

Client Alert

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Tax Compliance and Disclosure of Beneficial Ownership in the Energy and Mineral Resources Sector

Recent development in a nutshell

Following a period of economic softening, and in light of the Government's ambitious spending and infrastructure plans, the Government has been ramping up its efforts to improve tax collections. As with previous efforts to do so, the Government has demonstrated a relatively joined-up approach to tax collection. Within the Ministry of Energy and Mineral Resources (**MEMR**), officials have introduced a system of prior tax compliance validation¹ for certain licenses and approvals (e.g., to obtain a business license and to approve a transfer). They have also introduced relatively onerous disclosure requirements in relation to applicants' beneficial owners.

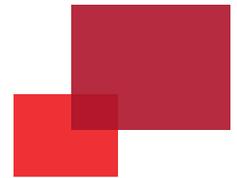
The MEMR began implementing tax compliance validation in late 2015 based on Decree No. 4458K/84/MEM/2015. However, the disclosure of information on beneficial ownership was not formally implemented in the mining sector until early 2018, following the issuance of a circular letter by the Director General of Mineral and Coal (**DGMC**) in late 2017.

The introduction of these requirements resulted in significant delays in license and approval processes. Following several rounds of evaluation, the MEMR issued:

- Regulation No. 23 of 2019 on Confirmation on Taxpayers Status in the Provision of Certain Public Services within the Energy and Mineral Resources Sectors (**Reg 23**), which came into effect on 19 November 2019
- Decree No. 243 K/08/MEM/2019 on Obligation to Provide Taxpayer Registration Number and a List of Beneficial Owners in Submitting Applications for Licenses or Filing Reports in the Energy and Mineral Resources Sectors (**Decree 243**), which came into effect on 4 December 2019

¹ Tax compliance validation is a process conducted by government officials that determines whether:

- a taxpayer's name and registration number (NPWP) are in accordance with the records maintained by the Directorate General of Tax (DGT)
- taxpayers have submitted income tax returns for the last two fiscal years in accordance with tax regulations



Reg 23

Reg 23:

- establishes an online and electronic tax compliance validation system
- updates the list of public services that are subject to that validation
- initiates tax compliance validation by license/approval applicants

The tax compliance validation process can now be conducted online through either of the following:

- a) the MEMR's information system, which is integrated with the Online Single Submission and/or Directorate General of Tax (**DGT**) information system
- b) the DGT application system

If the MEMR is not able to validate the applicant, the applicant may apply for a Statement of Taxpayer's Status (*Keterangan Status Wajib Pajak* **KSWP**) to either the tax office where it is registered as a taxpayer according to its domicile or the nearest tax service office.

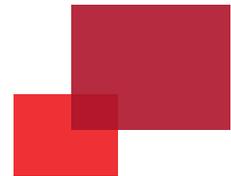
If the results of the validation exercise are that the application is 'invalid' (i.e., the taxpayer data does not match the DGT's records, or if the applicant failed to submit income tax returns for the last two years), the application will be stalled. That application remains stalled until the results of the tax compliance validation or of the KSWP indicate that the applicant is 'valid'. As a result, the application will be rejected by the MEMR and the applicant would need to re-submit that application once it has been successfully tax-compliance validated.

Set out in Attachment A is the list of public services provided by the MEMR that are subject to tax compliance validation.

Decree 243

Initially, disclosure of information on beneficial ownership was implemented as an unwritten policy of the MEMR for the mining and oil and gas sectors. Subsequently, the DGMC issued a circular letter requiring disclosure for the mining sector. Following this, the MEMR's unwritten policy was expanded to include the electricity sector, as a result of which the MEMR requires PLN, the state utility company, to require Independent Power Producers to disclose their beneficial owners despite the absence of an underlying regulation.

Before Decree 243, every application for an approval or business license was subject to disclosure requirements. Also, there was no uniformity of practice in respect of the amount of information or the number of layers of beneficial owners



that needed to be disclosed. This created confusion and resulted in significant delay.

Decree 243 now formalizes the disclosure requirement for all energy and mineral resources sectors, i.e., the mining, oil and gas, electricity and geothermal sectors.

Decree 243 also limits the type of public services or activities that are subject to beneficial ownership disclosure requirements.

Business entities/permanent establishments conducting activities in the energy and mineral resources sectors that wish to apply for a license or approval from the MEMR and/or file a report to the MEMR must provide the following information to the MEMR:

- (a) name and a copy of NPWP of the business entity/permanent establishment
- (b) names and copies of NPWP and/or tax identity of all directors/company management
- (c) names and copies of NPWP and/or tax identity of all commissioners /company supervisors
- (d) names and copies of NPWP and/or tax identity of all shareholders of business entity/permanent establishment
- (e) list of beneficial owners, including the names and copies of NPWP/tax identity of beneficial owners in the form set out in Attachment B

Types of licenses and reports that are subject to Decree 243 are as follows

Sector	Type of Licensing and Reporting	Remarks
Oil and Gas	Application to approve transfer of part or all of a participating interest in the upstream oil and gas sector	-
	Change of direct control in upstream oil and gas companies	-
	Report of transfer of shares that results in a change of indirect control in the upstream oil and gas company	Except for transfer of shares made through the IDX
	Report on changes of board of directors (BOD) and/or	



Sector	Type of Licensing and Reporting	Remarks
	commissioners (BOC) for upstream oil and gas companies	
Electricity and new, renewable and conservation energies	Report of transfer of shares for Electricity Supply Business Permit (IUPTL) holders	Except for transfer of shares made through the IDX
	Report on changes of BOD and/or BOC of IUPTL holders	-
	Application for approval for transfer of shares for Geothermal License holders (IPB)	Except for transfer of shares made through the IDX
	Application for approval of changes in BOD and/or BOC for IPB holders	-
Mineral and Coal	Application for approval for transfer of shares of holders of: <ul style="list-style-type: none"> • Mining Business License (IUP) issued by the MEMR • Operation Production IUP (IUP-OP) Specifically for Processing and/or Refining issued by the MEMR • Special Mining Business License (IUPK) • Contract of Work • Coal Contract of Work 	Except for transfer of shares made through the IDX
	Application for approval of changes in BOD and/or BOC for holders of IUP, IUP-OP Specifically for Processing and/or Refining, IUPK, KK, or PKP2B	-

Notwithstanding the above, questions remain as to the implementation of Decree 243:

1. There is no express provision setting out how high up the chain beneficial ownership must be disclosed - does this have to go all the way



up to individual shareholders? Previously, this was particularly problematic where ultimate buyers included listed companies or private equity vehicles. Unfortunately, the form attached to Decree 243 (see Attachment B) is not clear on whether it is intended to require disclosures up to the ultimate beneficial owners or simply up to three layers above shareholders level (as indicated in the form set out in Attachment B).

2. The list of public services that is subject to Decree 243 may appear exhaustive, but the provision of the second dictum contains the word "including", which seems to suggest otherwise. This may lead to different interpretations and implementations between directorates general under the MEMR. If the list is applied non-exhaustively, this would then contradict the efforts by the Government to improve the ease of doing business.
3. It is not clear what happens if the applicant entity is unable to provide this information, e.g., because it is unable to procure minority shareholders to provide these details. However, we have seen in the past that an application would be stalled if the required information was not provided even if it is related to minority shareholders.
4. It is not clear how the Government will treat non-disclosure that might be protected by data protection rules - whether in Indonesia or elsewhere.
5. The definition of beneficial ownership is not entirely clear, e.g., where there are voting arrangements between various shareholders, does this establish 'beneficial ownership'?
6. For perfectly legitimate reasons, owners may be reluctant to disclose information except on a very limited basis. The current regulations do not contain any express obligation on the Government to keep that information confidential. Presidential Regulation No. 13 of 2018, which is the underlying regulation of Decree 243, clearly states in Article 29 that any person may ask for information on beneficial owners from the relevant authorized government institution on the basis of public information disclosure regulations.

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Conclusion

Reg 23 and Decree 243 do feature some positive changes compared to the previous regulations and, in particular, 'informal' policies. While the aim of these changes is to provide clearer legal grounds for tax compliance validation and disclosure of beneficial ownership, and to make it easier for companies to apply for approvals/licenses from the MEMR, it remains to be seen whether Reg 23 and Decree 243 will actually make it easier to obtain those services.

ATTACHMENT A

Types of Certain Public Services in MEMR Sectors

1. Oil and Gas Sector

No.	Types of Public Services
1.	Certificate of Oil and Gas Supporting Business Ability
2.	Oil and Gas Data Utilization Permit
3.	Recommendations for Use of Work Areas for Other Activities
4.	General Survey Permit
5.	Oil and Gas Storage Business Permit
6.	Oil and Gas Processing Business Permit
7.	Oil and Gas Transportation Business Permit
8.	Oil and Gas Trade Business Permit
9.	Issuance of Registered Lubricant Numbers
10.	Permit to Use Explosive Warehouses
11.	Import Recommendation of Crude Oil and Fuel Oil for Direct User
12.	Import Recommendation of LPG/CNG/LNG/Gas/Processed Products
13.	Export Recommendation of Crude Oil and Fuel Oil
14.	Export Recommendation of LPG/CNG/LNG/Gas/Processed Products
15.	Import Recommendation of Crude Oil and Fuel Oil
16.	Import Recommendation of LPG/CNG/LNG/Gas/Processed Products for Direct User
17.	Approval of Oil Production in Old Wells
18.	Export Recommendation of Oil and Gas from Upstream Oil and Gas Activities

2. Mineral and Coal Sector

No.	Types of Public Services
1.	Exploration Special Mining Business License (Exploration IUPK)
2.	Operation Production Special Mining Business Licence (IUPK-OP), and its extension
3.	Exploration Mining Business License (Exploration IUP)

No.	Types of Public Services
4.	Operation Production Mining Business Licence (IUP-OP), and its extension
5.	IUP-OP Specifically for Processing and/or Refining, and its extension
6.	IUP-OP Specifically for Transportation and Sales, and its extension
7.	IUP-OP for Sales
8.	Mining Service Business Permit (IUJP) and its extension
9.	Approval of change of shareholders
10.	Approval of change of Directors and/or Commissioners
11.	Approval of change of IUP-OP Specifically for Transportation and Sales related to: a. adjustments to cooperation, including the addition of cooperation b. adjustment of the amount of capacity c. adjustment of the issuance of IUP Special Production Operation for transportation and sales.
12.	Approval of Change of IUP-OP Specifically for Processing and/or Refining related to: a. adjustments to cooperation, including the addition of cooperation; b. adjustment of the amount of capacity; and/or c. publishing adjustment of IUP Special Production Operations for transportation and sales.
13.	Termination of Mining Business Permit and IUJP due to the IUJP is returned
14.	Termination of Mining Business Permit and IUJP due to a revocation

3. Electricity and New, Renewable and Conservation Energies

No.	Types of Public Services
1.	Electricity Supply Business License (IUPTL)
2.	Operating Permit
3.	Determination of Business Area
4.	Electricity Support Services Business Permit
5.	Permit of Cross-Border Buying and Selling of Electric Power
6.	Permit for Utilization of Electric Power Networks for the Purpose of Telecommunications, Multimedia and Information Technology
7.	Geothermal License (IPB)
8.	Geothermal Supporting Business Registration
9.	Geothermal Exploration and Preliminary Survey (PSPE) Assignment

No.	Types of Public Services
10.	Designation of Imported Goods Plan in the Geothermal sector (Recommendation)
11.	Biofuel Trade Business Permit
12.	Export and Import Recommendations for Biofuels
13.	Permit to Affix Energy Saving Sign Labels for Energy Utilizing Equipment

