exporter may open more than one DHE SDA Account in more than one Forex Bank. It may be in the form of either of the following:

- current account (rekening giro);
- savings account (tabungan); or
- other forms of account.

In order to open a DHE SDA Account, an Exporter must submit the following documents:

- supporting documentation showing export on the result of business, management, and/or the processing of natural resources (including the Registration of Export Declaration, export license from the relevant institution, and export sales contract); or
- statement letter which contains a statement that the relevant party is an Exporter.

In addition to documentation on export as mandated by laws and regulations, the procedures to open a special DHE SDA account should only follow that of a general savings account and/or current account.

Description	Bank Mandiri	BCA	BNI
<b>Type of special DHE SDA account</b>	Savings account or current account	Current account	Savings account or current account
<b>Documents required to be submitted to open the account</b>	<ul style="list-style-type: none"> <li>• Application form;</li> <li>• Power of attorney (if delegated);</li> <li>• Bank reference letter;</li> <li>• Deed of Establishment, its amendments, and the Minister of Law and Human Rights approvals / receipt on notification;</li> <li>• Copy of a valid Identification card (KTP) or passport or KITAS of members of the Board of Directors and Board of Commissioners based on the articles of association;</li> <li>• Company Registration Certificate (TDP) or Business Identification Number (NIB);</li> <li>• Trade Business License (SIUP);</li> <li>• Certificate of Domicile (SKDP);</li> <li>• Taxpayer Registration Number (NPWP) of the company;</li> <li>• Photograph of the authorized signee; and</li> <li>• Specimen signature of the signee.</li> </ul>	<ul style="list-style-type: none"> <li>• NPWP of the company;</li> <li>• SKDP from the Sub-District and Building Management;</li> <li>• TDP / NIB;</li> <li>• SIUP;</li> <li>• Bank reference letter;</li> <li>• Deed of Establishment, its amendments, and the Minister of Law and Human Rights approvals / receipt on notification; and</li> <li>• Copy of a valid KTP or passport or KITAS of members of the Board of Directors and Board of Commissioners based on the articles of association; and</li> <li>• Additional information such as the description of field or type of business, person in charge of the account, tenure of the BOD and BOC, name of proxy (if delegated), and the reason for opening the account in the specific branch office).</li> </ul>	<ul style="list-style-type: none"> <li>• NPWP of the company;</li> <li>• SKDP;</li> <li>• TDP / NIB;</li> <li>• SIUP;</li> <li>• Bank reference letter;</li> <li>• Deed of Establishment, its amendments, and the Minister of Law and Human Rights approvals / receipt on notification; and</li> <li>• Copy of a valid KTP or passport or KITAS of members of the Board of Directors and Board of Commissioners based on the articles of association.</li> </ul>
<b>Process</b>	7 business days	2-3 business days	2-3 business days

## ***SUPERVISION***

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- The Minister of Finance will supervise the implementation of the export of goods subject to GR 1/2019.
- BI will supervise Exporters on the implementation of the requirements to place DHE SDA into the Indonesian financial system and the utilization of the DHE SDA through an indirect supervision and/or inspection. In conducting its supervision, BI may request for explanation, evidence, notes, and/or supporting documents, with or with no involvement of the relevant institutions, and carry out other activities stipulated by BI. BI may also request another party to investigate the validity of the supporting documents.
- OJK will supervise escrow accounts.



# SANCTIONS

<b>If based on the results of the supervision by BI and OJK, it is found that the Exporter:</b>	<b>The Exporter shall be subject to the following sanctions:</b>
FAILS TO DEPOSIT THE DHE SDA IN THE INDONESIAN FINANCIAL SYSTEM	<ul style="list-style-type: none"><li>• Administrative sanction in the form of fine amounting to 0.5% of the DHE SDA value not deposited in Forex Bank;</li><li>• Incapacity to export; and/or</li><li>• Revocation of its business license.</li></ul>
UTILIZES THE DHE SDA NOT IN ACCORDANCE WITH THE PROVISIONS OF LAWS AND REGULATIONS	<ul style="list-style-type: none"><li>• Administrative sanction in the form of fine amounting to 0.25% of the value of the DHE SDA utilized;</li><li>• Incapacity to export; and/or</li><li>• Revocation of its business license.</li></ul>
FAILS TO OPEN AN ESCROW ACCOUNT/RELOCATE AN OVERSEAS ACCOUNT TO A BANK	<ul style="list-style-type: none"><li>• Administrative sanction in the form of a postponement of the granting of customs services in the export sector;</li><li>• Incapacity to export; and/or</li><li>• Revocation of its business license.</li></ul>

# *CONTACT US*

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