



A Newsletter of RSM AAJ Associates

# Wake up Call

Quarter III/2015 Edition







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# Functional Currency: Don't worry, be ready!

Saptoto Agustomo, Audit Assurance Practice

Since being promulgated at the end of March 2015, Bank Indonesia Regulation No. 17/3/2015 has become a hot topic in the business. It requires you to reassess the functional currency as a consequence of Bank Indonesia Regulation No. 17/3/PBI/2015 on mandatory use of Rupiah within the territory of the Republic of Indonesia. Does it have anything to do with your business transactions and financial reporting? What are key action plans that need to be taken in order to comply with this new regulation?



## General provision of Bank Indonesia Regulation (PBI) No.17/3/2015

The regulation basically requires that all parties use Rupiah in any transactions undergone within the territory of the Republic of Indonesia. Transactions here include every transaction to be completed with payments, settlement of obligations by currencies, and/or other financial transactions by all means. The obligation to use Rupiah in every transaction prevails for both cash and non-cash transactions. In this regulation, business entities are required to quote for prices of goods and/or services in Rupiah.

Notwithstanding its general stance on the use of Rupiah, the following transactions are exempt from the use of Rupiah:

1. Certain transactions related to administration of state budget, including: settlement of foreign debts, settlement of domestic debts denominated in foreign currencies, foreign commodities expenditures, foreign capital expenditures, income from sale of **government's bonds denominated in foreign currencies**, and other transactions in relation with the **administration of government's budget**;

2. Receipt or payment of offshore grants;
3. International commercial transactions, including: export/import of goods and cross-border trade in services done by cross-border supply and consumption abroad;
4. Bank deposits in foreign currencies; or
5. International financing transaction.

Transitional provisions of the regulation assert that any written agreements regarding payments or settlement of obligations denominated in foreign currencies made before 1 July 2015, will still valid until the expiry of those agreements. With respect to the transitional provisions, all entities are advised to review their existing and contemplated agreements and contracts. Bank Indonesia allows existing agreements and contracts which require the entity to commit payments using foreign currency up to the expiry date of such agreements. But any amendments or addendum thereto before 1 July 2015 must comply with this regulation. Eventually, any agreements and contracts entered into on or after 1 July 2015 must comply with this regulation as well.

An entity whose businesses and transactions is exempt from this regulation as described above, is suggested to seek for confirmation or clarification from Bank Indonesia to be very clear.

An entity whose businesses and transactions are not clear exempt is also suggested to seek for clarification from Bank Indonesia.

## Relook at functional currency

One frequently asked question is whether the application of this PBI, then the entity's functional currency will automatically change to become Rupiah?

**PSAK 10 "Effects of Changes in Foreign Exchange Rates" requires companies to identify their functional currency. An entity's functional currency reflects relevant underlying transactions, events, and conditions and so, once determined, a functional currency should not change unless there are changes in the underlying transactions, events, and conditions of that entity.**

The following indicators (primary indicators) will be considered in de-

## termining an entity's functional currency:

1. A currency which mostly influences the selling price of goods and services (often being the currency in which price of goods and services are quoted and settled); and a currency of a country whose competitive advantages and regulations significantly influence the selling price of goods and services;
2. A currency which mostly determines the labor costs, materials, and other costs of goods and services supplies (often being the currency in which such costs are denominated and settled).

An entity may also consider the following factors (as additional indicators) in determining its functional currency:

- A currency in which main financing activities are denominated (be it debt or equity);
- A currency in which income from operations are generally retained.

When the above indicators are mixed and the functional currency is unclear, the management shall use its discretion to determine which currency most properly reflects the underlying economy of the transactions, events, and conditions. This discretion is applied with an approach that the management shall treat primary indicators prior to consider the secondary factors.

### Are you ready?

The implementation of this regulation *does not* necessarily cause a change in the underlying economy of an entity. For example, for companies whose **functional currency was "non Rupiah"**, while they are now required to quote for prices of goods in Rupiah, they still have price-sensitive goods which compete with foreign products and experience significant downwards or upwards effect from such change in pricing.

Even if the price in Rupiah causes significant impact to those companies, however the underlying events and conditions do not change, that is the currency which mostly influences

the selling price of goods and services as well as the currency that most affect the cost of labor, material and other costs of procurement of goods or services remains the same. The additional indicators may also not change. In this case, it is no need **to change its' functional currency** into Rupiah.

To ensure the effects of implementation of this PBI has been responded appropriately, an entity needs to reassess its functional currency.

The reassessment shall include all possible factors and indicators in order to conclude a currency which is the best representation of the underlying economy of the entity.

**If the management's reassessment** results in a decision to change in functional currency, it shall be implemented prospectively.

For further discussion with regards to change in functional currency, please do not hesitate to contact us!

# Implementation of Debt-Equity Ratio for Deductibility of Borrowing Costs

Nick Graham & Jese Sitorus, Tax and Business Services Practice

On 9 September, 2015 the Department of Finance issued Minister of Finance Regulation No. 169/PMK.010/2015 regarding Stipulation of Debt-Equity Ratios for Calculation of Income Tax that implements Article 18(1) of the Income Tax Law.

Prior to this regulation, the Government had previously issued a Minister of Finance Decree No. 1002/KMK.04/1984 dated 8 October, 1984. This decree, however, was suspended by Minister of Finance Decree No. 254/KMK.01/1985 dated 8 March, 1985 and there were no further regulations issued despite the provision under Article 18(1) remaining in the Income Tax Law to permit the Minister of Finance to regulate debt-equity ratios for the purpose of calculating income tax.

## When is it effective?

The regulation applies to all taxpayers **that are "badan" as defined in the Taxation General Administration & Procedures Law** that are established or domiciled in Indonesia and that have capital in the form of shares.

Both Yayasan and Permanent Establishments ("PE") are included in the definition of "badan". Although a Yayasan would not be caught because its capital is not in the form of shares, however, it is not clear if a PE of a foreign company would be caught (since the PE is only an extension of the foreign company). Although the PE might **not be regarded as "domiciled" from a Company Law perspective**, it might be considered to be established since it was brought into existence through either a license issued by an Indonesian Government Department (e.g.

BKPM Representative Office) or by the **Tax Office (a "pure" PE)**.

## How are borrowing costs defined?

Borrowing costs are defined as including:

- Interest
- Discounts or premium paid in relation to the borrowing
- Arrangement fees
- Finance charges on leasing
- Guarantee fees
- Foreign exchange differences in relation to interest on foreign currency loans

It is important to note that the definition does not specifically include foreign exchange differences on the actual foreign currency principal amount. However, these might be captured since the definition of borrowing costs is not a limited definition. We are seeking further guidance regarding this.

Furthermore the reference to foreign **exchange differences ("selisih kurs")** suggests that even a foreign exchange gain might be subject to adjustment if it arises from an excessive D/E ratio.

## What is the permitted D/E ratio?

The maximum permitted D/E ratio is 4:1. If this is exceeded then there will be a proportionate reduction to the allowable deduction for borrowing costs.

For example if the D/E ratio was 5:1 then only 4/5 or 80% of any borrow-

ing costs would be allowed as a deduction.

Importantly - if the company has zero equity or negative equity then it is not permitted to claim a deduction for borrowing costs.

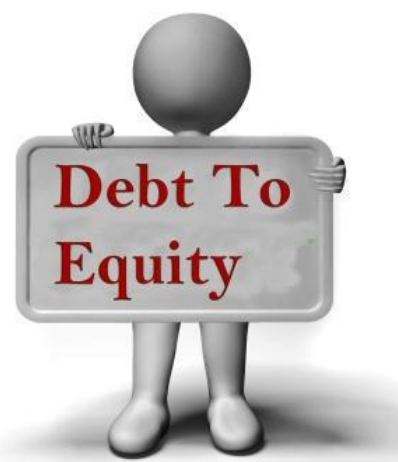
This regulation does not over-ride or **replace a taxpayer's obligations to support that any deduction for borrowing costs charged by related parties is at arm's-length rates.**

## How is the D/E ratio calculated?

The D/E ratio is determined based on the average end-of-month balances **for "debt" and "equity"**.

Debt is defined as including:

- Long-term payables
- Short-term payables
- Trade payables that are subject to interest





Equity is defined as:

- All equity as per Financial Accounting Standards (i.e. share capital, share premium reserve, retained earnings and current-year earnings)
- Non-interest bearing loans from related parties

## Are there any exclusions?

There are exclusions for specified businesses and also types of income.

Banks, finance companies, insurance/re-insurance companies and companies operating in the infrastructure sector are not subject to this regulation. The same also applies to oil & gas and mining companies that are subject to working agreements (e.g. PSC, COW) provided that these agreements stipulate a D/E ratio. If no ratio is stipulated or there is a period then this regulation will apply in the absence of a ratio or once the period expires.

**If a company's income is subject to Final Tax** then the regulation will not apply (since no expenses are deductible in any case).

However, if part of the income is subject to Final Tax then a proportionate adjustment is required to the deductible borrowing cost unless it is possible to specifically identify which loan (and borrowing cost) relates to the Final Taxed income. In this case the loan is excluded from the D/E calculation and the borrowing cost is also excluded from the deduction.

## Reporting obligations

The regulation requires that private loans sourced from overseas must be reported to the Tax Office otherwise no deduction can be claimed for the borrowing cost. The mechanism for reporting will be stipulated by the Tax Office at a later date.

## Issues for consideration & planning

Although the D/E ratio of 4:1 does not fully represent commercial practices in specific industries and/or specific market economic conditions it does provide a safe harbour and remove the existing uncertainty where the Tax Office might make an arbitrary decision during a tax audit that a company has excessive debt.

Companies (and, potentially, PE) that have income not subject to Final Tax and have claims for borrowing costs should assess their D/E ratio in advance of the 2016 Tax Year. In particular, consideration should be given to restructuring the balance sheet if there is negative equity.

Once the reporting requirements are issued then companies will also need to maintain appropriate records to facilitate prompt reporting of private loans sourced from overseas.

# Implementation of Pension Plan Regulation

Nick Graham & Astrid Suryandari, Tax and Business Services Practice

Government Regulation No. 45 was issued on 30 June 2015.

This regulation implements the Pension Benefits Program provisions of Law No.40/2004 on National Social Security System.

This is in addition to the existing obligations under BPJS-Kesehatan (Health) and BPJS-Ketenagakerjaan (Employment/Manpower).

## Who does it effect?

The effective date is 1 July 2015.

All employers are required to register their existing employees.

New employees should be registered no later than 30 days from their date of commencement.

If the employer does not register its employees then the employees are entitled to self-register. In these cases the employer can be subject to sanctions specified in the law and regulations, in addition to remaining responsible for payment of the contribution and payment of any pension benefit that might arise.

## How much are the contributions?

The monthly contribution is calculated at 3% x the Basic Salary and Fixed Allowances, subject to a cap (referring to the Basic Salary and Fixed Allowances). The current cap is IDR 7,000,000/month for the Basic Salary plus Fixed Allowances and therefore the current maximum monthly contribution is IDR 210,000.

The contribution shall be paid partly by the employer and partly by the employee (via deduction from salary) as follows:

The monthly contribution is payable to BPJS-Ketenagakerjaan no later than the

Employer	Employee
2 % from Basic Salary and Fixed Allowances (maximum of IDR 140,000/month)	1 % from Basic Salary and Fixed Allowances (maximum of IDR 70,000/month)

15th of the following month. Late payment is subject to penalties of 2% of the late paid amount per month of late payment.

## Future revisions

Both the cap for calculation of maximum contribution and the percentage rate of contribution are subject to periodic revision.

The cap for calculation of maximum contribution (IDR 7,000,000/month for Basic Salary plus Fixed Allowances) is subject to revision each year based on GDP growth for the previous year) and will be advised by BPJS Ketenagakerjaan.

The percentage rate of contribution will be revised each 3 years until the rate reaches 8%. The revision is based on "economic conditions and a calculation of the adequacy of the actuarial liability" and will be advised by BPJS Ketenagakerjaan.

## Registration Process

The registration process requires that:

- The premium for the 1st month is paid in arrears
- BPJS must then issue a Participant Number within 1 day

## Pension Payment

The Pension Benefit shall be paid after the employee has reached retirement age. The retirement age is set at 56 years as of the Regulation coming into force. On 1 January 2019, the retirement age will be 57, and this will continue to increase every three years until reaching the age of 65.

Unlike the Jaminan Hari Tua (Old Age Guarantee/Benefit), the Pension Benefit is a monthly pension payable to the pensioned employee provided that at least 15 years (180 months) of premiums have been paid. It is also payable in certain other circumstances (e.g. to the widow).

If the employee has reached the retirement age before achieving 15 years of contributions then a lump-sum payment will be made equal to the contributions plus earnings.

# Implications of New Work Permit Regulation

Nick Graham & Fauzi Novian, Tax and Business Services Practice

The Minister of Manpower issued Regulation No. 16 on 29 June, 2015 regarding the Utilisation of Foreign Manpower (Reg-16).

This regulation is effective from 29 June, 2015, although actual implementation may be subject to the Department of Manpower issuing related regulations and policies.

In addition to administrative changes to the process to arrange Work Permits and the RPTKA (Foreign Manpower Utilisation Plan), Reg-16 contains several potentially contentious matters.

In the past we were aware of a handful of situations where Department of Manpower officials have argued that non-resident directors should have Work Permits because the directors are supposed to be actively involved in managing the company. These instances appeared to be driven by internal labour disputes where an unhappy employee had contacted the Department of Manpower who then **visited to assess that company's** compliance with regulations. Until now there was no consistent policy from the Department of Manpower and certainly no suggestion that it might also apply to commissioners (or board members of a Yayasan).

In our view Article 37(2) needs to be interpreted together with the definition of foreign manpower (TKA - tenaga kerja asing). Foreign manpower are defined as being foreign citizens holding a visa with the intention of working in Indonesia. Therefore if the foreign citizens do not intend to work in Indonesia (and do not work in Indonesia) then no Work Permit should be required. It remains to be

## Matters for Attention with the Implementation of Reg-16

- Article 37(2) stipulates that foreign manpower that are a director, commissioner, or trustee, management or member of the supervisory board of a Yayasan whether resident in Indonesia or non-resident are required to obtain a Work Permit (IMTA).
- Companies wishing to employ foreign manpower are required to maintain a 10:1 ratio of Indonesian employees for each foreign manpower. This requirement does not, however, apply for foreign manpower that are a director or commissioner of a company (or a trustee, management or member of the supervisory board of a Yayasan).
- All foreign manpower are required to obtain an Indonesian Tax ID (NPWP) if they have worked for more than 6 months
- All foreign manpower are required to register for BPJS if they have worked for more than 6 months
- **It is also necessary to arrange an "insurance policy" for the foreign manpower**

seen whether Manpower officials will accept this argument if they conduct an inspection.

In this regard we note that Reg-16 includes some activities as requiring a temporary work permit that are broader than usually expected (e.g. attending meetings of the Head Office or branch in Indonesia). These suggest that any visit by a non-resident director to Indonesia might require a Work Permit.

The obligation to obtain the Work Permit commences on the date the deed of establishment or amendment to the articles of association is approved by the relevant government agency. In this regard we are aware of one company that was recently visited by the Department of Manpower who requested copies of the Work Permits for their non-resident directors - therefore it appears that the authorities might already be act-

ing on Reg-16. The officials did not ask for the Work Permits of the non-resident commissioners.

On a more positive note, Reg-16 has re-introduced Temporary Work Permits. This should assist companies that wish to bring in short-term foreign manpower - e.g. for project kick-offs. These are not subject to the 10:1 ratio.

## Compensation Fund for Employing Foreign Manpower

The requirement to pay the Compensation Fund for Employing Foreign Manpower ("DKP-TKA"), (USD 1,200 per annum) also applies to the Work Permits for non-residents - not just the expatriates. The commencement date for calculation of the DKP-TKA is the later of 29 June, 2015 or the date of the Notarial Deed appointing that individual as a director or commissioner.



## Requirement for Tax Registration (NPWP)

The obligation to obtain an NPWP based on period of work is clearly an attempt to remind expatriates of their potential tax obligations in Indonesia - that is, to obtain an NPWP, to report and pay tax on their worldwide income.

This, however, ignores the definition of tax residence in the Indonesian Income Tax Law, which is not simply based on period of work and, more importantly, is also subject to whether the expatriate remains a tax resident in a country that has signed a Double Tax Agreement with Indonesia. As a consequence it is quite likely (especially for non-resident directors and commissioners) that they should not obtain an NPWP.

We further note that recent information suggests that the Department of Manpower will not expect non-resident directors (and similar) to obtain an NPWP or to register for BPJS. This appears to reflect the understanding that they are unlikely to meet the threshold for registrations under the relevant laws. That said, this information is not consistent with the regulation and it remains to be seen whether all officials will adopt the same approach.

## Required actions

We believe that companies with non-resident directors and commissioners should re-assess their role. If it is necessary to maintain them, then a Work Permit should be applied for as soon as possible to avoid exposure to pressure from government officials.

If the non-resident director to commissioner visits Indonesia for meetings then a Work Permit is strongly advised.

The obligation to obtain an NPWP should be reviewed and, if truly a non-resident for tax, appropriate documentation obtained to support the argument that the director or commissioner is not an Indonesian tax resident.

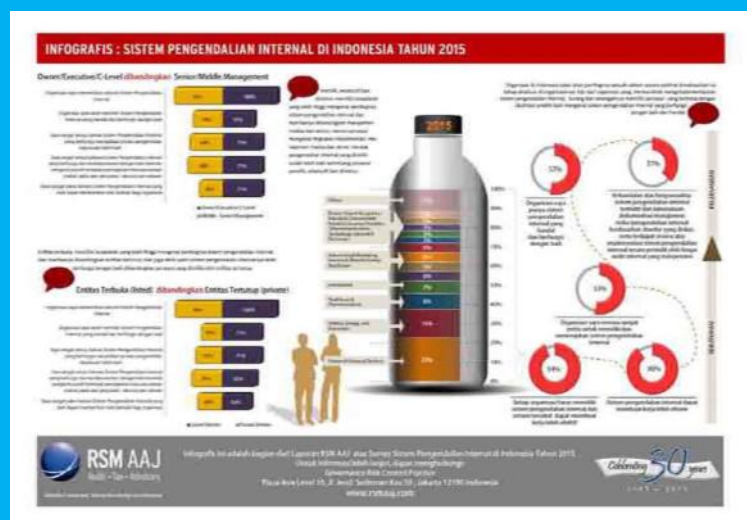


**The RSM AAJ 2015 Internal Control Survey Report is now out, and it can aid organizations in Indonesia to compared on what others are perceiving and implementing in their organization, with regards to an internal control system.**

**This is the first time that a survey on internal control system has been made and shared publicly.**

**This is greatly attributable to organizations in Indonesia that have assist in participating on this survey.**

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# Our activities



## RSM AAJ Celebrate Indonesia Independence Day



On 17 Augusts 2015, we celebrate Independence Day of our country Indonesia. RSM AAJ celebrate this day on 18 August with proclamation reenacting by partners continued with screening of the movie Soekarno, the first president of the Republic of Indonesia.

## RSM AAJ in the spotlight



Our Chairman, Amir Abadi Jusuf was featured at TVRI on 16 September 2015 in the talkshow “Kabinet Kerja Menjawab” along with Bambang Brodjonegoro, the Minister of Finance of the Republic of Indonesia. The show discusses the new economy policies recently launched by the government.



Our partner, Wiljadi Tan was featured at iBCM Channel (Business & Capital Market Channel) on 18 September 2015 as a spoke person for Eyes On Program discussing corporate finance issues.



Our partner, Angela Simatupang was one of the speaker at the Indonesia 2015 IIA National Conference held in Yogyakarta on 19-20 August 2015. RSM AAJ also participate in supporting the event as effort in contributing to the internal audit profession.





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