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Research Paper

Handling of Aggressive Tax Planning Problems Case Study: Google Indonesia Tax Avoidance

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ABSTRACT: *Businesses must be able to adapt competitive strategies and business models to keep up with on-going developments to be in line with digital and global economic growth. In the other hand, government must be able to adapt the government regulations, especially tax regulations to support not only the businesses but also country development. Google is an Internet-based services and products provider that located in Singapore as regional office. Google utilize tax treaty between Indonesia and Singapore in its tax planning scheme aimed to avoid taxation in conducting its business in Indonesia. There is no record of revenues and profits derived from the representative office activities in Indonesia.*

The purpose of this research is to explain the obstacle faced by the government of Indonesia in handling the Aggressive Tax Planning problems that done by Google Company. Descriptive analytic become the research method while Books, journals, mass media, and internet are references to get the secondary data. Based on the results of the research, the existing applicable tax regulation in Indonesia cannot support internet-based business model that is new business model in Indonesia. Hence Google Company refused to become a Permanent Establishment in Indonesia. It becomes obstacle for Indonesia in handling the Aggressive Tax Planning by Google Company. Moreover, Google considers the Directorate General of taxes offer the tax liability calculation that exceed their expectations.

INDEX TERMS: *Multinational Company, Tax Regulation, Internet-based Business, Aggressive Tax Planning*

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I. BACKGROUND

Multinational companies (MNCs) are companies that carry out foreign direct investment (FDI) and which own or control value added activities to some extent in several countries (Dunning and Lundan, 2008, p. 3). Multinational companies can be in the form of small companies investing abroad or large groups that manage subsidiaries in several countries (Mayrhofer, 2012). Local subsidiaries frequently cooperate with foreign companies and interact autonomously with other parties in their local business environment such as government, vendors, distributors, clients, etc.

The development of international trade has encouraged the formation of multinational corporations. Multinational companies are companies that operate in two or more countries and have several branch offices in various countries where the aim of the company is to get greater profits in the countries that are its branches by implementing a strategy to minimize taxes, one of which is Google.

One of the MNCs in Indonesia is Google. Google entered Indonesia for the first time before establishing a Representative Office. Google first made foreign investment in Indonesia in 2011. Google began to be used in 2004 as a search engine other than Yahoo. From year-to-year Yahoo began to be left behind and Google became a popular search engine because Google found more URLs than Yahoo. Google began to officially establish a Representative Office in Indonesia on March 30, 2012, located at Cyber 2 Tower Jalan HR Rasuna Said Blok X-5 Kuningan, South Jakarta.

At the beginning of its establishment, Google had committed tax violations that could harm Indonesia from the tax revenue sector, namely avoiding taxes by diverting all income earned in Indonesia to a low-tax country like Singapore. Google is doing this in order to minimize taxes and take huge profits from Indonesia. Because Google only considers itself as the dependent agent of Google Asia Pacific Pte, Ltd. The Indonesian government has made efforts to deal with tax violations by Google but it has not been completed due to several obstacles.

II. LITERATURE REVIEW

Negotiation

Negotiations occur in every transaction by legal subjects, both individuals and legal entities. The negotiation process can take place both in the private sector and in the government sector. Negotiation can be said as a form of social interaction with the aim of reaching a mutually beneficial agreement, considering that in the negotiation process the parties involved try to resolve different and conflicting problems.[1]

This negotiation is a means for the parties to establish two-way communication designed to reach an agreement as a result of differences in views on a matter motivated by similarities or inequality of interests between the parties.[2]

Tax Avoidance

Tax avoidance is an effort to avoid tax legally because it does not conflict with taxation provisions because the methods and techniques used are exploiting weaknesses in tax laws and regulations to reduce the amount of tax owed (Pohan, 2016). This action becomes an obstacle for the government to carry out development because each year the value of the tax budgeted does not match its realization. The government hopes that all taxpayers deposit their taxes into the state treasury properly and honestly. Companies that have large profits will find it easier to take advantage of loopholes in managing their tax costs (Dewinta & Setiawan, 2016).

III. RESEARCH METHODOLOGY

Researchers used descriptive research methods, namely describing and explaining the object of research through all data sources obtained from the literature used in the study. The type of data used in this research is secondary data and the data collection technique used in this research is library research. The author used a qualitative technique as the data analysis technique to obtain the truth of the information by explaining the relationship between one data to another.

IV. RESEARCH RESULT

History of Google enter Indonesia

Google was first introduced to the public in 1998 by Sergey Brin and Lawrence Page who were students from Stanford University who at that time was still a prototype and was available at the url address http://google.stanford.edu (Brin & Page, 1998).

Google developed its business in a car garage in Menlo Park with only eight employees before becoming a large company. Google continued to grow and recruited more employees, hence Google had to move offices several times to get a bigger workspace.

In August, Google moved into a new office at 2400 E. Bayshore, Mountain View with an additional 40 employees. As Google company got bigger, produced many new services and has acquired two web companies. Google moved to 1600 Amphitheater Parkway in Mountain View, California with more than 800 employees, Google offices were designed with a campus atmosphere and became Google's official venue with a new name, Google Plex.

Since its establishment, Google has had branch offices in various countries such as the United States, Europe, Canada, Czech Republic, Denmark, and many more in other countries, one of which is Indonesia, but Google entered Indonesia before they had branch offices in Jakarta. Google had been able to be used in Indonesia as a search engine other than Yahoo since 2004. Google's entry in Indonesia was marked by the large number of people using Google compared to the Yahoo search engine at that time, from year-to-year Yahoo began to be abandoned and Google became the most popular search engine because of the URLs it found. Google began to officially open a branch office in Indonesia and invested in the Jakarta stock exchange since March 30, 2012, located at Cyber 2 Tower, Jalan HR Rasuna Said Blok X-5 Kuningan, South Jakarta.

Google Aggressive Tax Planning Issues in Indonesia

A profit-oriented company, is a domestic company or a multinational company that try to minimize the tax burden by taking advantage of the weaknesses of a country's tax regulation system. Google carries out unauthorized tax avoidance (aggressive tax planning), in which a country with another country may have different views on aggressive tax planning.

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[1] Ni Made Rai Sukmawati dan I Made Budiasa, Negosiasi dan Kontrak Dagang Dalam Perdagangan Internasional "Export" di Fa. Ari, Soshum Jurnal Sosial dan Humaniora, Vol. 3, No. 1, Maret 2013, hlm. 108.

[2] Ahdiana Yuni Lestari dan Endang Heriyani, Dasar-Dasar Pembuatan Aqad & Kontrak, Yogyakarta, LabHukum Fakultas HukumUniversitas Muhamadiyah Yogyakarta, 2008, hlm. 95.

Frank et al. (2008) defines aggressive tax planning as an action that aims to reduce taxable profit through tax planning using methods both are classified and are not classified as tax avoidance. This aggressive tax planning act does not always originate from non-compliance with tax regulations, but also from taxes that are carried out according to regulations. However, the more loopholes are used to manage expenses, the more aggressive the company is in tax planning, even though it does not violate existing regulations.

The aggressive tax planning scheme carried out by multinational companies is to carry out transfer pricing, namely transferring income from a company in a country with a higher rate to another company outside the country with lower tax rates, utilization of tax haven countries, and abuse of double tax avoidance agreements (tax treaty).

Tax Regulations in Indonesia

According to Law Number 28 of 2007 Article 2 which reads about tax provisions and taxation procedures in Indonesia. Meanwhile, Law Number 36 Year 2008 Article 2 which reads about the criteria that are subject to tax in Indonesia.

The criteria for which Taxpayers pay taxes in Indonesia which have been regulated in the Laws and Regulations on Income Tax Number 36 of 2008 Article 2 paragraph 5 are a permanent establishment is a form of business that is used by an individual who does not reside in Indonesia, an individual who is in Indonesia. not more than 183 (one hundred and eighty-three) days within a period of 12 (twelve) months, and an entity that is not established and is not domiciled in Indonesia to run business or carry out activities in Indonesia, which can be:

a. place of management;
b. branch company;
c. representative office;
d. office building;
e. factory;
f. workshop;
g. warehouse;
h. space for promotion and sales;
i. mining and extracting natural resources;
j. oil and gas mining working area;
k. fishery, livestock, agriculture, plantation, or forestry;
l. construction, installation, or assembly projects;
m. providing services in any form by employees or by other people, as long as it is carried out more than 60 (sixty) days within a period of 12 (twelve) months;
n. a person or body acting as an agent whose position is not free;
o. agents or employees of insurance companies that are not established and domiciled in Indonesia who receive insurance premiums or bear risks in Indonesia; and
p. computers, electronic agents, or automatic equipment owned, rented, or used by electronic transaction providers to carry out business activities via the internet.

The residence of an individual or the domicile of an entity is determined by the Director General of Taxes according to the actual situation.

Foreign Investment (PMA) in Indonesia

Foreign Investment (PMA) is a limited liability company established under Indonesian law. Regarding foreign investment itself, the investment law can be defined as the activity of investing to carry out business in the territory of Indonesia he foreign investment, whether using foreign capital entirely or in collaboration with domestic investors.

Foreign Investment also has a tax obligation which has been regulated in accordance with Article 31A Number 36 Year 2008 which reads:

1. Taxpayers who invest in certain business fields and / or in certain areas that have high priority on a national scale may be granted tax facilities in the form of:

a. The reduction in net income is no higher than 30 percent of the total planting done;
b. Accelerated depreciation and amortization;
c. Compensation for losses that last longer, but not more than 10 years;
d. The imposition of Income Tax on dividends as referred to in Article 26 is 10 percent, unless the tariff according to the applicable taxation agreement stipulates a lower rate.

2. Further provisions regarding certain business fields and / or certain business areas which receive high priority on a national scale and the granting of taxation facilities as referred to in paragraph (1) shall be regulated in a Taxation Regulation.

Indonesia's efforts in handling Google's Aggressive Tax Planning

The Indonesian Government's effort in Handling Tax Avoidance by Google is to exchange data with the British government. Indonesia chose to exchange data against Britain, because Britain was the first country that succeeded in making Google pay taxes for the violations it had committed. Indonesia exchanges information with the UK Ministry of Finance, because the UK is the first to make Google pay taxes for its tax evasion.

Prior to the meeting held by Sri Mulyani and the British Minister of Finance, the Director General of Taxes Ken Dwijugiasteadi also had a meeting with the British tax authority, Her Majesty's Revenue and Customs (HRMC), in London, England. During the meeting, the Director General of Taxes shared experiences regarding the global tax pursuit of the digital giant Over the Top (OTT) and preparations for global cooperation: Automatic Exchange of Information (AEOI). In his written statement, the Directorate General of Taxes explained, the Director General of Taxes and the HMRC Commissioner realized the need for a joint commitment and approach to solve the current global tax problem.

Indonesian Government Constraints in Handling Tax Avoidance by Google

A. Google refuses to become a Permanent Establishment (PE)

The Directorate General of Taxation continues to push against Google, because of the financial information exchange policy made at the time of the G20 Summit in Hangzou, China in 2016. The existence of this policy will be very beneficial in the interests of taxation for G20 member countries. This policy will help member countries to work together to share information about taxes. With the disclosure of information about taxes, it will help avoid tax avoidance and encourage conducive tax policies in each member country.

Another thing that encourages the government to continue to make Google a Permanent Establishment is the need for the status of the Permanent Establishment itself. Permanent Establishment status is very necessary for a company like Google to earn income in Indonesia. In accordance with the regulations of the Ministry of Communication and Information regarding the operation of telecommunications networks, Internet service providers can be provided by foreign individuals and business entities with the mandatory provision for the establishment of PEs.

The efforts made by the Directorate General of Taxes are not automatically carried out by Google. Google refused to have the company designated as PE. The inspection letter provided by the Ministry of Communication and Information to Google Asia Pacific Pte Ltd was responded to with a refusal. The refusal was conveyed directly by the Director of Asia Pacific, Financial Planning and Analyst Marco Borla to the Special Tax Office for Foreigners (Badora) "they said that Google Asia Pacific Pte Ltd. in Singapore should not be deemed to have a Permanent Establishment and therefore should not be given a Tax ID in a position. In Indonesia, which means there is no need for an Audit by the RI Tax Office

Google still refuses to become a Permanent Establishment, so Google's status in Indonesia remains as PMA. As for the response of the Indonesian Government in terms of Google not wanting to become a Permanent Establishment, according to Rusdiantara as Minister of Communication and Information “The government has indeed asked Google to become a PE. The government also cannot immediately force Google to become a PE. There must be further considerations such as Tax Treaty or tax treaties by countries that are included in the equation and Tax Treaty in each country can be different.

B. Failure to do Tax Settlement (Tax Negotiation)

Tax negotiations carried out in 2016 were the second step of the Indonesian government because, the first step taken by the Indonesian Government was rejected by Google to become a Permanent Establishment.

The move by the government is the same step taken by the British and Indian governments when Google also violated taxes in their countries. What Britain, together with the tax authorities and parliament, did was to form a new rule called the Diverted Profit Tax, while what India was doing was to form an equalization tax to impose tax obligations on the company. According to Darussalam, a tax observer from Danny Darussalam Tax Center (DDTC), the most ideal approach to solve Google's tax cases is to negotiate.

Negotiations carried out by Indonesia are by asking Google to calculate the tax rate that must be paid and then submitted to the Directorate General of Taxes. However, when compared with the calculation results of the Directorate General of Taxes, the figure submitted by Google is very small, which is only about one-fifth of the data held by the Directorate General of Taxes. After that Google made an offer so that the Directorate General of Taxes would lower the results of their tax debt calculation, but the Directorate General of Taxes rejected it, because in fact the figures submitted by the Directorate General of Taxes were very minimal and according to the Directorate General of tax the calculations carried out by the DG of tax were based on Google's financial data obtained by the government from Google's accounting department.

V. CONCLUSION

Google avoids tax by minimizing the tax that should be paid by allocating this data to a lower tax country, namely Singapore. Google's tax evasion takes advantage of the gap between the domestic tax regulations in a country and the double tax avoidance agreement (P3B).

The Indonesian government effort in dealing with the problem of tax evasion by Google companies is to exchange data with the British government through the UK Ministry of Finance. Where the British Government was the first country that succeeded in making Google companies willing to pay taxes and comply with regulated laws and regulations.

The efforts made by the Indonesian government did not necessarily go well. However, there are also obstacles faced by the Indonesian Government, namely Google refusing the request of the Directorate General of Taxes to become a Permanent Business Entity in Indonesia and the failure of negotiations conducted by Google together with the Directorate General of Taxes by calculating income and taxes that must be paid to the Indonesian government. Google considers the DG tax calculation too big compared to Google's own calculation.

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