

## Draft Government Regulation No. 1 of 2019: Domestic Placement of Proceeds from Exports of Natural Resources, Another Attempt to Control Foreign Exchange



As a follow up to the Government's sixteenth Economic Reform Policy Package announced by the Coordinating Ministry of Economic Affairs on 16 November 2018, which consists of the granting of tax holidays, relaxation of Negative Investment List and regulation of Forex from Proceeds from Natural Resources, the Government has issued Government Regulation No. 1 of 2019 ("GR No. 1/2019") which came into effect on 10 January 2019. In general, GR No. 1/2019 required Proceeds or Funds derived from the Export of Natural Resources to be deposited to Indonesia financial system through a local bank.

This measure has been adopted since the exchange rate of the Rupiah has not shown significant recovery against the US Dollar. Darmin Nasution (Coordinating Minister of Economic Affairs) has stated in several media that this regulation was made in order to stabilize the Rupiah exchange rate and to cover the deficit in the balance of trade. Natural resources was selected since the export of natural resources does not need many imports to fulfill its production needs and so the industry should not find this obligation unduly burdensome.

The practical implementation of GR No. 1/2019 will need to wait for a more detailed implementing regulation, which is currently being prepared by the Ministry of Finance and Bank Indonesia as a government regulation only provides general guidelines on the new policy or provisions. GR No. 1/2019 stipulates that the implementing regulation should be issued within 7 days from the effective date of GR No.1/2019. To date, according to our research, the implementing regulation has yet to be announced or issued by the relevant institutions.

### Export Proceeds that must be Deposited to Indonesian Financial System

GR No. 1/2019 requires forex resulting from the export of natural resources to be kept in the Indonesian Financial System ("Forex from Export Proceeds"), Forex from Export Proceeds includes proceeds from the export of mining, plantation, forestry and fishery related goods. Minister of Finance is granted the authority to determine the which specific types of export are subject to the provisions in GR No. 1/2019.

### Deposit of Forex from Export Proceeds

Article 4 of GR No.1 /2019 requires every exporter to deposit its Forex from Export Proceeds in a "special account" in a bank that is licensed by the Financial Services Authority (OJK) to engage in forex business, not including foreign branches of a bank whose head office is located in Indonesia ("Indonesian Forex Bank"). Forex from Export Proceeds must be deposited in such account no later than the end of the third month after the registration of the export customs notification.

### Utilization of Forex from Export Proceeds

The Forex from Export Proceeds deposited or kept in a Special Account may be utilized by the Exporter for the following payments:

- a. customs and other duties related to exports;
- b. loans;
- c. imports;
- d. profits/dividends; and
- e. other purposes of the investor as permitted by the Investment Law such as transfer or repatriation in foreign currency for capital, profits, bank interest, dividends, royalties, other income and expenses, salaries, compensation for loss or take over, technical assistance payment, project payment, loan repayment, purchase of material, investment financing, replacement of capital goods, proceeds from sales of assets, and other permitted purposes.

If the payment mentioned above is made through an escrow account, then the exporter must create the escrow account in an Indonesian Forex Bank. If the escrow account was previously made overseas, then the escrow account must be transferred to a Indonesian Forex Bank no later than 90 days after the enactment of GR No. 1/2019.

### Supervision

The supervisory authority for the enforcement of GR No. 1/2019 is divided among several institutions. The Ministry of Finance will monitor the exports while Bank Indonesia will monitor the deposit of Forex from Export Proceeds in Indonesian Financial System and the utilization of such proceeds. The Financial Service Authority (OJK) is granted the authority to monitor escrow accounts in Indonesian Forex Banks for this purpose.

### Sanctions for Non-Compliance

GR No. 1/2019 provides administrative sanctions in the form of administrative fines, an export ban, and/or the revocation of the business license. Further provisions regarding this sanction will be regulated by the Ministry of Finance and other sectoral Ministries depending on the exporter business.

### What's New?

The obligation for Natural Resources Exporter to deposit its Forex from Export Proceeds in Indonesia is not actually new as it was formerly required under the older Bank Indonesia Regulation No. 16/20/PBI/2014 which came into effect on 14 May 2014 ("PBI 16/2014") and Minister of Energy and Mineral Resources Decree No. 1952K/84/MEM/2018 ("Decree 1952K/2018").

However, both PBI 16/2014 and Decree 1952K/2018 only mentioned that the Forex from Export Proceeds to be "received and "returned" through local forex bank while the GR No.1/2019 use stricter wordings in "deposited/entered" hence provide stricter order for the Exporters to deposit their Forex from Export Proceeds in local forex bank. Further, GR No. 1/2019 also introduce the utilization of "special account" under the supervision of Financial Service Authority which allows the government to have better access in monitoring and tracking the Forex from Export Proceeds.

As for practical enforcement, the Government through Bank Indonesia and the Minister of Finance has created a new monitoring and enforcement system called "Immediately Integrated Forex Information Monitoring System (*Sistem Informasi Monitoring Devisa Terintegrasi Seketika*)". Technically, this system will integrate (i) the flow of documents, goods and funds from the Directorate General of Customs and Excise, (ii) Taxation Data generated from Tax Identification Numbers, (iii) incoming exports and outgoing imports from the financial transaction messaging system, and (iv) forex banks. Through this new monitoring and tracking system, the government wishes to increase the exporters' compliance in placing or depositing the Forex from Export Proceeds in Indonesian Forex Banks.

To achieve its target, the Government is also planning to provide additional benefits for Natural Resources Exporters. The new Minister of Finance Regulation is planned to make it easier for exporters in gaining income tax deduction facilities by placing their Forex from Export Proceeds in Indonesian Forex Banks while Bank Indonesia is also considering incentives for the parking of Forex from Export Proceeds.

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