

E-Commerce

SEP translated into physical presence

Foreign e-commerce businesses are required to have a physical presence in Indonesia if they are considered to have significant economic presence (SEP) in Indonesia. This can be done by appointing a representative based in Indonesia who can act as or for the foreign e-commerce business. The requirement is set out in Government Regulation (GR) No. 80/2019 (GR) regarding e-commerce issued in late November 2019.

E-Commerce in GR 80 refers to transactions of goods or services between parties through a chain of electronic devices and procedures aimed at transferring right over the goods and services and generating compensation. It not only involves businesses but also consumers, government, and individual persons.

The SEP is to be determined based on a certain criteria which measures the numbers of transactions, package shipments, and traffic access, and transaction values. Further details are yet to be elaborated in Minister of Trade regulations.

The issue of SEP and physical presence has long been a hot topic in e-commerce. It is crucial to note that, under current international tax standard, a country can only tax business profit of a foreign business if the foreign business has physical presence in that country, something easily dodged by e-commerce businesses as they can naturally do significant business in a country without physical presence in that country.

Given the authority it has to act for and on behalf of the foreign business, under current international tax standard, the representative's physical presence gives rise to a permanent establishment (PE), a nexus which in turn gives a country the right to tax the foreign business' business profits arising from that country. It would be challenging for the Director General of Tax (DGT) to determine the business profits amount attributable to the Indonesian PE and tax them.

Apart from the PE implication, GR 80 lays down the following non-tax provisions:

- Business license is required to operate as e-commerce business. It has to abide by regulatory requirements including customs when involved in export and import of goods;
- E-commerce must observe consumer protection. Dissatisfied consumers may report to the Trade Minister which may send an e-commerce business to a priority watch list.
- Use of *dot.id* domains must be prioritized for internet situs.
- E-commerce data or information should be kept for at least 10 years from its acquisition if it pertains to financial transactions or 5 years if not.
- Foreign and domestic e-commerce businesses must provide and keep valid e-commerce transactions using Electronic System as specified in prevailing regulations.
- E-commerce business can provide electronic advertising. Further provisions will be provided in ministerial regulations.

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