Consulting Group

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TAXGuide

Solution for Your Tax Matters

EXCLUSIVE
INTERVIEW

DON'T PLAYING AROUND WITH TRANSFER PRICING!

Achmad Amin
Deputy Director of International Tax Dispute Prevention and Handling of the Directorate General of Taxes.

Don't Playing Around with Transfer Pricing!

More than 80 countries are committed to apply the Country by Country Report (CBSR) initiated by OECD back in 2013. So far, more than 50 countries have adopted it, including Indonesia. With the issuance of PMK Number 213 Year 2016, the provisions of Transfer Pricing Documentation (TP Doc) for business groups making affiliated transactions in Indonesia are changed significantly. Starting from tax year 2016, not only local file but also master file and CBCR are mandatory for business groups to prepare in a relatively short time.

To get a clearer picture of this policy, MUC Tax Guide interviews **Achmad Amin, Deputy Director of International Tax Dispute Prevention and Handling of the Directorate General of Taxes.** Here is the interview:

What is the background of the policy of Master File and CBCR submission?

In 2013, G20 endorsed Base Erosion and Profit Shifting (BEPS) Action Plan and promoted international transparency to tackle tax avoidance. OECD, based on the endorsement of G20 initiated BEPS project or BEPS action plan, with the main message for G20 country members and other countries in the world that is to handle BEPS in terms of mobilizing domestic resources jointly and under the same standard as well as at the same level of playing field. BEPS action plan is specifically to overcome unfair double non taxation. The point is that preventing tax planning from causing Taxpayers not to be taxed everywhere. It is unfair since the Country does not acquire anything while profit is all for Taxpayers. This is a hazard. Both from the morale perspective and the legal perspective, it cannot be justified.

For example, a company (Taxpayer) in Indonesia pays an interest or a management fee to its affiliate in another country. The interest or the management fee paid definitely reduces revenue. As a cost, it is treated as deductible expense in. But in the other country that does not tax income from abroad, it cannot be a taxable object. So, the interest or the management fee is not taxed everywhere and it is only beneficial for that Taxpayer, there is no contribution at all for the Country and for the World.

Later, the 15 action plans in the BEPS project were born, one of which is the Action No.13, CBCR. Indonesia as a G20 member and a BEPS Assosiate will surely strive to be committed to the CBCR application as part of a minimum standard of the BEPS action plan to perform. Once we are committed to CBCR exchange, the format and the threshold should be the same, even though the submission timeline and the procedure can vary according to the domestic provisions prevailing in each country. However, the obligation of CBCR preparation is not for all companies, only those meeting the certain criterion, namely parent companies with consolidated revenue value more than 750 million Euro or IDR11 trillion.

How is CBCR application in Indonesia?

The Indonesian Government has issued PMK Number 213 Year 2016 to regulate the obligation to prepare TP Doc. It is a package of TP Doc consisting of master file, local file and CBCR. All of which shall be made in Indonesian Language.

The content of CBCR covers data of group's profit in each country, tax paid, and number of employees, to represent information of the group's activity or functions performed by each business group in each country. And, this is going to be transmitted automatically, but only to countries having the same commitment and signing the CBC exchange agreement bilaterally or multilaterally. The CBC exchange agreement multilaterally is called CBC Multilateral Competent Authority Agreement (CBC-MCAA).

What is the urgency of CBCR?

Indirectly, we want to give some kind of alert: "You cannot play around again using group scheme!" There is already a mechanism to monitor it for achieving fairness. That is the first reason.

The second, we also require working paper for CBCR. The objective is to make sure that Taxpayers do not prepare CBCR carelessly, the sources should be clear. The use of CBCR is limited to risk management, thus it cannot be used as a base of tax audit correction. Later, only CBCR form is exchanged with the other country, not the working paper.

Basically, all types of unfairness, tax avoidance, can be mitigated well from the very beginning. Do not make Taxpayers unaware of arm's length principle and later punish them. Since the first start, they should be well informed about what they are supposed to do. Incompliance should not be given any chance but later sanctions are charged.

"The problem is not on the transfer pricing, but on the abuse of transfer pricing. (It is a problem) if tax planning is set for tax avoidance,"

Does it mean that DGT's approach to Taxpayers is changed?

Our message contained in PMK 213 is basically our hope that Taxpayers applies the Arm's Length Principle (ALP) since they set up prices. This is known as price setting approach atau ex-ante basis. Based on this PMK, Taxpayers are expected to no longer apply ex-post basis for it is more fair from both Taxpayers' side and DGT's side. So, a Taxpayer should set a price based on the arm's length principle. For example, when a Taxpayer sets profit = total cost + 5%. The 5% should have a clear base. It should be based on the ALP and documented in TP Doc (Master File and Local File).

Our bigger message is that we hope that transactions with prices already based on ALP will not be subject to potential corrections. It is unfair if affiliated transactions under ALP from the beginning of the year are still corrected. By contrast, Taxpayers who do not set prices under ALP are surely exposed to risks of correction by tax auditors. This will not happen if they set their prices under ALP. Even if at the year-end deviation occurs on the pricing set earlier, Taxpayers are welcomed to explain it in the TP Docs to make all fair and transparent.

Is transfer pricing something normal?

Transfer pricing is pricing set for transactions between affiliates. Pricing of sales, purchase, royalty, fee and any other form is categorized as transfer pricing when it is done with affiliates. Until this phase, there is no problem since affiliated transactions are basically normal and not prohibited by law. It becomes a problem only when there is a transfer pricing abuse. Abuse what for? It is for minimizing taxes in Indonesia.

So, the problem is not on the transfer pricing, but on the transfer pricing abuse. If tax planning is set for tax avoidance, it surely will become an issue. If it is done not under ALP, DGT has the authority to make corrections.

It is ironic when the business is running in Indonesia, using energy resources and labors at cheap costs, huge amount of waste discarded in Indonesia, trucks destroying streets, but the profit is transferred to overseas. The issue is when the profit is transferred. So, it is not transfer pricing that is prohibited. Transfer pricing is allowed so long that it is fair (ALP).

Please also remember that CBCR cannot be used to correct transfer pricing. It is only for risk analysis on transfer pricing to get the picture of which aspects transfer pricing risks arising within a company. The risk analysis result will provide recommendation or indication that the company should be audited or examined further regarding its transfer pricing

This acts as a diagnostic tool to spot the transfer pricing risks. If there is no risk, it will not be transfer pricing audit's main priority. If there is, we will examine which transaction has the most optimum target of audits.

Does it burden Taxpayers even more?

It actually creates an easier condition for Taxpayers, encouraging them to comply with ALP. Those that comply will be seen as they do, and vice versa. So, we treat TP doc in a fair position to endorse a fair treatment. Compliant taxpayers will earn benefits and incompliant ones will get disincentives in the form of punishment.

What type of sanction for Taxpayers not complying with TP Doc Reporting?

In the past, the sanctions charged on Taxpayers' incompliance with ALP or on failure of TP Doc preparation were the same, 2% per month under Article 13 paragraph (2) of KUP Law.

Now, it is different. For taxpayers not maintaining TP documents, the sanction under Article 13 paragraph 3 of KUP Law shall be 50% from the unpaid or underpaid tax.

For Taxpayers with late submission or even not having submitted their TP Docs until the timeline elapses, there will be discretion for Tax Auditors whether their TP Docs will be considered or not. In other words, it is an authorized discretion. If it is unfair based on the test result, the tax auditor will charge 2% per month sanction.

Meanwhile, for Taxpayers manipulating their TP Docs by using untrue information, criminal sanctions can be imposed. So, we treat everything fairly. Taxpayers who do not prepare TP Docs will be treated similarly as those not performing the bookkeeping obligation.

What if the information given in the Master File is incomplete for not obtaining data from the parent company?

This is the same as the provisions of bookkeeping. Bookkeeping shall at least cover financial report, profit-loss report, statement of change in equity etc. If a company prepares its financial statements not meeting the provisions, just go ahead. There will be legal consequences to bear by not fulfilling the bookkeeping obligation. The tax auditor will use their discretion on whether to consider it or not.In other words, TP Docs obligation fulfillment is similar to bookkeeping obligation fulfillment, as we are giving the ball to the Taxpayers as according to the self assessment principle.

We hope that companies have an adequately systemized and standardized TP documentation. All are prepared since the first start and made available at the right time so that they do not get puzzled upon tax auditors' inquiries.

Google's Tax Savvy, the Tax Authority's Nerves

"Google, technology giant from the United States is now under a close watch of Tax Authorities in many countries, particularly in Europe and Asia. In 2014, Google saved USD2.4 million in taxes by channeling its worldwide revenue for approximately USD12 million to its shell corporation in Bermuda."

GOOGLE'S TAX SAVVY THE TAX AUTHORITY'S NERVES

In line with the development of information technology, information exchange is now faster than ever as the internet-based service provider (Over-the-Top/OTT) has been growing rapidly. Some internet technology giants like Yahoo, Google, Facebook, and Twitter have led the market throughout the world.

This digital business growth has given rise to the new era of electronic commercial transaction or e-commerce. However, the spread of this online business does not only come with business opportunity, but also the new problem accross the nations. It is caused by the fact that the revenue generated by most of the multinational digital companies is diverted and only parked offshore to some tax haven countries. By utilizing the loophole in the Double Taxation Avoidance Agreement or tax treaty, OTT can circumvent the high-rate tax legally.

We can take Google as an example. This technology giant from the United States is now under a close watch of Tax Authorities in many countries, particularly in Europe and Asia. In 2014, Bloomberg stated that Google saved USD2.4 million in taxes by channeling its worldwide revenue for approximately USD12 million to its shell corporation in Bermuda.

The scheme is notoriously called Double Irish with A Dutch Sandwich. By performing the scheme, Google minimizes its tax burden by establishing some 'facilitator' subsidiaries in Ireland and the Netherlands. In Ireland, Google has two subsidiaries: One as a revenue collector and one as the holder of Google's copyright and intellectual property. However, Google does not transfer its royalty-based revenue directly to both companies. Instead, it is shifted to another Google's subsidiary in the Netherlands, Google Netherlands Holding B.V., before proceeded to the subsidiary owning Google's copyright. Notwithstanding the fact that Google's copyright holder is registered in Ireland, the head quarter is located in Bermuda, which is a tax haven with zero income tax rate. That is how Google dodges Ireland income tax of 12% and the USA income tax of 35%.

In Asia Pacific, Google centralizes its business activities in Singapore through Google Inc. All of Google's revenue from its transaction around the region is entirely transferred to its subsidiary account in the Merlion Country, offering an extremely low tax rate.

Isn't it savvy? Google's move is not something illegal. However, this phenomenon becomes a big concern of many countries, such as England, Ireland, India, and even Indonesia. It indeed gets on the nerves of the Tax Authorities across those countries on how to impose a proper tax to Google. Meanwhile, the tax treaty seems to be their major stumbling block.

Indonesian government through its Directorate General of Taxes (DGT) has lately become a nuisance for Google's business in Indonesia. Based on its estimation, Google's tax liability for the last five years in Indonesia has approximately reached IDR5.2 billion. The DGT surely has pushed Google to settle the tax, but the company persists that they have paid their tax obediently and have complied with the Indonesian government regulations.
Google's business expansion to Indonesia has run since 2011 by establishing an affiliated entity in Jakarta, PT Google Indonesia. However, its status and business activities cannot be categorized as a Permanent Establishment (PE). It becomes their alibi to hedge the accusation of conducting tax evasion.

Unfortunately, the DGT does not own any specific tools yet to urge Google to settle the proper amount of tax. By always relying on tax treaty, Google has been succeeding to dodge paying taxes in many countries. Even if this case is brought before a court, Google is likely to win and DGT may only stand to lose. For the long-term purpose, a more concrete solution is needed by the DGT than a merely enforcement that seems like a call or a request for the OTT to 'contribute' in tax.

Learning from Other Countries

Indonesia can imitate other countries policies such as England's, Ireland's, or even India's in handling OTT tax evasion modus by issuing a new type of tax without violating tax treaty.

England government, for instance, has introduced a new type of tax for punishing Google and other companies with similar tax practice by imposing Diverted Profit Tax. As of FY 2015, England imposed tax of 25% on profits shifted by multinational companies.

Meanwhile, starting from 2020, Ireland obliges all of companies conducting business in that country to register as a taxpayer. Google and other similar companies indeed still have chances left to utilize the loophole of tax regulations in Ireland. The time is ticking anyway.

Google's case is responded by Indian government by introducing new type of tax, a "Google Tax" of "Equalization Levy." This regulation stipulates that foreign internet companies are subject to Equalization Retribution of 6% from revenue derived from particular internet service transactions, such as online advertisement. Related to that matter, it is possible for multinational OTT to claim tax credit in its original countries for the settled tax in India. So far, India is the only country applying this policy. The Ministry of Finance of India has announced this regulation to other digital multinational companies such as IBM, Microsoft, Amazon, Apple, and Netflix to be ready of equalization retribution collection.

Political Will

Speaking of Indonesian taxation, many tax policies have been made. It is now whether to do it or not. Strong political will not only come from the government, but it must also be supported by legislative since any kind of taxes imposed to OTT companies shall be discussed in parliament. The revision to the tax law which becomes the National Legislative Program may be an entrance for more concrete ways in conducting tax collection than only insisting without any clear base.

TAX ID NUMBER, CUSTOMS SINGLE IDENTITY

The Ministry of Finance (MOF) has recently improved customs registration system, by officially announcing the use of NPWP (Tax Identity Number) as a single identity number for customs registration.

In line with that, starting 24 December 2016, NIK (Customs Identity Number) and NP PPJK (Customs Service Handling Person Identity Number) shall no longer be used and valid. This is affirmed in MOF Regulation No. 179/ PMK.04/2016 on Customs Registration (PMK 179) issued on 24 November 2016 and effective 30 days following the issuance.

This new regulation automatically revoked the previous Customs Registration Provision, MOF Regulation No. 59/ PMK.04/2015.

Furthermore, the mechanism of customs registration service is also enhanced. The customs registration service is now processed online through the website of Directorate General of Customs and Excise (DGCE) at www.djbc.go.id, and Indonesia National Single Window (INSW) at www.insw.go.id. The online registration requires forms to be filled in and documents to be uploaded by addressing them to the DGCE.

Exception applies for the customs registration obligation of certain customs service users or individuals utilizing the service for non-commercial and diplomacy purpose, or goods incoming for social, religious, and/or research purposes.

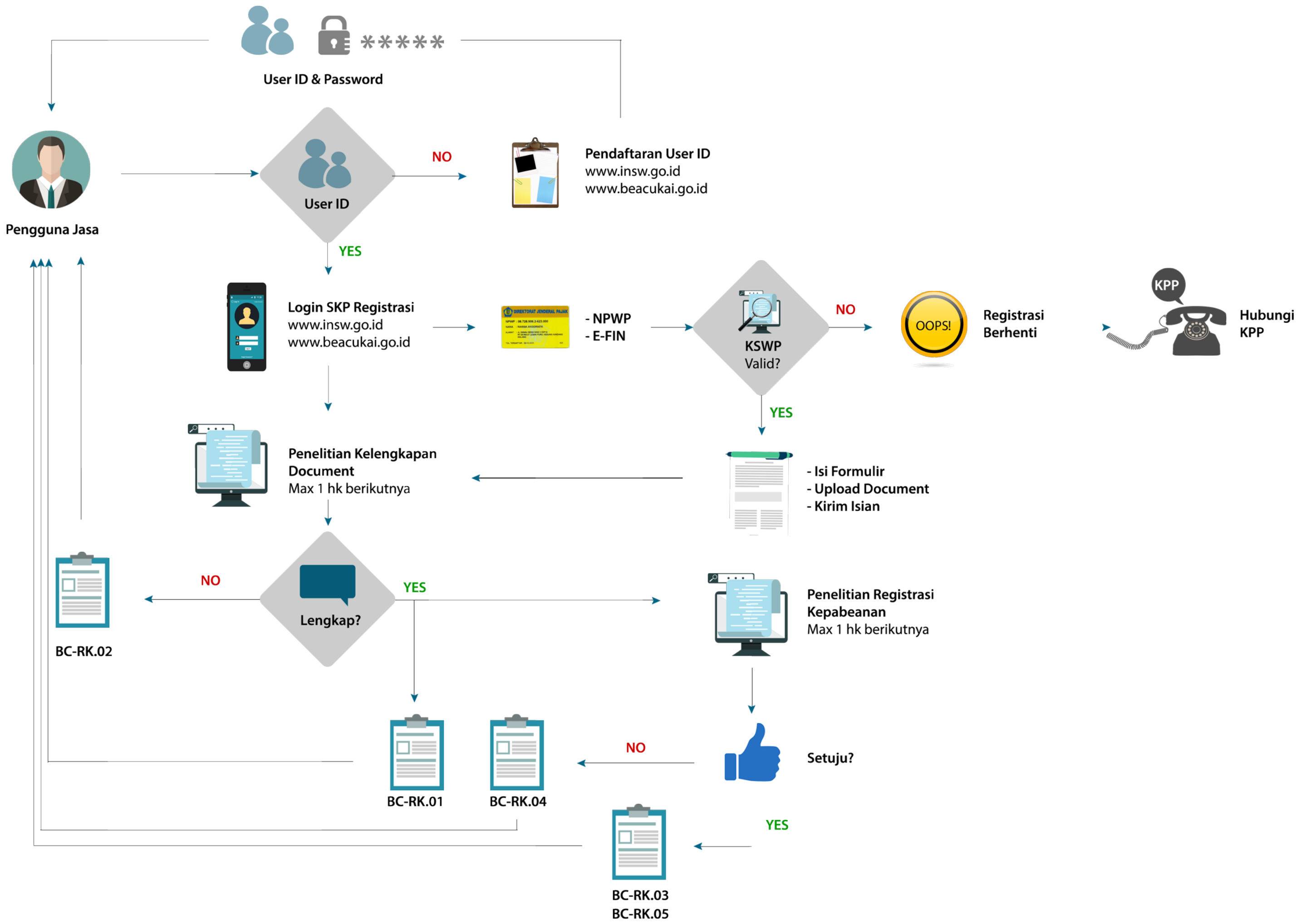
Data and Institutional Synergy

The use of NPWP as Customs Identity Number is a real evidence of a synergy between 2 (two) Indonesian tax institutions—the Directorate General of Taxes (DGT) and DGCE. The synergy is also marked by the issuance of the provision that requires the customs service users to report their Income Tax Returns and Monthly VAT Returns to DGT.

Furthermore, the application of this new customs registration can only be done after the applicants obtain a valid taxpayer status confirmation from DGT. The list of documents required will further be based on the characteristics of the customs service users.

This improvement is expected to integrate the NPWP data with the customs registration through INSW website. This synergy may also generate master file of customs existence data and accountability to be utilized jointly between DGBE and DGT.

Through this new mechanism, the compliance of customs service users toward the tax provisions is also expected to escalate. Also, the monitoring and evaluation of customs activity can be done periodically through administration verification and field checking by both institutions under the Ministry of Finance.



Previously, there were only 4 (four) customs service users on the list obliged to register, namely importer, exporter, Financial Service Companies (PPJK), and transporter/carrier. Under this PMK 179, it also covers courier service companies and Temporary Storage (TPS) companies.

For all customs services or PPJKs whose NPWPs are already registered in DGT data center and in the Customs system, the customs registration is not mandatory. Their data is automatically recorded in the system and shall be their single identity numbers replacing NIK or NP PPJK.

Customs Blockage

For those service users considered disobeying the regulation, the access to the customs activity may be blocked partially or fully by DGCE. The following are the condition when users' disobedience leads to the full blockage of customs activity:

- Not reporting the change of existence data and/or person in charge (PIC) structure;
- Being inactive in customs activity for consecutive 12 (twelve) months;
- Not submitting the Annual Tax Returns for the last 2 (two) years;
- Not reporting the Monthly VAT Returns for the last 3 (three) years;
- Not submitting the indenter data accurately in the Import/ Export Declaration;
- Not reporting the Export Foreign Exchange (Devisa Hasil Export/DHE) to Bank Indonesia.

Meanwhile, the partial blockage is potentially applied to the PPJK not reporting the change of customs expert data or based on internal or other institution recommendation.

To unblock the access, the service user is required to settle the obligation previously failed to comply. Especially for the inactivity in customs area, the blockage can only be open if the service users enclose the supporting documents proving the activeness. Meanwhile, for the service users obtaining blockage under internal or other institution recommendation, the access can only be regained through another recommendation from the party recommending the blockage at the first place.

This customs blockage is exempted for the service user undergoing the examination process by DGT for the purpose of Taxpayer's location/address change.

Requirement

IMPORTER

- Deed of Establishment
- Latest Deed of Amendment
- Import Identification Number (Angka Pengenal Impor/API)
- Identity of Company's PIC (Director): National Identity Card/Passport/ Permit of Foreign Labor Usage (IMTA)
- Tax ID Number of Company's PIC
- Proof of Account on behalf of the Company

EKSPORTER

- Deed of Establishment
- Latest Deed of Amendment
- Company Registration Certificate (TDP)
- Identity of Company's PIC (Director): National Identity Card/Passport/ Permit of Foreign Labor Usage (IMTA)
- Tax ID Number of Company's PIC
- Proof of Account on behalf of the Company

PPJK

- Deed of Establishment
- Latest Deed of Amendment
- Company Registration Certificate (TDP)
- Identity of Company's PIC (Director): National Identity Card/Passport/ Permit of Foreign Labor Usage (IMTA)
- Tax ID Number of Company's PIC
- Customs Expert Certificate
- Proof of Account on behalf of the Company

TRANSPORTER/ CARRIER

- Deed of Establishment
- Latest Deed of Amendment
- Air or Sea Transport Business Permit (SIUPAL/SIUAU/SIJJPT)
- Identity of Company's PIC (Director): National Identity Card/Passport/ Permit of Foreign Labor Usage (IMTA)
- Tax ID Number of Company's PIC
- Proof of Account on behalf of the Company

COURIER SERVICE ENTREPRENEUER

- Deed of Establishment
- Latest Deed of Amendment
- National Post Operation Permit
- Identity of Company's PIC (Director): National Identity Card/Passport/ Permit of Foreign Labor Usage (IMTA)
- Tax ID Number of Company's PIC
- Proof of Account on behalf of the Company

TEMPORARY SERVICE

- Deed of Establishment
- Latest Deed of Amendment
- Decision of Determination of Temporary Storage
- Identity of Company's PIC (Director): National Identity Card/Passport/ Permit of Foreign Labor Usage (IMTA)
- Tax ID Number of Company's PIC
- Proof of Account on behalf of the Company

FINAL ROUND OF TAX AMNESTY

NEW ROUND OF TAX REFORMATION

Tax amnesty program has finally come to its final episode. It's time to measure the success of the tax amnesty policy. The easiest indicator to measure is the target made by the government, that is to say the redemption money in the amount of IDR165 trillion and the asset repatriation of IDR1,000 trillion.

To that extent, the total of redemption money received in the State Treasury has reached IDR103 trillion or 62.4% of the target (Tuesday, January 10, 2017). On the other side, the assets that have been repatriated by taxpayers for the tax amnesty program has just reached IDR141 trillion or 14.1% of the targeted assets.

In point of fact, the socialization conducted by the government in the early period has been adequate to boost the taxpayers' enthusiasm to participate in the tax amnesty program. Yet, this euphoria unfortunately began to fade in the second period when the redemption rate increased, while in contrast the number of socialization lessened.

In the last period, evaluation as well as self-examination should be done by the tax authority. Apart from more socialization that shall be conducted, a policy/provision that can persuade taxpayers' voluntary participation in the program is needed. For instance, by giving a kind of reward to the taxpayers that have complied so far but still participating in tax amnesty program. These taxpayers should be appreciated especially since their participation is solely initiated by their loyalty to the State, instead of the amnesty itself

The approach conducted by Directorate General of Taxes (DGT) to the compliant taxpayers should be more in the form of fostering. The orientation should be altered by no longer targeting them as audit objects. This can be done by treating the data that have been registered as guidance in fostering the taxpayers, despite the audit targets. As a consequence, the taxpayers' compliance is expected to increase, while numbers of tax dispute in the tax court decrease.

Prior to the tax amnesty program, DGT has acquired data of the potential taxpayers in every tax office. The data can be re-accessed and notification can be sent to all inactive taxpayers in the form of notice to sign in the tax amnesty program.

At least, DGT still has three months to reach their target, as well as, the three months left for the taxpayers not yet participating to benefit from the tax amnesty facility provided by the government. Even though the rate is no longer as low as the earlier periods, the benefits to be acquired are the same as yet.

Whatever the final decision taken by taxpayers—whether to sign in the program or not—both preferences come with consequences, either positive or negative. For the taxpayers signing in, the benefits are in the form of debt relief; exemption from the administrative or criminal sanctions; as well as discontinuance of audit and

investigation in case of any tax crimes. However, by participating as well, they should be willing to give up their rights to have any overpayment refund and to compensate the loss, as well as the chance to do any Tax Return revision.

Meanwhile for taxpayers deciding not participating, surely no cost is spent for redemption money. However, it is considered insignificant if compared to the sanction that will follow in the future. Thus, the taxpayers should ensure that there is no past flawed history or tax negligence that can be targeted by the tax officers. The taxpayers should be ready to confront any potential audit in the future. The tax compliance is indeed the dream of all nations. Yet, it still cannot guarantee the immunity from the risk of audit by the tax officers.

There is this saying that to err is to be human. In the context of tax compliance, there is always loophole potentially discovered by the tax authority and disputable at a later time. If it is happening, the cost incurred in the upcoming days will be more expensive than paying the redemption with the rate of 5% or 10% in this last period of tax amnesty.

Let's say, you are a highly compliant taxpayer in which the tax officer may be mistaken in the discovery and your winning probability is high in case of a dispute. Still, it will cost you time and energy to prove the case. The tax dispute resolution may cause you loss of chance for productivity as it normally takes a long time to resolve. Even longer, when any additional asset is discovered to be unreported. In this case, you can be considered incompliant and shall be willing to pay extra to settle all of the arrears not including the administration sanction with significant amount.

Opportunity for UMKM

Tax amnesty is considerably a rare facility that the next issuance is indefinite. For Micro, Small and Medium Enterprises (UMKM), it is never late to participate, despite the last period. Special treatment applies for UMKM (taxpayers with turnover up to IDR4,8 billion a year) as no progressive rate is utilized. The redemption rate is 0.5% for UMKM with assets up to IDR10 billion, and 2% for those with assets more than IDR10 billion.

Therefore, timing difference is not an issue for any UMKM to enroll the program. Otherwise, when they entirely ignore the facility, past incompliance may become a new problem and may hinder their business activity in the future.

Avoid Queuing

Looking at the tax amnesty conduct in the last two quarters, taxpayers tend to be indecisive in the early period but in a rush by the book closing period. For this third period, it should be avoided. Taxpayers should decide and register themselves immediately if not wanting to get stuck in the long line of Individual taxpayers reporting their tax returns.

The due date of tax amnesty falls on March 31, 2017. And, it coincides with the due date of Individual Tax Return reporting. On that period each year, all tax offices are usually very busy as taxpayers are in the process of their tax return submission. By considering the fact that this year the tax officers must serve the tax amnesty line as well, it is better to finish the tax amnesty matters soon before the peak period comes. And, this is also important for the DGT to consider, so they can give the best service to the taxpayers.

Given these points, take benefit from this tax amnesty program while it lasts. The tax socialization year has been drawn to a close and DGT is now focusing on the law enforcement. By participating, one can think progressively, thus the resources owned can be generated fully for the more productive activities solely for the business.

Batas waktu TERSEDIANYA:

1. Dokumen induk 2016
2. Dokumen lokal 2016

Batas waktu PENYAMPAIAN:

1. Ikhtisar dokumen induk 2016
2. Ikhtisar dokumen lokal 2016

30 April 2017

Batas waktu TERSEDIANYA Laporan per Negara 2016

30 April 2017

Batas waktu TERSEDIANYA:

1. Dokumen induk 2017
2. Dokumen lokal 2017

Batas waktu PENYAMPAIAN:

1. Ikhtisar dokumen induk 2017
2. Ikhtisar dokumen lokal 2017
3. Laporan per Negara 2016

30 April 2018

2016

2017

2018