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Assalamualaikum Wr. Wb. May prosperity be unto all of us. Eid Mubarak to all Muslims. On this Eid al-Fitr, may all believers regain the fitrah as servants of Allah SWT.

This momentum of Eid day has inspired the Tax Guide team to raise the issue of the importance of tax as one of instruments to purifying the Taxpayers' assets.

Thus, we present the article relating to the Taxpayers' compliance phenomenon in light of religion and moral perspectives. Paying taxes has been considered as a formal activity of the citizen to the country. In fact, the existence should be taken more as social responsibility.

In addition, this edition also presents an article highlighting the policy of reform in business licensing through Online Single Submission (OSS), which appears not growing. It is because, since the target of its release on May 20 to date, OSS has still not been accessible.

Furthermore, we also discuss the decision of Constitutional Court of Indonesia on review of Taxation General Provisions and Procedure granting the lawsuit by the advocate objecting against the article that limits the Taxpayer's attorney criteria. The decision has raise a polemic since the area that has been occupied by tax consultants become open for anyone who understands taxation to become a Taxpayer's attorney.

In info-graphic rubric, we visualize the mechanism to claim zakat as deduction to net income (taxable income).

Last but not least, the editorial team of Tax Guide and MUC Consulting Group Management wish you a blessed Eid al-Fitr 1439H. May Allah accept our fasts and prayers. We hope that the information we provide in Tax Guide always gives enlightenment to us all, as well as be a beneficial source for all the readers. Happy reading. Wassalamualaikum, Wr. Wb.

Jakarta, July 2018

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Zakat and Tax as the Path to Purity



This month, a religious moment that plays an important role to maintain the relation between the people and the country, mainly for the Muslims, takes place. It is the closing of Ramadan that marks the celebration of Eid Al Fitr, the glorious day that gives the believers a chance of returning to the fitrah or the pure humane nature.

Certainly, this moment is related to a set of worshipping activities conducted by the Muslims. One of the activities is zakat. In religious context, zakat is the realization of a person's empathy to the people in the area who are economically and socially lacking. In the national context, the concept of zakat is also applied in the modern taxation system globally, including Indonesia.

As stated by Masdar Farid Masudi (2005), zakat, in its development, has been deemed as an institutional administrative by many, not only a mere spiritual commitment. Since zakat was mandated 14 centuries ago, the object of zakat has been developed, not only for certain kind of income that is zakat-obliged.

Zakat is perceived as the obligation of a person to God and, similarly to tax, closely related to social responsibility. Zakat is understood as an obligation that has to be obeyed. At the same place, it is also as the will of God that has to be sincerely accepted.

Therefore, it is fair if the Government—in this case, the tax authority—uses moral to spiritual (religious) approach to arouse and enhance the Taxpayer's obedience. The religious approaches have been used to change the Taxpayer's paradigm that mainly considers tax as a forced demand instead of seeing it as a basic obligation of each citizen.

Tax is a tool for the State to conduct income distribution and development equalization, which can be defined differently according to the approach. From religious perspective, tax is truly a worship facility that can be equal to zakat or charity donation paid consciously for mutual benefit.

The benefit of tax covers wider area compared to zakat or religious donation because the advantage can be felt by all layers of lower society without taking into account the religion, ethnic, skin color, or economy status background.

The domination of tax as the source of state's revenue is indeed unnegotiable. This condition creates a chronic dependency on most countries in the world to the tax revenue, including Indonesia. However, the low level of Taxpayer's obedience is the problem for the tax authorities, especially in Indonesia.

Based on the data of Directorate General of Taxes (DGT), currently, the number of Taxpayers registered is of 38.6 million. The number is very biased if compared to the number of the people having income or work recorded Central Bureau of Statistics (BPS). Per February 2018, it reached 127.07 million.

The inequality of the taxpayer's data is also reflected by the ratio of tax revenue to Gross Domestic Product (GDP) or tax ratio that was recorded only of 10.9% by the end of 2017. Such number is still too low in comparison with the tax ratio of neighboring countries in Asia and still far from the target the Government wants to achieve in 2018, which is 14% of GDP.

Various efforts to raise the citizen's awareness to pay tax have and will always be strived by the Government, starting from the subtle to harsh approach. Among others, the action recently taken is to grant tax amnesty. The antithesis of the policy is to issue the threat of force body penalty (*gijzeling*) and travel ban for Taxpayers that have not paid their tax.

The problem of tax revenue is not supposed to be this serious if all parties are having the same perspective on the existence of tax, which is as a tool to enhance the wealth of the society.

There are several factors affecting the tax perception in the eye of the people. One of which is the rampant corruption of taxpayer's money cases, as expressed by the Director General of Taxes for 2011-2015 period Fuad Rahmany.

Morality in Tax

The effort to build the awareness through religious approach is not a sin because almost all of religious teachings acknowledge the concept of tax or obligatory contribution by the believers to the leaders or to those rightful.

A few months ago, the citizen are shocked by the leaflets distributed by DGT. The leaflets contained a quite sensitive content because it quoted several paragraphs from the holy book. The message contained in the leaflets was the call for the people to pay tax.

The religious approach is taken to balance the massive campaign of tax compliance through compelling law enforcement. This is an extra effort of the Government that is worth our reflection as religious citizens.

In global taxation perspective, the term tax morality is known. James Alm and Benno Torgler, on their work, *Do Ethics Matter? Tax Compliance and Morality*, explained that individuals do not always behaving selfish and self-interested.

Human behavior is also influenced by the aspects of morality, social norms, fairness, or other factors that can be said as ethics. Through these ethics, human behavior can be directed to increase the tax compliance.

Meanwhile, Mohammad Rifky (2013) wrote that tax morality is closely related to the faith of the Taxpayers to the Government and their nationalism. In this case, the faith is related to public service, trust to the leader, and a fair tax administration.

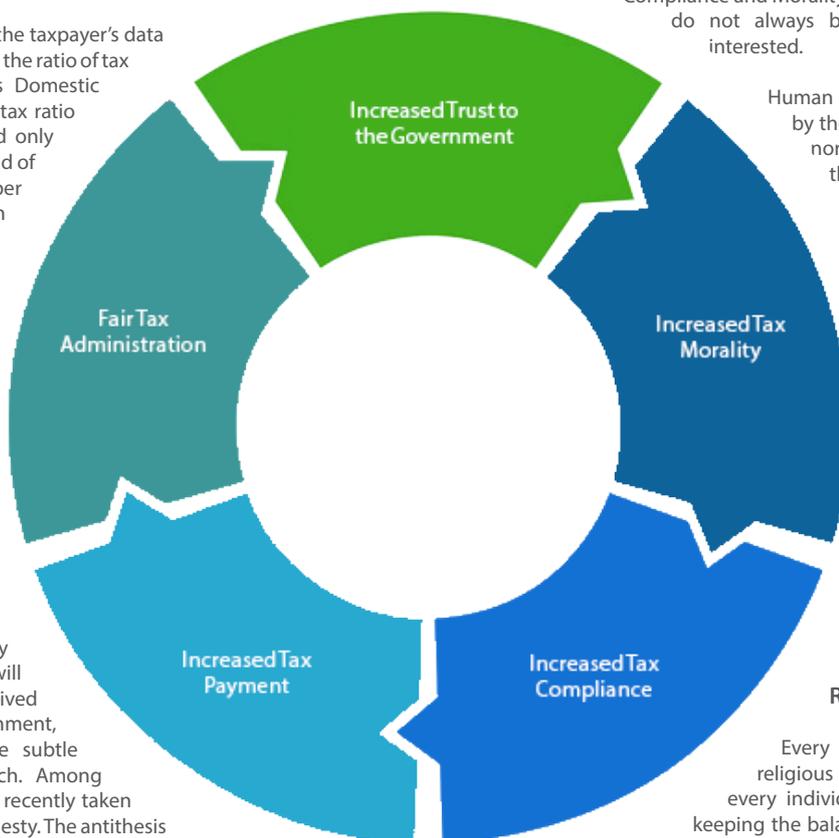
Returning to the *Fitrah*

Every year, there are always religious rituals that actually remind every individual of the importance of keeping the balance of empathy as a God's creature and a social being. Eid Al Fitr and any holy festivities are supposed to be the momentum for all of the people to go back to the *fitrah* by paying zakat, tax, or other mandatory religious donations.

The hope is indeed that the obedience to pay tax and religious donations does not only recur on a holy moment, but the consistency to do so is to be maintained whenever receiving an income.

As the number of the citizen paying tax compliantly and correctly is increasing, more money can be used for development. In the end, all of the parties will gain "victory" just like the personal victory on the holy day. The citizen celebrating the victory will make the country advanced and dignified as aspired by the founding fathers.

Let us perfect our worship by enhancing our social concern to others by making tax as an obligation, not a burden. We wish a happy Eid Al Fitr 1439 H for all Muslims celebrating. May our past wrongdoings be forgiven.



¹ Masudi, Masdar, 2005, *Pajak itu Zakat: Uang Allah Untuk Kemaslahatan Rakyat*, Mizan.



Pay Zakat, Cut Tax Expense

"Zakat or mandatory Religious Donation can be deducted from gross income..."

(Director General of Taxes Regulation Number PER - 11/PJ/2018)

Terms & Conditions:

- The zakat/donation is paid through Board/Institution established and legitimized by the Government.
- The zakat/donation is reported in Net Income calculation on the individual Annual Tax Return.

Legal Boards/Institutions acting as zakat/religious donation recipients:

Islam:

1. Badan Amil Zakat Nasional (Baznas)
2. Lembaga Amil Zakat (LAZ) Indonesia
3. LAZ Nurul Hayat
4. LAZ Inisiatif Zakat Indonesia
5. LAZ Baitul Maal Hidayatullah
6. Yayasan Lembaga Manajemen Infaq Ukhuwah Islamiyah
7. Yayasan Yatim Mandiri (LAZ Yatim Mandiri) Surabaya
8. Yayasan Dompot Dhuafa Republik
9. Yayasan Pesantren Islam Al Azhar (LAZ Al Azhar)
10. Yayasan Baitul Maal Muamalat (LAZ BMM)
11. Yayasan Daarut Tauhid (LAZ Daarut Tauhid)
12. Yayasan Dana Sosial Al Falah (LAZ YDSF)
13. Yayasan Dewan Dakwah Islamiyah Indonesia
14. Yayasan Global Zakat
15. Perkumpulan Persatuan Islam (PERSIS)
16. Yayasan Rumah Yatim Ar Rohman Indonesia
17. Yayasan Kesejahteraan Madani (YAKESMA)
18. Lembaga Amil, Zakat, Infaq, dan Shadaqah (LAZIS) Nahdlatul Ulama
19. LAZIS Muhammadiyah
20. Yayasan Gema Indonesia Sejahtera (LAZ GIS)
21. Yayasan Nurul Fikri, Palangkaraya

22. Yayasan Solo Peduli Ummat

23. Yayasan Dompot Amal Sejahtera Ibnu Abbas, NTB
24. Yayasan Baitul Maal Forum Komunikasi Aktif Masjid
25. Yayasan Dana Peduli Ummat, Kalimantan Timur
26. Yayasan Dompot Sosial Madani, Bali
27. Yayasan Sinergi Foundation
28. Yayasan Harapan Dhuafa, Banten
29. Yayasan Al Ihsan, Jawa Tengah
30. LAZ Rumah Peduli Umat, Bandung Barat
31. LAZ Mata Air (LAZISMA)
32. LAZ Baitul Maal Abdurrahman Bin Auf
33. LAZ Yayasan Ummul Quro'
34. LAZ Yayasan Dompot Amanah Umat Sedati, Sidoarjo
35. LAZ Nasional Baitul Mal Madinatul Iman
36. LAZ Yayasan Zakatku Bakti Persada
37. LAZ Indonesia Berbagi
38. LAZ Yayasan Amal Sosial As-Shohwah, Malang
39. LAZ Yayasan Ulil Albab, Sumatera Utara
40. LAZ Yayasan Nahwa Nur, Jawa Barat Nomor
41. LAZ Yayasan Insan Masyarakat Madani, Bekasi

Non Islam:

42. Yayasan Buddha Tzu Chi Indonesia
43. Yayasan Dana Paramita Buddha Maitreya Indonesia
44. Yayasan Dana Paramita Agama Buddha Indonesia
45. Yayasan Dana Paramita Majelis Tridharma Indonesia.
46. Badan Amal Kasih Katolik (BAKKAT)
47. Lembaga Sumbangan Agama Kristen Indonesia (LEMSAKTI)
48. Yayasan Sumbangan Sosial Keagamaan Kristen Indonesia (YASKI)
49. Badan Dharma Dana Nasional Yayasan Adikara (Hindu)
50. Dharma Parisad (BDDN YADP)

Who Can Be A Tax Proxy?

Constitutional Court has recently granted a lawsuit of an advocate—who had been rejected as a Taxpayer's representative (tax proxy) three times by the Tax Office. Article 32 paragraph 3a of Law Number 28/2007 on General Provisions and Taxation Procedures (KUP) is the subject of judicial review.

The article states that: *The requirements and the exercise of rights or obligations of a proxy as stated in paragraph (3) is stipulated by or based on the Minister of Finance's regulation.*

Delegation of authority from the law to the Minister of Finance Regulation (PMK) is considered unconstitutional because it gives an excessive authority to the Minister of Finance. In the case experienced by the plaintiff, the implementation of Article 32 paragraph 3a of KUP Law by the Minister of Finance is considered limiting the citizen's constitutional rights—in this case, advocates—to be a tax proxy.

The authority in question is expressed in PMK Number 229/PMK.03/2014 on Requirements and Exercise of Rights and Obligations of a Proxy. The Minister of Finance, through the PMK, stipulates that only tax consultant and the Taxpayer's employee may become a tax proxy. Thus, the chance for people of other professions to be a tax proxy is closed. The main requirement to become a proxy is that the tax consultant or the Taxpayer's

employee must understand and master the provisions of tax legislation.

To prove such mastery, a tax consultant must have Certificate of Tax Consultant (SKP) issued by Director General of Taxes or appointed officials as a proof of license to practice based on his/her skill level in tax (A, B, or C). As the precondition to obtain SKP or license to practice, the tax consultant has to pass Tax Consultant Certification Exam (USKP). The professional level exam of tax consultant is held by USKP Organizing Body established by Indonesian Tax Consultants Association (IKPI).

Retired Directorate General of Taxes (DGT) employee may also become a tax consultant or tax proxy under specific requirements. Aside from considering the time of service in DGT, the license to practice may be given to a retired DGT employee after passing equivalency test of tax consultant certification level.

As for the Taxpayer's employee, to prove that they understand tax



and are competent to become a tax proxy, the employee has to prove their legality in the form of tax brevet certificate issued by tax brevet educational institution course; certificate of formal education in tax at least Diploma III level issued by state or private university with accreditation status of A; or SKP.

Almost similar requirements also applies for Tax Court attorney. Aside from the obligation to own formal diploma/brevet certificate, a Tax Court attorney must have a license of attorney from the Head of Tax Court.

Considering KUP Law, the general requirement of a tax proxy is to understand tax. In other words, anyone is possible to become a tax proxy as long as the person has qualified understanding in tax. Meanwhile, the technical regulation made by the Minister of Finance applies otherwise, limiting those considered appropriate in accompanying or representing Taxpayer.

In this case, the advocate suing the case was considered not fulfilling the qualification of tax proxy because the advocate has no tax consultant license to practice—despite the Brevet Tax Certifications of A and B from notable university owned by the advocate.

Implication

In deciding the case of Article 32 paragraph 3a of KUP Law judicial review, the Constitutional Court considered that the implementation of the article contradicted the Constitution of Republic of Indonesia of 1945 on a conditional basis and did not have any binding legal force so long as not taken as only related to technical-administrative matters and not a limitation and/or expansion of rights and obligations of citizen. In other words, the article has permanent legal force to the extent that it only regulates technical matters regarding tax proxy.

The problem is that the KUP Law does not stipulate in detail the technical and criteria of a person who can be a tax proxy. KUP Law also does not clearly regulate the standard of tax understanding a tax proxy shall have. Further authority regarding the case is delegated to the Minister of Finance instead by issuing PMK Number 229/PMK.03/2014 that limits the profession of tax proxy.

The Government and House Representative argued that the limitation of tax proxy was made as a form of protection to the tax-payer's interest. However, the determination of requirements and exercise of rights and obligation of a tax proxy is wholly shifted to the Minister of Finance cq DGT who certainly "faces" the Taxpayers on daily basis.



Thus, it is neither the requirements nor the exercise of rights and obligations of a tax proxy that is being questioned by the Constitutional Court. Instead, the question is on the delegation of authority to the Minister of Finance that is too much because the practice of the authority is prone to conflict of interest.

Matters regarding recognition, respect, limitation, deduction, or retraction of certain rights of a citizen are supposed to be stipulated in regulation at the law level. In case of tax proxy, the law must describe the competency and understanding that shall be owned by the tax proxy, including the rights and obligations requirements and implementing rules.

Preference

The question arisen is who can be a tax proxy? Sure enough, by the issuance of Constitutional Court Decision Number 63/PUU-XV/2017, the occupation of tax proxy can no longer be monopolized by tax consultant. It means that anyone—as long as the person is competent and understands tax—is possible to become a tax proxy.

However, the competency and tax understanding will always be debatable if the proof is unclear. That is to say, a test is still needed to demonstrate one's competency and proficient tax understanding to become a tax proxy. In addition, it has to be clear as to which professional institution or agency is authorized to test as well as to



issue the certification and license to practice for tax proxy.

Since the coverage of service rendered is tax, ideally, university graduates majoring in tax get easier access to become a tax proxy. At least, tax universities can teach ethics and curriculum as well as hold final exam in the standard of tax proxy profession.

This is the same with lawyers who, in providing legal services, have to comply with the Advocate Law. The law stipulates in detail the definition of advocate, the scope of legal service that can be given by a lawyer, from sanction upon offenses to professional institution authorized in issuing the license of practice—in this case, the lawyers association.

Aside from how the regulation will take form, the decision of Constitutional Court regarding the tax proxy—which eliminates the monopoly of tax consultant—will not significantly affect the preference of Taxpayer in appointing a proxy. After all, the number of tax consultants is currently around 3,500 people. This number is not proportional enough to defend the tax-payer's interest, in which the number to date is approaching 40 million Taxpayers.

Competency, understanding in tax issues, as well as experience can be the considerations of Taxpayer in choosing a proxy in the midst of the more wide-opened market.





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Business Permit Acceleration Still Gets Nowhere



Government's effort in continuing investment reform-by cutting the number of business permit and launching the Online Single Submission (OSS) system-is still hampered by unpreparedness and problem in cross ministry/central and regional institutions coordination.

The policy stated in President Regulation (Perpres) Number 91 Year 2017 on Acceleration of Doing Business Implementation is in fact not easy to execute. It has been 9 (nine) months since the Perpres issuance on 22 September 2017, until now the promised reform has yet to be realized. Meanwhile, the target of OSS system launch has been determined in March 2018, before it was revised to May 2018.

Task Force—that was formed to improve the service, supervision, handling of obstacle, simplification, and development of online system in terms of acceleration of doing business licensing implementation—is blaming each other.

The Coordinating Minister for Economy Darmin Nasution as the National Task Force Chairman expresses his displeasure to Indonesia Investment Coordinating Board (BKPM) because they are not ready to implement the OSS pursuant to the agreed deadline. On the other side, BKPM argues, other than the absence of budget, the big number of regional governments who have not prepared Task Force becomes the causal factor of the OSS launch lateness. (CNNIndonesia.com)

Ideal Concept

The objective of investment licensing reform and OSS is basically quite good. The aim is to synergize several licensing systems managed by number of ministries/institutions or regional governments into single system called OSS. Furthermore, government will also promise the facility of checklist system in economy regions and apply data sharing system.

The smoothness of investment licensing reform and OSS depends on coordination and execution of Task Forces of cross ministry/institution, province and regency/city that have been formed through Perpres Number 91 Year 2017. The communication and coordination of all Task Forces will be established in a national platform, OSS.

The use of OSS system will also automatically simplify the procedures for business licensing, from manual to online, so it is expected that the process is quicker and easier, or done in less than one hour.

To date, investor candidates could spend time until 3 (three) weeks to handle the permit of foreign investment (PMA) in One Stop Service Center (PTSP) (BKPM). Meanwhile, to get Company Registration Number (TDP) in provincial or regional PTSP, the process takes approximately 1 (one) week. In the meantime, to get Import Identification Number (API), it needs at least 1 (one) month.

By the operation of OSS, investor candidates shall only make TDP once and it is valid during the operation. Thus, investors do

not require to extend TDP, as long as they perform business activities.

All of those are the ideal depiction of business licensing reform. However, the concept that is long-awaited by entrepreneur has yet to be implemented because the system and infrastructure as well as the capability of human resource are not ready yet. The government's effort in fixing the investment climate by expecting the reward from the improvement of Ease of Doing Business rank is also hindered and gets nowhere.

Sectoral Ego

The planning for integrating all business licensing into PTSP has long been announced. Instead of being integrated, what factually happens is conflict of interest of inter-ministry/institution and with local government. In this context, we face sectoral ego of state officials who are afraid of losing their authority.

It also happens to the plan of easing the business licensing through OSS. No wonder many parties-especially entrepreneurs-doubt the ability of Task Force in integrating the licensing process, both in central and local through single system of OSS.

Asosiasi Pengusaha Indonesia (Apindo) acknowledges that the concept of business licensing reform planned by the government is very good. However, it is not easy to implement (Katadata, 2018).

The pessimism of Apindo is quite reasonable. At least there are some investment licensing matters that currently hinder the business activity and they become very difficult "homework" for the government to solve.

First, the licensing that is not synchronized and consistent both in central and regional levels, as well as inter-ministry/institution. The most common example of such case is different interpretation of investment regulation that is confusing for entrepreneur.

Second, the process of licensing that is not efficient and transparent causing uncertainty and high cost for investor.

The government's effort to answer the entrepreneur's complaint and doubt through investment licensing reform shall be surely appreciated. However, the good skill in designing a policy or making promises is not enough. The public expectation for better business licensing system is beyond than just the expression of "Almost there..." in the OSS website interface, but it shall be "It's here ..." proven by the optimal licensing system operation in accordance with the promise.

