

Indonesia Regulatory Update

March 2017



Regulatory Highlights

This publication sets out to highlight at summary level, some of the key current regulatory changes in Indonesia. These important changes have implications for industry, covering a wide range of industries and within these, specific and complex business processes. For further details on any of the items covered, a listing of KPMG Contact Points for further discussion is included at the end of the document. Hyperlinks to the source documentation (Bahasa Indonesia for most items) are provided as appropriate.

Regulatory updates covered in this publication are as follows:

- Compensation of Investment Fee in Upstream Oil-and-Gas Activities
- The Use of Services Rendered by Public Accountants and Public Accounting Firms in Financial Services Activities
- Amendment to Indonesian Financial Services Authority (“Otoritas Jasa Keuangan” – “OJK”) Regulation No. 32/POJK.04/2014 regarding the Planning and Implementation of the General Meeting of Shareholders (“GMS”) for Public Companies
- Reports on Ownership or Changes in the Shares Ownership of Publicly Listed Company
- Guideline on the Determination of Permanent Establishment for Foreign Tax Subjects Providing Application or Content Services through the Internet.

Energy and Natural Resources Sector

Compensation of Investment Fee in Upstream Oil-and-Gas Activities

Ministry of Energy and Mineral Resources (“MEMR”) issued regulation No. 26 of 2017 on the Mechanism for Investment Fee Compensation in Upstream Oil-and-Gas Activities. This Regulation has come into

effect as of 30 March 2017.

Under this Regulation, upstream oil-and-gas contractors (“Contractors”) are required to maintain the level of production until the end of the Production Sharing Contracts (“PSC”), and are required to invest in their Working Areas. Contractors will receive compensation fee on their investment throughout the PSC period.

Under the cost recovery scheme, in the event when the PSC has been extended while there is remaining investment fee that has not been compensated, the compensation will continue to be carried throughout the PSC extension period. While under the gross-split scheme, the remaining investment fee that has not been compensated will be calculated as part of Contractors’ takes. In the case when there are new Contractors, the remaining investment fee will also be borne by the new Contractors proportionally according to their respective participating interest.

In the event when the PSC is not extended, the new Contractors will be obliged to compensate the remaining investment fee to the previous Contractors. The compensated amount will be calculated as deduction in the operating cost of the existing Contractors, and will be taken into account as part of the new Contractors’ takes (for cost recovery scheme). While under the gross-split scheme, the compensated amount has been taken into account as part of Contractors’ take and will not affect the calculation of profit splits.

(Issued regulation in Bahasa: [MEMR Regulation No. 26 of 2017](#))

Financial Services

The Use of Services Rendered by Public Accountants and Public Accounting Firms in Financial Services Activities

OJK Regulation No.13 /POJK.03/2017 on the Use of Services Rendered by Public Accountants and Public Accounting Firms in Financial Services Activities has come into effect as of 27 March 2017.

Some of the noteworthy provisions covered in the Regulations are:

- Parties conducting financial services activities (referred to as "Parties") are required to use the services of Public Accountants and Public Accounting Firms which are registered in OJK. Public Accountants and Public Accounting Firms that have registered with OJK prior to the effective date of this Regulation, must re-register within 1 year after this Regulation came into effect.
- The appointment of Public Accountants and Public Accounting Firms will be conducted through GMS by taking into account recommendation from Board of Commissioners ("BOC") and Audit Committee.
- Public Accounting Firms are obliged to submit annual reports which consist of recapitulation of services provided to Parties, as well as incidental reports regarding any changes in the details of Public Accountants or Public Accounting Firms.
- Parties are obliged to submit annual reports on the designation of Public Accountants and Public Accounting Firms (by attaching the document of appointment, as well as the evaluation results and recommendation from Audit Committee).
- Parties are required to limit the use of the audit services from the same Public Accountants to a maximum period of 3 consecutive years (previously 5 consecutive years). Parties who have appointed the same Public Accountants before the effective date of this Regulation will be allowed to use the services from the appointed Public Accountants for 2017 fiscal year. The appointment of Public Accountants for the following year shall refer to this Regulation.

(Issued regulation in Bahasa: [OJK Regulation No. 13/POJK.03/2017](#))

Capital Market

[Amendment to OJK Regulation No. 32/POJK.04/2014 regarding the Planning and Implementation of the GMS for Public Companies](#)

OJK Regulation No. 10/POJK.04/2017 is the amendment of [OJK Regulation No. 32/POJK.04/2014](#) regarding the Planning and Implementation of the GMS for Public Companies. OJK Regulation No. 10/POJK.04/2017 sets out the addition of 3 new articles, namely Article 29A, Article 29B and Article 36A. The addition of these articles is intended to enhance protection for minority shareholders who are affected by proposed changes to the rights of a certain class of shares, as well as provide the detail on the appointment and dismissal of an external auditor. This regulation has come into effect as of 14 March 2017.

This Regulation introduces provisions on the quorum to be met for convening GMS with an agenda of making changes to rights on shares. Under this Regulation, Shareholders, which according to the articles of association do not have voting right but are affected by the changes made to certain shares

classification, will be granted the right to attend the meeting, vote, and adopt resolutions related to the changes made to right on shares of certain shares classification.

The Regulation confirms two methods for appointment or dismissal of an external auditor:

- a. Direct approval by GMS after considering the recommendation from BOC; or
- b. The delegation of authority by GMS to the BOC to make such appointment or dismissal.

(Issued regulation in Bahasa: [OJK Regulation No. 10/POJK.04/2017](#))

Reports on Ownership or Changes in the Shares Ownership of Publicly Listed Company

OJK Regulation No. 11/POJK.04/2017 regarding the Reports on Ownership or Changes in the Shares Ownership of Publicly Listed Company revokes [OJK Regulation No. 60/POJK.04/2015](#) on Disclosure Requirements for Certain Shareholders. OJK Regulation No. 11/POJK.04/2017 has come into effect as of 14 March 2017.

Some of the noteworthy provisions covered in the Regulation are, among others:

- Members of the Board of Director ("BOD") and BOC of a public company are required to report to OJK regarding their direct or indirect ownership and any changes in the ownership of the company shares.
- Direct or indirect shareholders who hold 5% or more of the total issued shares in a public company are required to report their shares ownership to OJK, in the event where changes to their ownership involve 0.5% or more of the total issued shares in the public company.
- The shares ownership report must be submitted to OJK by no later than 10 days after the occurrence of such shares ownership or changes in the shares ownership.
- Every public company is required to have policies regarding the obligation for BOD and BOC members to disclose information to the company regarding their shares ownership and changes in their shares ownership. The information must be submitted by no later than 3 business days following occurrence of such ownership or changes in the shares ownership. The implementation of such policies must be disclosed in the company annual report or website.

(Issued regulation in Bahasa: [OJK Regulation No. 11/POJK.04/2017](#))

Taxation

Guidelines on the Determination of Permanent Establishment for Foreign Tax Subjects Providing Application or Content Services through the Internet

Director General of Taxes (“DGT”) issued Circular Letter No. SE-04/PJ/2017 regarding the Guidelines on the Determination of Permanent Establishment (“*Badan Usaha Tetap*” – “BUT”) for Foreign Tax Subjects (“*Subjek Pajak Luar Negeri*” - “SPLN”) providing application or content services through the Internet (“Over the Top” – “OTT”). This Circular Letter has come into effect as of 6 February 2017.

The Circular Letter provides confirmation and explanation on the determination of BUT according to Income Tax Law and Agreement for the Avoidance of Double Taxation (“*Persetujuan Penghindaran Pajak Berganda*” – “P3B”).

According to the Income Tax Law, BUT is an establishment used by an individual person who does not reside in Indonesia; is in Indonesia for not more than 183 days within 12 months; or an entity which is not established and not domiciled in Indonesia. BUT can be in the form of branch company, representative office, office buildings, factories, workshops, warehouses, space for promotion and sales, mining extraction site, as well as computers, electronic agent, or automated equipment owned, leased, or used by the organizers of electronic transactions to conduct business via the Internet.

Based on P3B, tax on SPLN business profit originating from a partner country is based on the existence of BUT. The business profit of SPLN may be subjected to tax, as long as the business is conducted through BUT in Indonesia. P3B define BUT as a fixed place of business which can take the form of premises, facilities, or installation.

*(Issued regulation in Bahasa: DGT Circular Letter No. SE-04/PJ/2017)**

** Note: Issued regulation has not been published on DGT website.*



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