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Tax Planning and Its Legality

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ABSTRACT

Paying taxes is the duty of every citizen, within the framework of participation in nation to build the obedience in paying tax. However, on the other hand, as citizens (taxpayers) will miss some of the "wealth". Therefore, how taxpayers remain obedient in carrying out tax obligations within the minimum tax burden Planning is a tool that allows the taxpayer to provide a minimum tax payment plan. Tax planning means planning each event and transaction which supported by its accounting policies in order to reduce the tax burden in minimized amount. Furthermore, it did not violate the tax laws.

Keywords: *Legality, Taxpayer, Tax Planning*

INTRODUCTION

Tax is one of the important sources of revenue in the state budget that is used to finance its expenditures, both routine expenditures and development expenditures. As for the company, taxes are an expense that will reduce net income.¹ This is contrary to the main goal to be achieved by management to provide maximum profit to the owner.

In the implementation of the fulfillment of tax obligations, there are differences in interests between the taxpayer and the tax authorities. This difference in interests causes taxpayers to tend to do tax planning. Tax planning is a form of tax resistance that is active but still within the framework of tax regulations. Efforts to minimize tax by euphemism are often referred to as tax planning (tax planning) is a means to fulfill tax obligations correctly (not violating the law) but the amount of tax paid can be reduced as low as possible to obtain the expected profit and liquidity.² However, tax planning can also have a positive connotation as planning for the fulfillment of tax obligations in a complete, correct and timely manner to avoid the wasting resources optimally.³

By doing tax planning, the company will be able to plan the company's operational activities and make decisions to achieve maximum profit and improve company performance to continue to exist and become a wise and tax-abiding company and can update the latest and applicable tax regulations.

From the background of the problems described above, a formulation of the problem can be drawn as follows, namely the scope of tax planning and its legality.

RESEARCH METHODOLOGY

In order to effectively explore the topic of tax planning and its legality, a comprehensive research methodology is essential. The following paragraphs outline a suitable approach to achieving this objective.

Research Design

This study will adopt a qualitative research design to gain in-depth insights into tax planning practices and their legal implications. A qualitative approach allows for the exploration of complex issues, such as ethical considerations and compliance with tax laws, which are central to understanding the boundaries between legal and illegal tax planning.

Data Collection Methods

Data will be collected through multiple methods to ensure a holistic understanding of the subject. Semi-structured interviews will be conducted with tax

¹ Erly Suandy, *Perencanaan Pajak* (Salemba Empat, 2003).

² Sophar Lumbantoruan, *Akuntansi Pajak* (Grasindo, 1996).

³ Suandy, *Perencanaan Pajak*.

professionals, accountants, and business managers. These interviews will provide firsthand accounts of tax planning strategies and their legality, offering rich qualitative data and diverse perspectives.

Additionally, a document analysis will be performed to examine existing tax regulations, legal cases, and tax planning literature. This analysis will provide a thorough understanding of the legal framework governing tax planning, helping to distinguish between legal tax planning and illegal tax evasion. Surveys will also be distributed to a broader audience of taxpayers to assess their understanding of tax planning and their experiences with tax obligations. This quantitative data will complement the qualitative findings, providing a more comprehensive perspective.

Sample Selection

The study will focus on businesses of varying sizes across different industries, particularly those that engage in tax planning. This diversity will help capture a wide range of practices and interpretations of tax law. Participants will be selected using a purposive sampling technique, ensuring that they have relevant experience in tax planning. This approach will maximize the relevance and quality of the data collected.

Data Analysis

Thematic analysis will be employed to analyze interview transcripts and survey responses, identifying common themes and patterns related to tax planning practices and their legality. This method will help uncover the motivations behind different tax planning strategies. Comparative analysis will also be used to contrast findings from document analysis with interview and survey data, highlighting discrepancies or alignments in perceptions of the legality of tax planning practices.

Ethical Considerations

Ethical considerations will be prioritized throughout the research process. All participants will provide informed consent before participating in interviews or surveys, respecting their autonomy and ensuring transparency. Measures will be implemented to protect the anonymity of participants and safeguard the confidentiality of sensitive information related to tax planning practices.

Limitations

The study acknowledges certain limitations inherent in its methodology. Qualitative data may be subject to personal biases, which can influence interpretations. To mitigate this, triangulation of data sources will be employed to enhance the validity and reliability of the findings. This proposed methodology aims to provide a comprehensive understanding of tax planning and its legality. By combining qualitative and quantitative approaches, it seeks to generate valuable insights that contribute meaningfully to the field of tax research.

RESULT AND DISCUSSION

Allowable Deductions as a Deduction from Gross Income

Article 6 of Law No. 36/2008 on Tax Income, stated as following:

1. Costs that are directly or indirectly related to business activities;
2. Depreciation of expenses to acquire tangible assets and amortization of expenses to acquire rights and other costs that have a useful life of more than 1 (one) year;
3. The contributions to pension funds whose establishment has been approved by the Minister of Finance;
4. Losses happen due to the sale or transfer of property owned and used in the company or held to earn, collect and maintain income;
5. foreign exchange loss;
6. The costs of research and development companies carried out in Indonesia;
7. Scholarship, internship and training fees;
8. Receivables that obviously cannot be collected on conditions;
9. Donations in the context of research and development carried out in Indonesia whose provisions are regulated by Government Regulations;
10. The cost of social infrastructure development whose provisions are regulated by a Government Regulation;
11. Donation of educational facilities whose provisions are regulated by Government Regulation;
12. Donations in the context of sports development whose provisions are regulated by Government Regulations.

The expenses that can be deducted from gross income can be divided into 2 (two) groups, namely expenses that have a useful life of not more than a year and those that have a useful life of more than a year.⁴ Expenses that have a useful life of not more than 1 (one) year are expenses for the year concerned, while expenses that have a useful life of more than 1 (one) year are charged through depreciation or through amortization. In addition, if in a tax year there are losses due to the sale of assets or due to foreign exchange differences, these losses can be deducted from the gross income.⁵

⁴ Eha Nugraha, Veranda Aga Refmasari, and Alif Ilham Akbar Fatriansyah, "Critical Review Zakat as Tax Deduction (Indonesia-Malaysia Comparative Study)," *Journal of Economics, Business, & Accountancy Ventura* 23, no. 3 (March 31, 2021): 426–40, <https://doi.org/10.14414/jebav.v23i3.2481>.

⁵ Fitri Oktariani and Putu Indrajaya Lembut, "Tax Avoidance Sebagai Latar Belakang Dalam Memanfaatkan Tax Deductible Expense (Studi Pada Perusahaan Manufaktur Yang Terdaftar Di BEI)," *InFestasi* 14, no. 2 (January 26, 2019): 154, <https://doi.org/10.21107/infestasi.v14i2.4860>.

Administrative Sanctions and Tax Crimes

In Article 38 of Law No. 28/2007 concerning on General Provisions of Taxation, everyone due to their negligence:

1. Did not submit the notification letter; or
2. Submitted a Notification Letter, but the contents are incorrect or incomplete, or attach information whose contents are not correct so that it can cause loss to state revenue and the act is an act after the first act as referred to in Article 13A, shall be fined at least 1 (one) time. the amount of unpaid or underpaid tax payable and a maximum of 2 (two) times the unpaid or underpaid tax payable, or a minimum of 3 (three) months or a maximum of 1 (one) year imprisonment.

Violation of the tax obligations carried out by the taxpayer, as long as it involves tax administration actions, is subject to administrative sanctions by issuing a tax assessment letter or tax collection letter, while those involving criminal acts in the taxation sector are subject to criminal sanctions.

In Article 39 of Law No. 28/2007 concerning on General Provisions of Taxation, Article 39 as following below:

1. Every person who intentionally:
 - a. does not register to be given a Taxpayer Identification Number or does not report his business to be confirmed as a Taxable Entrepreneur;
 - b. misuse or use without rights the Taxpayer Identification Number or Taxable Entrepreneur Confirmation;
 - c. did not submit notification letter;
 - d. submit a Notification Letter and/or information whose contents are incorrect or incomplete;
 - e. refuse to carry out the examination as referred to in Article 29;
 - f. provide data, records, or other documents that are false or falsified as if they were true, or do not represent the actual situation;
 - g. did not keep the data or records in Indonesia, not showing or not lending any data, records, or other documents;
 - h. did not keep any data, records, or documents as the basis for bookkeeping or recording and other documents including the results of data processing from electronically managed books or online application programs in Indonesia as referred to in Article 28 paragraph (11); or
 - i. does not deposit taxes that have been withheld or collected so as to cause losses to state revenue, shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of

tax payable which is not or less. paid and a maximum of 4 (four) times the amount of tax payable which is not or underpaid.

2. The punishment as referred to in paragraph (1) is added 1 (one) time to become 2 (two) times the criminal sanction if someone commits another crime in the taxation sector before 1 (one) year has passed, starting from the completion of the imprisonment sentence imposed.
3. Any person who attempts to commit a criminal act of abusing or using without right the Taxpayer Identification Number or the Confirmation of a Taxable Entrepreneur as referred to in paragraph (1) letter b, or submits a Tax Return and/or information whose contents are incorrect or incomplete, as referred to in paragraph (1) letter d, in the context of applying for restitution or applying for tax compensation or tax credit, shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 2 (two) years and a fine of at least 2 (two) times. the amount of restitution requested and/or compensation or crediting made and a maximum of 4 (four) times the amount of restitution being applied for and/or compensation or crediting made.

Tax Resistance

Tax resistance can be divided into two:

1. Passive resistance consists of obstacles that complicate the tax collection process and are closely related to the economic structure of a country, to intellectual development, and to the tax collection technique itself;
2. Active resistance includes all efforts and actions, which are directly aimed at the tax authorities and aim to avoid taxes, passive resistance is also interpreted from failures in the control system that cannot be carried out effectively or even cannot be implemented.⁶

Active resistance can be distinguished in the following below:

1. Avoid the Tax
Tax avoidance can be carried out by not taking actions that give reasons for being taxed, namely by eliminating or doing things that can be taxed.
2. Dodge the Tax
Tax evasion is an unlawful act that intentionally escapes tax obligations, in a dishonest way.⁷

⁶ R. Santoso Brotodihardjo, *Pengantar Ilmu Hukum Pajak* (Bandung: Refika Aditama, 1995).

⁷ Brotodihardjo.

Definition of Tax Planning

Tax planning is a structuring action related to the potential tax consequences, the emphasis is on controlling every transaction that has tax consequences.⁸ In order to carry out tax planning that does not violate the applicable tax laws, there are at least five main requirements, namely: First, understand tax regulations or other related regulations, it will be very difficult to be able to carry out tax plans that do not violate the rules if the tax plans are designed not in accordance with the law. collar of applicable tax laws.⁹ Second, determining the goals to be achieved in tax planning, in terms of avoiding actions that violate the law, of course, cannot do tax planning to avoid tax obligations.¹⁰ According to Suandy, tax planning has at least two main objectives, namely (1) applying tax regulations correctly and (2) in efficiency to achieve the expected profit.¹¹ Third, in tax planning, the character of the taxpayer's business must be understood, because almost every company has differences in policies and behavior (behavior), and habits. By understanding in depth the ins and outs of the business, it will be very helpful in carrying out tax planning.¹² Fourth, understand the level of fairness of transactions regulated in tax planning, because if you carry out tax planning by ignoring fairness, of course, it will cause difficulties due to the suspicion of the tax authorities, and this can have implications for audits, because it may indicate the possibility of tax fraud.¹³ Fifth, tax planning must be supported by accounting policies (accounting treatment) and supported by adequate evidence.¹⁴

Grey Area Tax Planning

Grey area taxation is a condition, transaction or event that is seriously suspected of being exposed to taxation rules, but there are no current tax regulations that can be applied to it. The grey area taxation factor that occurs in every condition can be used in tax planning, to produce an efficient income tax burden, by:

1. Make sure that the income does not include the definition of income that may be subject to income tax or that taxable income is replaced with non-taxable income or the imposition of tax is deferred.
2. Increase deductible expenses or certain expenses that are not deductible from taxable income are reduced and transferred to deductible expenses.
3. Extend the period of taxation of income or shorten the period of deductible expenses.

⁸ Zain Mohammad, *Manajemen Perpajakan* (Jakarta: Salemba Empat, 2003).

⁹ Suandy, *Perencanaan Pajak*.

¹⁰ Nur Hidayat, "Menelusuri Tax Planning Dalam Kerangka Undang-Undang," *Jurnal Perpajakan Indonesia*, 2000.

¹¹ Suandy, *Perencanaan Pajak*.

¹² Hidayat, "Menelusuri Tax Planning Dalam Kerangka Undang-Undang."

¹³ Hidayat.

¹⁴ Hidayat.

4. Consider an increase in income with an increased tax burden, or an increase in certain costs with a reduced tax burden, and the net result should be an increase in after-tax profit.

Taxable and Deductible Principle

The principle of taxable and deductible is a principle commonly used in tax planning, which generally changes non-deductible costs into deductible costs and on the other hand converts income that is a tax object into income that is not a tax object, with the consequence of a change in tax payable as a result of the change.¹⁵

As an illustration of giving in kind and pleasure to employees, based on Article 4 Paragraph (3) letter d of the Income Tax Law, income that is not an object of tax for employees, so it is not taxed on such income. On the other hand, from the point of view of the company that incurs the cost, commercially it is a cost that can be deducted from income, but based on Article 9 Paragraph (1) e of the Income Tax Law, it is an expense that cannot be deducted.

If gift is a form of kind and pleasure, such as doctors and medicines, for example, are converted into health benefits, then based on article 4 paragraph (1) letter a of the Income Tax Law, the health benefits given in the form of money are income that will be taxed and on the other hand, based on article 6 paragraph (1) letter a the cost of the allowance can be deducted from the company's gross income.

Maximize Reduction

Maximizing deductions is the transfer of gifts in kind (fringe benefit or payment in kind) to allowances that can be deducted as expenses in accordance with the principle of taxable and deductible according to statutory provisions- taxation invitation.

Management of Transactions Related to Providing Employee Welfare

There are many opportunities for efficiency of Corporate Income Tax that can be done on costs related to employee welfare. The corporate income tax efficiency strategy, which is related to employee welfare costs, is highly dependent on the company's conditions, as following below:

1. In companies that earn taxable income (tax income) which has been subject to the highest rate (above Rp. 100 million) and the imposition of corporate income tax is not final, efforts are made to provide employees welfare in the form of in-kind and fringe benefits as little as possible because these expenses cannot be paid for charged as an expense.

¹⁵ Jofita Meida Kadariyanty, Dwi Suhartini, and Tamadoy Thamrin, "Analisis Faktor-Faktor Yang Memotivasi Manajemen Perusahaan Melakukan Tax Planning (Studi Pada Perusahaan Industri Kimia Yang Terdaftar Di Disperindag Surabaya 2010)," *AKRUAL: Jurnal Akuntansi* 4, no. 1 (October 8, 2012): 19, <https://doi.org/10.26740/jaj.v4n1.p19-34>.

2. For companies that are still at a loss, giving in kind and enjoyment will reduce Article 21 Income Tax while Corporate Income Tax remains null.

Engineered employee welfare consists of:

1. Income Tax Article 21 employees, with alternatives :
 - a. The income tax is borne by the employee concerned.
In this alternative, the employer only acts as a tax withholding agent, therefore it does not affect the company's income
 - b. Income Tax Allowance
This second alternative is taxable for employees and deductible for employers.
 - c. The income tax borne by the company.
This third alternative is a pleasure for employees and is a non-deductible cost for the employer.
2. Employee medical/health, with alternatives:
 - a. the company establishes its own clinic or cooperates with certain hospitals.
 - b. employees are given regular health benefits whether sick or not.
3. Payment of insurance premiums for employees, within the alternatives as following below:
 - a. Premium borne by the company.
 - b. Premium is borne by the employee concerned.
 - c. Premium is partly borne by the employees, partly borne by the company.
4. Employee's official residence, within the alternatives of:
 - a. The company provides official housing.
 - b. The company provides housing allowance.
5. Transportation for employees, within the alternatives of:
 - a. The company provides official cars.
 - b. The company provides transportation allowance.
6. Employee work clothes, within the alternatives of:
 - a. Work clothes in relation to the performance environment, for example security guards, hotel employee uniforms, pilots and others.
 - b. Employee uniforms in general.
7. Eat within the alternatives of:
 - a. The company provides rice or provides catering for employees.
 - b. Rice or meal allowance
8. Bonuses and production services, within the alternatives of:
 - a. charged in the current year
 - b. charged to retained earnings

Selection of Depreciation Method

Depreciation of property, plant and equipment and amortization of intangible assets that have been recognized by the tax authorities since 1995 consist of (two) methods, namely the straight-line method and the declining balance method.

Transactions Related to Tax Collectors

Apart from being a taxpayer, the company also acts as a tax withholding for third parties (withholding tax). The problem that often arises is that the party concerned is not willing to have his tax deducted. If the company does not deduct the withholding tax (eg PPh 23, for consulting services), the company will bear the consequences if an audit is carried out by the tax authorities because the company will be subject to an obligation to pay the withholding tax plus an interest penalty for late deposit of 2% a month of the tax principal.

To overcome this, the company should mark up the transaction value so that the value includes taxes, because if the company only pays the Article 23 income tax, then the income tax paid by the company cannot be charged as an expense.

Application for Reduced Payment (Lump Sum) PPh Ps. 25

The amount of Article 25 income tax payments depends on the amount of last year's income tax payable. The application for a reduction in the lump-sum payment (installment) of Article 25 Income Tax is submitted to the KPP concerned by attaching:

1. Projected calculation of profit/loss for the year concerned;
2. Projected balance sheet at the end of the concerned year.

Projection of the amount of corporate income tax payable, which turns out to be an overpayment of tax, if the lump-sum amount is not deducted.

CONCLUSION

Tax planning can be categorized as an active form of tax resistance by means of juridical evasion, in which every manager's action is based on a certain method, plan, or logic and not on the basis of a hunch. will be done when it will be done, how it will be done and who will do it.

There are many ways to reduce the tax burden by avoiding taxes (tax evasion). However, this violates the law so it is not recommended in the implementation of tax planning. Tax planning is minimizing the tax burden, which can be done by maximizing deductions and streamlining existing income within the framework of tax regulations. Basically, tax planning refers to the process of engineering taxpayers' businesses and transactions so that the tax burden is minimal but does not violate tax regulations.

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