



# Foreign Business Tax Treatment in Indonesia

by Pratiwi Widyastuti



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Badan Usaha Tetap, is a special Indonesian tax category for certain types of foreign businesses operating in Indonesia, which allows those businesses to be treated for tax purposes as a local tax payer.

In April 2019, the Minister of Finance issued a regulation clarifying the tax category of Badan Usaha Tetap (the **Regulation**)<sup>1</sup>.

The Regulation defines Badan Usaha Tetap as an establishment used by foreigners (individuals<sup>2</sup> or entities<sup>3</sup>), to run their businesses in Indonesia, and which fulfills the following criteria, the Badan Usaha Tetap must:

- have a place of business in Indonesia. This is broadly defined and includes any type of rooms, facilities, or installations (machinery or equipment);
- be permanent, that is, used continuously and be located in the same geographic location within Indonesia; and
- be used by foreigners who have unlimited leave to run their businesses in Indonesia (other than premises used solely for electronic data storage businesses).

The Regulation lists some exemptions, which allows certain types of businesses to be categorised as Badan Usaha Tetap

while not fulfilling the criteria listed above, including, foreign businesses whose main activity is:

- construction<sup>4</sup>, installation or assembly<sup>5</sup>;
- service provision not exceeding 60 days in a 12 month period;
- acting as agents; and
- foreign insurance providers who provide insurance premiums in Indonesia.

The Regulation broadly sets out criteria that determines when the P3B<sup>6</sup>, the prevention of double taxation, applies to Badan Usaha Tetap. Generally, the Regulation states that P3B will apply to Badan Usaha Tetap in the start-up stage of a business.

Foreigners who conduct their business through Badan Usaha Tetap must obtain a Taxpayer Identity Number (Nomor Pokok Wajib Pajak) and be established as a Taxable Entrepreneur for VAT Purposes (Pengusaha Kena Pajak).

<sup>1</sup> The Decree of the Minister of Finance No. 35/PMK.03/2019 of 2019.

<sup>2</sup> Foreign individuals means individuals who are not Indonesian nationals or who do not reside in Indonesia for more than 183 days in any 12 month period.

<sup>3</sup> Foreign entities means entities that have not been first established in Indonesia.

<sup>4</sup> Construction projects includes consultation services.

<sup>5</sup> The installation or assembly of machinery or equipment.

<sup>6</sup> P3B means the agreement between the Indonesian government and another country's government to prevent double taxation.



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# Export & Import Provisions for Petroleum, Natural Gas and Other Types of Fuel

by A. A. A. Reditha Saras



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On 28 February 2019, the Minister of Trade issued regulation no. 21 of 2019 concerning the Export & Import Provisions for Petroleum, Natural Gas and Other Types of Fuel (**Regulation No. 21**). Regulation No. 21 provides that all applications relating to export and import may be made electronically through <http://inatrade.kemendag.go.id> (the **Ministry Website**).

Regulation No. 21 states that in order to export petroleum, natural gas and other types of fuel, any legal entity and permanent establishment must be designated as a “registered exporter” in accordance with Regulation No. 21. To be so designated, a legal entity must apply through the Ministry Website by attaching scanned copies of its single business number and other relevant licenses in relation to petroleum and/or natural gas. The result of a successful application is the designation as a “registered exporter” with a digital signature of the authorized official and a QR code.

Any changes to the data of a registered exporter must be amended through the Ministry Website.

In addition to the designation as a “registered exporter”, an entity may only export petroleum and natural gas if it has obtained the necessary approval and been provided with the relevant customs documents. The approvals may be applied for via the Ministry Website by attaching all the necessary documentation including the registered exporter designation document, an export plan report and an export recommendation, which may be obtained from the Ministry of Energy and Mineral Resources or the Ministry of Industry.

Similarly, importation may only be carried out directly by a legal entity that has obtained the necessary approvals. These approvals may be applied for via the Ministry Website by attaching the single business number, an import plan report and an import recommendation. The relevant approvals will be given electronically with an officially recognised digital signature and a QR code.

Regulation No. 21 allows for the manual submission of all approvals, etc if the Ministry Website is not functioning. These can be made through the Trade Integrated Service Unit addressed to the General Director of Foreign Trade.

# Bank of Indonesia Regulations: Foreign Exchange Traffic Activities

by Shaskia Putri Ramadhani

On 1 March 2019, the Bank of Indonesia's Regulation concerning Reports for Foreign Exchange Traffic Activities in the Form of Offshore Loans and Risk Participation Transactions (**Regulation No. 21**)\* came into effect. Regulation No. 21 was issued in order to reconcile the provisions of a number of different regulations\*\* and to increase the strength of the reporting and monitoring of offshore loans and risk transactions including all types of loans, debt securities, trade credit, dividend debt and royalty debt (**Foreign Exchange Traffic Activities**).

Regulation No. 21 sets out the scope of the reports that must be submitted including:

- all principal data;
- recapitulation data, including plans and the realization on withdrawal or payment, debt position and changes in data; and
- new plans or changes to current Foreign Exchange Traffic Activities, specifically for offshore loans.

Banks or the relevant individuals may submit principal data and recapitulation data. Any new plans or changes must be reported by the relevant individual, non-Bank financial institution, non-financial institution enterprise, or other entity (whether or not a legal entity).

The deadline for the report submissions depends on the type of data being reporting, consequently, reports must be submitted for:

- principal data and recapitulation data, monthly and no later than the 15th;
- new plans for offshore loans, at the beginning of year and no later than 15 March;
- changes in plans for offshore loans, no later than 15 June; and
- correction reports, no later than 20th of the month in which the original report was submitted.



Regulation No. 21 introduces new administrative sanctions for breach of its provisions. Prior to Regulation No. 21, administrative sanctions included fines. Regulation No. 21 introduces written reprimands for incorrect and late reports and for failure to submit reports. Regulation No. 21 allows the Bank of Indonesia to share the fact that an administrative sanction has been imposed to certain authorities, creditors and/or headquarters.

Different sanctions will be applicable for entities that are in the process of bankruptcy or are no longer operating.

\* Regulation of BI No. 21/4/PADG/2019 concerning Reports for Foreign Exchange Traffic Activities in the Form of Offshore Loans and Risk Participation Transactions. Regulation No. 21 was enacted on February 28, 2019 and came into effect on March 1, 2019 by revoking the Circular Letter of BI No. 15/16/DInt on 2013 and Circular Letter of BI No. 17/4/DStA on 2015 concerning Reports for Foreign Exchange Traffic Activities in the Form of Realization, Position, Plan and Changes in Foreign Offshore Loans.

\*\* Regulation of BI No. 21/1/PBI/2019 concerning Bank Foreign Offshore Loans and Other Bank Liabilities in Foreign Exchange and Regulation of BI No. 21/2/PBI/2019 concerning Activity Reports for Foreign Exchange Traffic.

# Import and Export Related Benefits: New Monitoring Systems

by Melisa Kristian

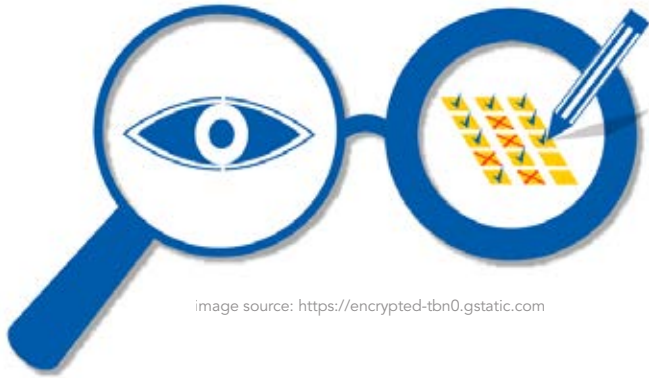


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On 13 February 2019, the Director General of Customs and Excise (the **Director General**) enacted a Regulation<sup>1</sup> relating to the monitoring and evaluation of those entities that receive certain governmental benefits related to bonded storage areas (TPB) and benefits to help ease the import of goods, which will be processed into goods for export (KITE) (the **Regulation**).

## TPB Benefits

In relation to monitoring the recipients of TPB benefits, the Regulation sets out three categories of monitoring; general, specific and independent.

General monitoring constitutes monitoring carried out by the relevant units in the main service office (*kantor pelayanan utama* or KPUBC) and/or the customs and excise service and monitoring office (*kantor pengawasan dan pelayanan bea dan cukai* or KPPBC).

Specific monitoring is performed by a team, which has been assigned by the relevant statutory authorities, including the Director General, to carry out the type of monitoring as specified in the assignment.

Independent monitoring or self-monitoring is defined in the Regulation as supervision and examination carried out by the recipient of the TPB benefit itself and constitutes:

- 1) the reconciliation of manual inventory with electronic inventory records;
- 2) the reconciliation of customs notifications with electronic inventory records; and/or
- 3) other matters, determined by the person in charge, and may include how the benefit is used.

The Regulation states that monitoring of the recipient of the TPB benefits may be done in two ways; micro and macro evaluations. A TPB micro evaluation is an evaluation performed by the TPB micro evaluation team in KPUBC or KPPBC over the appropriateness of the granting of the TPB benefit to the recipient. The macro evaluation of the TPB benefit recipient is performed based on the result of the TPB micro evaluation. A TPB macro recipient evaluation is an examination of the impact and effectiveness of granting the TPB benefits.

## KITE Benefits

Similarly, monitoring and evaluation of recipients of KITE benefits are divided into three categories; general, specific, and independent and the evaluation activities are divided into micro and macro. Monitoring activities of the recipients of KITE and TPB benefits may be carried out by different government agencies. For example, the monitoring of the recipients of KITE benefits may be performed by regional law offices in addition to KPUBC and KPPBC.

The evaluation and monitoring activities under the Regulation may be carried out electronically.

The Regulation pioneers the provision of monitoring and evaluation of the recipients of TPB and KITE benefits.

<sup>1</sup> Customs and Excise Director General Regulation No: PER-02/BC/2019