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Research Paper

Implementation of Control Rules In Overcoming Companies the Basis of Erosion and Transfer of Profit In Indonesia

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ABSTRACT
Tax avoidance by multinational companies is a topic that is often discussed by the mass media. Bloomberg calls this phenomenon "the great corporate tax dodge," while several other media discuss the strategies used by various multinational companies in lowering their effective tax rates globally. The phenomenon of tax avoidance itself is not new.
Tax avoidance by multinational companies, which is increasingly detrimental to source country revenues, has turned into the political realm. In the Los Cabos declaration in 2012, the countries that are members of the G20 emphasized the importance of joint action with the Organization for Economic Co-operation and Development (OECD) to prevent tax evasion by multinational companies. The OECD publishes a report on "Addressing Base Erosion and Profit Shifting." The OECD then published 15 Action Plans on Base Erosion and Profit Shifting (starting now referred to as BEPS) in July 2013 and received support from the G20 countries during their meeting in Saint Petersburg. As part of the G20, the OECD's Action Plan will impact Indonesia's tax regulations.
So that the application of CFC Rules becomes an exciting thing to discuss, then the authors write.
An article entitled "Application of Controlled Foreign Company Rules in Overcoming Base Erosion and Profit Shifting in Indonesia."
KEYWORDS: *Base Erosion and Profit Shifting, Controlled Foreign Company (CFC) Rules, Indonesia.*

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I. INTRODUCTION

The tax revenue target is not within reach, one of which is caused by taxpayers' reluctance to pay taxes or tend to avoid taxes. Tax avoidance is performed by taking advantage of differences in tax rates and tax regulations between countries to gain tax advantages.

One form of tax avoidance is under the control of foreign companies (CFCs) to delay the recognition of income from capital sourced abroad to be taxed domestically at home. Taxpayers usually use CFCs to delay their dividends, thus waiting for taxation of the dividend income.

In Indonesia, Asian Agri is an example of a company implementing tax evasion by using CFCs as one of its schemes. The CFC scheme used by the Asian Agri Group is to move tax subjects and tax objects to a low tax jurisdiction or even a tax haven country. Move the head office to a country with a territory system and intragroup transactions that utilize an ownership threshold of 50%, which is considered too low. Limited data exacerbate this due to the lack of Exchange of Information (EOI), especially with tax haven countries.

Many countries have considered this tax avoidance practice to have caused a base erosion of domestic taxation and a shift in profit (profit shifting). This similarity is faced by countries in the world that have triggered the raising of base erosion and profit shifting (BEPS) in public forums, namely the G20 and the OECD.

Although there has been much encouragement, especially from the G20 and OECD member countries, to resolve the harmful practices of BEPS by multinational companies, the debate about how much impact the method of profit shifting by international companies has on other countries' economies is still a question.
As a member of the G20 and an Associate Member in the BEPS Project, Indonesia has an equal position with other OECD member countries. It is responsible for carrying out the results agreed upon in BEPS, including strengthening the CFC Rules.

Indonesia itself already has CFC Rules as one of the Specific Anti Avoidance Rule (SAAR) as stipulated in Article 18 paragraph (2) of Law Number 36 the Year 2008 concerning Income Tax. However, with the current CFC Rules in Indonesia, there is still some tax evasion by taxpayers.

European Union (EU) banking has a different view to solve multinational companies' harmful practices with their profit-shifting. The EU believes that global companies' profit shifting problem does not need to be solved by creating a new international tax system. Still, it is sufficient to overcome it by strengthening regulations and supervision to regulate multinational companies' operations. At present, the EU has made regulations governing international companies' operations. Each company registered in the EU will have one bank account and will then be taxed based on the taxation provisions in force in the EU.

The House of Lords in the United Kingdom (UK) has a different view on resolving multinational company practices that are detrimental to the country they occupy. The UK prefers a unilateral approach by strengthening its national tax regulations to regulate global companies' harmful practices and maintain the current international tax system. This approach differs from that of the OECD with its BEPS project. The OECD believes that the current tax system is no longer suitable for the increasingly complex conditions and business environment, so modernization is needed. Besides that, OECD also chooses a multilateral approach to resolve the BEPS issue by involving many countries in its implementation.

Indonesia also needs to be actively involved in discussing the BEPS project currently being implemented by the OECD. Indonesia's active role in this project is significant to protect Indonesia's interests in particular and emerging countries in general. Since the BEPS problem can only be resolved with all countries' involvement, Indonesia's involvement can also minimize the potential risks that may arise.

II. ANALYSIS & DISCUSSION

Principles of international tax law.

Rochmat Soemitro (1986), in his book entitled "Indonesian International Tax Law," describes the principles and principles of international tax law as follows:

a. The Principle of sovereignty in international tax law.
b. The Principle of justice.
c. The rule of law principle.
d. The direction of territory/territory.
e. The Principle of universality.
f. The code of the country of residence / lex fori.
g. Country of origin/source principle.
h. The focus of nationality.
i. The Principle of establishment remains.

Controlled Foreign Corporation (CFC) concept

Controlled Foreign Companies or Corporation (CFC) is defined as an entity incorporated abroad over which the domestic taxpayer controls (Asqolani 2008). CFC is recognized as a separate taxable entity in the foreign jurisdiction and indirectly becomes the shareholder's domicile country (Fontana 2008).

Controlled Foreign Companies (CFC) Rules

CFC Rules in Indonesia are mandated in Article 18 paragraph (2) of Law Number 36 the Year 2008 concerning Income Tax. This article gives the Minister of Finance the authority to determine when dividends are received from a domestic taxpayer with absolute ownership in a CFC.

Tax Avoidance And Base Erosion and Profit Shifting

The OECD in Kristian Agung Prasetyo (2008,16) does not provide a clear definition of tax avoidance. The OECD only illustrates that tax avoidance is usually used to explain taxpayers' efforts to reduce their tax burden.

Base Erosion and Profit Shifting (BEPS), which according to the OECD (2014b), can be said to be a tax planning strategy that exploits loopholes and mismatches in tax regulations to artificially divert profits to places or countries with low or even zero taxes. BEPS is a term used by G-8, G-20, and OECD member countries to describe the business practices carried out by many multinational companies to transfer their business profits through transfer pricing schemes to countries that apply low / zero tax rates. In general, apart from transfer pricing, BEPS practices can also occur due to practices.

Hybrid mismatches, namely the imposition of different transactions by each country to avoid taxes and granting unique purpose entities (SPE), have given multinational companies the flexibility to divert their business profits to other countries. Such practices can create unhealthy competition among business actors, create injustice for taxpayers to comply with the same taxation policies, and lead to inefficient allocation of resources. Furthermore, the practice of BEPS will impact the potential loss of revenue received by each country

because the profits of a company will be transferred to other countries that impose a low tax rate policy. Thus the practice of BEPS by MNCs will be a severe challenge for every country and can be detrimental for countries that apply standard or high tax rates.

Indonesia's CFC Rules in overcoming BEPS through CFCs based on seven building blocks are summarized into:

***1.* Definition of a CFC**

The use of the word "business entity" to describe CFCs provides a reasonably broad scope, at least for Indonesia's current taxation conditions. However, it cannot be denied that the CFCs currently covered are only business entities whose ownership is in the form of shares. However, the existing definitions are sufficient to address BEPS conducted through CFCs because most of these CFCs are only corporations.

***2.* Threshold requirements**

The use of limited lists such as the country blacklist requires periodic updates. The effectiveness of using this list is very low due to the changing international tax climate. Many countries are no longer using the blacklisted country as a threshold. It is recorded that only one country from all OECD members uses the blacklisted country. However, the absence of a point makes CFC Rule's general in nature less effective in overcoming BEPS. Several overseas entities that do not have tax evasion motives are covered by these CFC Rules.

***3.* Definition of control**

Indirect ownership should fall within the scope of the CFC Rules. The current gap makes Indonesia's CFC Rules easy to avoid. It is easy to create a new CFC at the next level of ownership, which cannot be covered according to the current CFC rules. Based on the Principle of simplicity, the 50% limit is still acceptable. However, more sources wanted tighter restrictions to prevent current BEPS practices. Thus,
when viewed from the definition of control, Indonesia's CFC Rules have not been able to overcome BEPS because there are still loopholes that can be exploited for tax avoidance.

***1.* Definition of CFC income.**

Further regulation regarding what income is included in the CFC Rules is needed. With the current rules in place where all CFC revenues are included, BEPS can be appropriately handled. However, it becomes less precise because the goal is not solely tax avoidance or the practice of BEPS itself.

***2.* Rules for computing income.**

The current regulations are appropriate and are considered capable of dealing with BEPS. The use of state accounting standards for the position of CFCs is felt to be more comfortable. Recalculating using existing parent country regulations will waste existing DGT resources. Data exchange through EOI is not easy, so it is considered more feasible to use rules or provisions from the country where the CFC is located.

Limited information and simplicity are the reasons for this. If the country or jurisdiction where the CFC is located uses generally accepted standards, such as IFRS, the current regulations can overcome BEPS.

***3.* Rules for attributing income.**

Several gaps indicate that there are still opportunities for taxpayers to do tax evasion and practice BEPS. So, the ordinance. Existing practices have not yet been able to overcome BEPS practices and need to be clarified or refined.

***4.* Rules to prevent or eliminate double taxation**

The procedure for crediting foreign taxes or taxes on dividends that have been paid in the country where the CFC is located is sufficient to avoid double taxation, which is a fundamental consideration in the CFC Rules to overcome BEPS practices that occur. However, a more detailed explanation and more practical examples are needed to create convenience and legal certainty for both taxpayers and the physical.

III. CONCLUSION

Based on the Discussion Draft BEPS Action Plan, four of the seven existing building blocks have not addressed BEPS practices that are carried out through the use of CFCs. There are still many gaps in Indonesia's CFC Rules that need to be corrected to better address BEPS and tax avoidance practices in the future.

From the analysis carried out on the current CFC Rules in Indonesia, the following suggestions for improvements can be given for the future:

1. The Directorate General of Taxes should immediately prepare regulations to improve the current CFC rules. Although viewed from an acceptance perspective, the CFC Rules will not contribute much, and this regulation is an anti-voidance rule that should exist in the Indonesian tax system.
2. Further drafting or refinement of regulations should consider the mechanism or implementation instructions in great detail so that the increased complexity does not lead to disputes between Fiskus and taxpayers.
3. It is necessary to build a robust information exchange system and a comprehensive taxpayer database to support the CFC Rules' effectiveness.

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