

Analysis of the Final Income Tax Treatment for the Procurement of Imported Materials

(In the Construction of Power Plant Project at PT XYZ Based on the Certainty Principles of Tax Collection)

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Abstract—In an effort to achieve the tax revenue target provided by the Government, the Directorate General of Tax (DGT) is working hard to explore all potential taxes from every business process in Indonesia, including imposing a Final Income Tax for procurement of imported materials in the EPC contract for the construction of a power plant at PT XYZ. DGT asked PT XYZ to rectify the Final Income Tax monthly report and deposit the underpaid Income Tax to the State Treasury and subsequently deduct the Final Income Tax from the contractor implementing the power plant construction. This research will discuss the imposition of Final Income Tax and the impact of the imposition of Final Income Tax on imported materials on PT XYZ. This research uses descriptive qualitative research. Data The method of collection used in this study is an in-depth interview method from key informants at PT XYZ to gather information as a guide for drawing conclusions from this study. This study aims to analyze whether the imposition of Final Income Tax on procurement of imported goods made by PT XYZ in accordance with the policy formula and meets the principle indicators of legal certainty.

Keywords: *tax potential, final PPh, imposition impact, legal certainty*

I. INTRODUCTION

The government together with PT XYZ and a private power company/Independent Power Producer ("IPP") undertook the construction of 109 power plants. The government assigned PT XYZ (as one of the state-owned enterprises in the electricity sector) to build 35 power projects with a total capacity of 10,681 Megawatts (MW), while IPP built 74 power projects with a total capacity of 25,904 MW. This assignment aims to provide and maintain an adequate supply of electricity in the amount of electricity consumers throughout the Republic of Indonesia in a sustainable manner in realizing equitable electrical energy in all regions of Indonesia.

Electricity capacity development through the construction of power plants implemented by PT XYZ through the procurement of power plant construction using the Engineering Procurement Construction (EPC) scheme and taking into account the principles of efficiency, effectiveness, competitive,

transparent, fair and fair, and accountable. Engineering work in the EPC contract is defined as the output of the planning consultant in making civil, mechanical, architectural and spatial drawings of the power plant that will be built in detail and in full as a work guide for the contractor in the construction implementation. Procurement work includes the portion of material procurement from within the country (Local Portion) and material from abroad (Import Portion), while the Construction work includes the implementation of power plant construction.

In carrying out the assignment of the Government to provide and maintain the supply of electricity throughout the territory of Indonesia, PT XYZ built power plants, transmissions and distributions through an open and national and international procurement mechanism for work that aims to determine the winning contractor, either a single contractor or contractor that engages with other contractors (joint operations) in accordance with technical and non-technical requirements determined by PT XYZ.

As mandated by the Government for PT XYZ to take efficiency measures in the procurement of power plant construction work, PT XYZ acts as an importer for the portion of material procurement from abroad as stated in each contract/agreement made with the contractor. This is intended so that PT XYZ can minimize costs incurred through the utilization of import duty and tax related import (import VAT and import Income tax article 22) compared if the contractor as an importer in the procurement of imported materials.

In the implementation of power plant construction there are obstacles or problems that cause costs that are not planned in advance by PT XYZ, such as land acquisition issues, licensing issues, Corporate Social Responsibility (CSR) issues, funding problems and other problems including taxation issues. The taxation problem currently being faced by PT XYZ is the appeal from the DGT through its letters in 2017, 2018 and 2019 so that PT XYZ corrects the Final Income Tax monthly report and deposits the final underpayment of PPh in the letter. The shortage of the Final Income Tax deposit is due to PT

XYZ not cutting the Final Income Tax on the procurement of imported materials listed in the contract and masterlist.

At the beginning of DGT's appeal to impose Final Income Tax on imported material contained in the EPC contract / work agreement, PT XYZ gave a different response to the imposition of Final Income Tax on imported material by DGT. PT XYZ explained that imported material should not be subject to Final Income Tax because it has already been subject to import income tax Article 22 at the time of custom clearance of the material from the customs area and the payment of imported material is made directly to the manufacturer abroad as the material owner based on the commercial invoice attached to shipping document.

The difference of opinion between PT XYZ and the DGT was formulated by researchers in a number of issues to be discussed, namely the imposition of Final Income Tax before and after the DGT issued an appeal letter regarding the imposition of Final Income Tax for imported materials in the EPC contract for the construction of a power plant. Researchers will also discuss the implications of the imposition of this Final Income Tax on PT XYZ and look at the imposition of Final Income Tax on imported materials in the construction of power plants based on the principle of legal certainty. From this problem, a research was conducted by researchers with the aim of analyzing the imposition of Final Income Tax before and after the DGT issued an appeal letter and analyzed the implications of the imposition of Final Income Tax on the procurement of imported materials against PT XYZ as well as analyzing the imposition of Final Income Tax on imported materials from the principle of legal certainty.

II. THEORETICAL FRAMEWORK

A. Taxation Concepts and Theories

Understanding the tax term delivered by economists from America, Sommerfeld, Anderson and Brock defines tax as follows: "A tax can be defined meaningfully as any nonpenal yet compulsory transfer of resources from the private to the public sector, levied on the basis of predetermined criteria and without receipt of a specific benefit of equal value, in order to accomplish some of a nation's economic and social objectives. From this definition that there is a very important meaning in the sense of tax, namely:

1) *Forceful*: This is the difference between taxes and other levies / fees. The term "compulsory" is used in explaining the notion of tax as being different from the more voluntary contributions.

2) *The law as the basis of collection*: Taxes must be determined and implemented by Taxpayers and Fiscus based on the law. Implicitly, the phrase "predetermined criteria" emphasizes that taxes cannot be collected haphazardly, but there must be conditions that are decided in advance by public authorities (made by public authorities) in the form of taxation rules and regulations.

3) *Do not get immediate directly benefits*: WP does not get immediate directly benefits for the contribution of tax payments made because the tax is not a special benefit.

4) *As an instrument in carrying out state functions*: The tax is levied by the government to fund the construction of public goods and infrastructure as well as other Government objectives.

B. Principles of Tax Collection

In tax collection must pay attention to the rules as stated by Adam Smith in his book *The Wealth of Nations*, namely:

1) *Equality*: The application of the principle of justice in tax collection is something that is not easy to formulate because it is very subjective because tax collection is considered fair by one party but not necessarily fair by another party. To overcome various interpretations of fairness in tax collection, Mustgrave and Peggi B convey 2 (two) approaches, namely:

a) *Benefit principle approach*: Based on this principle, tax collection can be said to meet the requirements of justice if the tax paid is done according to the benefits received by the tax payer from the Government.

b) *Principle approach to the ability to make payments/Ability to pay principle approach*: Based on this principle, the tax collected is considered if it is based on the ability to pay from each tax payer.

2) *Certainty*: All people must know exactly how to carry out their tax obligations, including certainty who is the subject of tax, the object of tax collection, what the rate of tax is imposed and certainty regarding the procedure of tax collection / deduction, tax calculation, up to the deposit and tax reporting.

3) *Convenience*: Tax payments are made when there is convenience for tax payer to pay taxes so that tax payer will carry out tax obligations with pleasure. However, it can be said that the time that does not make it difficult for tax payer to carry out its tax obligations is the time when the person concerned receives the benefit ("Pay As You Earn").

4) *Economy principles*: This principle is based on the low tax collection issued by the government and does not cause tax payer's business to have obstacles in carrying out its economic activities. The ease and simplicity of tax administration also needs to be taken into consideration so that undue administrative costs can be avoided. According to Deverux that each tax system should consider (1) taxes to be fair (2) to minimize administrative costs (3) to minimize disincentive effects.

C. Income Concept

The concept of income that reflects justice and can be applied is that put forward by Haig, an economist from America in "The Federal Income Tax" is: "Income is the increase or accretion in one's power to satisfy his wants in a given period so far as that power consists of (a) money itself, or (b) anything susceptible of valuation in terms of money" Haig stressed that the nature of income is to get satisfaction. Therefore, income is obtained when additional capabilities are received, not when controlling goods and services that satisfy needs and are used to satisfy needs.

While the concept of income according to Simons is "Personal Income is defined as the amount of algebra from the market value of a consumed right and changes in the value of the stock of wealth from the beginning to the end of the period in question. In other words, the results obtained are by adding consumption during the period through wealth at the end of the period and reducing wealth at the beginning of the period".

III. RESEARCH METHODS

This research approach uses a qualitative approach. According to Creswell, qualitative research is: "a need exists to explore and describe the phenomena and to develop theory." The issues raised in this study were examined using a qualitative approach because researchers questioned the meaning of an object in depth and understood the truth as something "perceived" "Which is never out of context.

Theories are only used as a comparison to clarify the characteristics of the data so that later a comprehensive interpretation is built up. The author will analyze the policy regarding the taxation of construction service income, what are the problems that arise and what are the tax policy considerations that underlie the tax treatment taken by the government on construction service income so that the policy does not conflict with tax principles, as well as the objectives and tax principle.

This research can be categorized as descriptive research and based on Neuman's opinion that descriptive research is "Descriptive research presents a picture of the specific details of the situation, social setting, or relationship. The outcome of a descriptive study is a detailed picture of the subject". In a descriptive study, the author provides an overview of the tax treatment of construction service income and its implications for PT XYZ, the burden that must be borne by PT XYZ and the purpose of taxation.

The data collected in this study are qualitative data which according to Patton, qualitative data consists of 3 types, namely interviews, observation, and documents. The researcher sets a criterion in determining the informant to be interviewed. Neuman sets 4 criteria good informants, namely:

- The informant is totally familiar with the culture and the position to witness significant events makes a good informant
- The individual is currently involved in the field
- The person can spend time with the researcher
- Non analytic individuals make better informants

IV. RESEARCH FINDING AND DISCUSSION

Based on information from PT XYZ's tax management sector, the imposition of Final Income Tax on imported materials used in the construction of power plants in PT XYZ's EPC contract with the contractor before the DGT submits an appeal letter to PT XYZ is limited to engineering work, local material procurement and installation services, import material installation services, transportation services for imported materials from customs areas (seaports or airports) to the power

plant location. In 2017, 2018 and 2019, the DGT requested PT XYZ to deduct the Final Income Tax on the income provided to the contractor in the amount of the Final Income Tax tariff in accordance with Government Regulation (PP) No. 51/2008 from the value of imported imported materials.

DGT also asked PT XYZ to rectify the Final Income Tax report and deposit the less deducted Final Income Tax for 2017, 2018 and 2019 because PT XYZ did not deduct the Final Income Tax on the income paid to the contractor. This was justified by the tax manager of PT XYZ on the grounds that PT XYZ had not received certainty regarding the mechanism for withholding Final Income Tax on imported materials as requested by the DGT. The reason for PT XYZ is based on the opinion that PT XYZ made payments to the contractor for services provided by the contractor based on the stages of work specified in the EPC contract for engineering work, procurement and installation of local materials, transportation of imported materials to the project site and material installation work import. As for the payment of imported materials, PT XYZ's treasury manager does not make any deductions to the contractor because PT XYZ makes payments directly to overseas manufacturers / suppliers according to the commercial invoice attached to the shipping document received by PT XYZ.

DGT responded to the opinion of PT XYZ above by conveying the provisions contained in PP number 51 of 2008 that the value of the construction service contract is the value stated in one construction service contract as a whole. The portion of imported material is included in one contract, the portion of imported material is also subject to Final Income Tax deduction even though PT XYZ is designated as an importer and shipping document in the name of PT XYZ. It was found by PT XYZ's Account Representative (AR) at the tax office that the DGT had studied the transactions in PT XYZ's EPC contract and collected data on imported materials obtained from the Directorate General of Customs and Excise (DJBC). AR also said that PT XYZ should not object because it was asked to deduct the Final Income Tax as the party providing income to the contractor and if the contractor objected to the deduction, the contractor could file an objection. DGT provided input to PT XYZ to separate the value of imported material procurement in a separate contract so that the procurement of imported material is not subject to Final Income Tax.

This condition is very burdensome to PT XYZ because they have to make Final Income Tax for 2017, 2018 and 2019 in the amount of Rp.2,071,286,617,940, - and face objections raised by the contractors of each EPC contract. This was conveyed by the contract procurement manager at PT XYZ that the implication that would be felt by PT XYZ was the potential for amending the contract value proposed by the contractor because the contractor would calculate this as a loss. The contractor suffered a loss due to income received from PT XYZ Responding to the input from AR, the contract procurement manager at PT XYZ responded that the EPC contract at PT XYZ was a contract based on work results (performances base) making it impossible for PT XYZ to make a special separate contract procurement of imported materials, in addition to the large number of procurement contracts due to

the large number of imported materials, will also result in a mismatch of material specifications with the ability to install from contractors on these materials.

Sumitro has explained that there are several factors that must be fulfilled in order to achieve a legal certainty namely object, subject, definition, narrowing or expansion, scope, and use of legal language and standard terms. These factors are needed to achieve legal certainty with the same interpretation of the applicable law. The following analysis of the policy formulation is in accordance with the principle of legal certainty based on Soemitro's theory.

A. Legal Certainty Over Objects

PT XYZ always submits contract documents and transportation documents for imported materials in submitting data and information at the beginning of the project to the Tax Office and for the purpose of filing the import VAT exemption. This has been done by PT XYZ since the 10,000 Megawatt project began in 2009 and there is no imposition of Final Income Tax which differs from Tax Office both in depositing and reporting. At that time, the Tax Office knew of PT XYZ's position in each EPC contract / agreement, namely as an importer. The imposition of Final Income Tax which is different from the previous treatment makes taxpayer confusion in this case PT XYZ.

B. Legal Certainty Over the Subject

In PP Number 51 Year 2008 regulated the obligations of those who make the Final Income Tax namely service users or service providers in the case of service users not as tax withholder. In this connection, PT XYZ as the Final Income Tax withholder. In this PP is also regulated if there is a difference in the deficit of Final Income Tax owed based on the value of the construction service contract with Final Income Tax based on payments that have been deducted or self-paid, then the difference in the shortage is paid by the provider himself services. In this case, the Tax Office should coordinate with the Tax Office where the contractor is registered as a taxpayer so that the shortage of Final Income Tax can be billed through the contractor's Tax Office to the contractor himself so that it does not become a burden of PT XYZ as a service user and confusion from PT XYZ about who should bear the tax burden in accordance PP Number 51 Year 2008.

C. Legal Certainty Over Defining

Definition is the most important factor in legal certainty so as not to cause ambiguity or differences in understanding. According to Soemitro, there are several ways to define or interpret, the methods used in this study are:

1) *Authentic interpretation*: Authentic interpretation is the interpretation made by the maker the law itself in the relevant law. In reality there is no interpretation or definition written in the next Article in PP Number 51 Year 2008 regarding construction service business work. PT XYZ did not get an explanation at the time the PP was transferred or when PT XYZ explained the EPC contract to obtain tax facilities on imported materials.

2) *Systematic interpretation*: This interpretation is done by connecting the interpretations with laws or other regulations that are related to the relevant Regulations prior to the issuance of PP Number 51 Year 2008, namely PP Number 140 Year 2000. PP Number 51 Year 2008 regulates specifically for construction service businesses that govern the definition of construction services, taxation and PPh rates based on business qualifications. PT XYZ does not know that its position as an importer in any EPC contract it holds is not an exception from the imposition of Final Income Tax so that PT XYZ is considered to have not deducted Final Income Tax and is subject to administrative sanctions in the form of interest.

3) *Historical interpretation*: Based on this history, it can be concluded that the legal certainty in terms of historical definition has not been fulfilled because it has been more than ten years for procurement or purchase of imported materials used in the construction of power plants not subject to Final Income Tax when PT XYZ acts as an importer in each EPC contract later now subject to Final Income Tax.

D. Legal Certainty for Narrowing or Expansion

Narrowing or expansion of material is also not permitted if it is done with regulations that are more desirable than the law, even though the narrowing or expansion serves to achieve legal certainty. Narrowing or expansion of the material will be needed to provide a clearer explanation in the relevant articles so as not to cause multiple interpretations. There is no explanation of the value of the construction service contract so it does not meet legal certainty because it raises a different understanding between taxpayers and tax authorities.

E. Legal Certainty Over the Scope

Legal certainty according to scope factors can be determined based on place and time. The law only applies in certain regions and also certain times. In the case of this study, the time for the retirement of to Final Income Tax is the date of the enactment of PP Number 51 Year 2008, January 1, 2008. to Final Income Tax is payable and collected at the time of payment. Every payment made by PT XYZ to the contractor for work that has been carried out based on the stages of work agreed in the EPC contract, is tax payable and must be deducted by to Final Income Tax when payment is made.

F. Legal Certainty Over the Use of Legal Language and Standard Terms

The use of language certainly has a big influence on the perception of each person in interpreting a regulation. Not a few people who easily understand the language of law, so the use of language must be assertive, clear, concise and do not contain doubts. In the norm of Indonesian grammar, a regulation should also use standard terms. There is a difference in understanding the value of the construction service contract in article 1 and the person in charge if there is a difference in the payment of tax in article 6 in PP No. 51 of 2008. PT XYZ is indeed the party affected by the difference in understanding above so that PT XYZ receives administrative sanctions and raises financial burden in 2017 and 2018 so that PT XYZ believes that policy changes do not have legal certainty and the

editorial side of regulation is still a gray area because it can be interpreted with many meanings according to its needs. Based on this analysis, it can be concluded that the legal certainty of the factors using legal language and standard terms has not yet been fulfilled because it still has multiple interpretations between the parties concerned, namely the party making the rules and the parties implementing the regulations.

Based on the above policy formulation, all legal certainty indicators for the imposition of Final Income Tax on the procurement and purchase of imported materials needed by PT XYZ in the construction of power plants and in relation to PT XYZ's position as an importer in contracts / agreements are not fulfilled.

V. CONCLUSIONS

Based on the analysis conducted, the conclusions that can be drawn according to the research questions are as follows:

- Imposition of Final Income Tax on imported materials needed in the EPC contract for the construction of a power plant at PT XYZ is implemented differently by the DGT that is before 2017 with 2017 and thereafter.
- The implication of the imposition of final PPh on imported material in the PT XYZ EPC contract is the incurring of tax costs that should not have been paid by PT XYZ so that this feels very burdensome to PT XYZ's finances. This also has the potential for contract amendments from contractors who feel disadvantaged because of the imposition of final income tax from income they do not receive.
- The treatment of the imposition of Final Income Tax for the procurement of imported materials needed in the construction of the PT XYZ power plant based on a letter from the Tax Office, does not meet the principle of legal certainty based on testing on indicators of legal certainty principle.

Based on the research conducted, suggestions that can be submitted in relation to the problems in this study, are:

- DGT in this case the Tax Office should open a discussion room first with PT XYZ before submitting a

taxation treatment treatment that is different from the previous tax year and year and understand the business process of PT XYZ as the party carrying out the assignment in the electricity sector.

- DGT, in this case, TAX OFFICE should maximize the function of AR as a liaison between taxpayers and DGT in socializing changes in tax treatment.
- In order to create legal certainty in a tax policy, the use of editors in regulations should be made by selecting the editorial sentences that do not cause multiple interpretations.
- PT XYZ must carry out tax planning on the imposition of Final PPh on imported materials needed in the construction of the power plant in order to minimize the impact of the imposition of this Final PPh.

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