

Implications of the Income Tax Annulment on Dividends Received from Abroad as Regulated in Job Creation Law (Known as “Omnibus Law”)

Dewi Shintawati Kusnadi*, Denny Kurniawan**

* Student of Master of Administration Science, Tax Management, STIAMI Institute

** Student of Master of Administration Science, Tax Management, STIAMI Institute

DOI: 10.29322/IJSRP.11.02.2021.p11014

<http://dx.doi.org/10.29322/IJSRP.11.02.2021.p11014>

Abstract- The Omnibus Law is not only a job creation law that creates and increases employment but has a cross-sectoral meaning and has a meaning as a social law. This Omnibus Law also includes tax clusters for strengthening in the economic sector, in accordance with the Income Tax Law which has been amended through the Job Creation Law, on domestic dividends received and obtained by domestic corporate taxpayers are directly exempted from the income tax (PPH) object. However, domestic dividends received or obtained by individual taxpayers must meet the criteria, namely that they must be invested in Indonesia within a certain period of time as well as dividends from abroad, both those traded on the stock exchange and those that are not traded on the stock exchange. effect, received or obtained by domestic corporate taxpayers or domestic individual taxpayers, the elimination of income tax on domestic and foreign dividends is one of the instruments in the taxation Omnibus Law that is used in order to attract or increase the attractiveness of Indonesia as an investment destination country and by the existence of double tax avoidance agreement (P3B) which is the reference in taxation of tax objects and tax subjects in Indonesia, provided that they are invested or used to support other business activities in the territory of the Republic of Indonesia for a certain period of time and such dividends must be invested at least 30% (thirty percent) of the profit after tax. The annulment of income tax (PPH) on domestic and foreign dividends is one of the instruments in the taxation Omnibus Law which is used to attract or increase the attractiveness of Indonesia as an investment destination country and with the double tax avoidance agreement (P3B) which becomes a reference in taxation of tax objects and tax subject in Indonesia. provided that they are invested or used to support other business activities in the territory of the Republic of Indonesia for a certain period of time and such dividends must be invested at least 30% (thirty percent) of the profit after tax. The annulment of tax income (PPH) on domestic and foreign dividends is one of the instruments in the taxation Omnibus Law which is used to attract or increase the attractiveness of Indonesia as an investment destination country and with the double tax avoidance agreement (P3B) which becomes a reference in taxation of tax objects and tax subject in Indonesia. provided that they are invested or used to support other business activities in the territory of the Republic of Indonesia for a certain period of time and such dividends must be invested at least 30% (thirty percent) of the profit after tax.

Index Terms- double tax avoidance agreement (P3B), dividend, omnibus law, tax treaty

I. INTRODUCTION

The economic slowdown in various parts of the world has resulted in a massive decline in consumption, lower demand and commodity prices, and the COVID-19 (Corona Virus Disease-2019) pandemic has also added to market uncertainty. This incident also affected Indonesia, the national economy weakened, the performance of the industrial sector became sluggish, the level of production, commodity exports, foreign exchange earnings and state revenues also declined¹. Regarding this condition, the government made efforts to drive the national economy through 16 (sixteen) economic policy packages by means of deregulation, de-bureaucratization and fiscal incentives. According to this economic policy package, one of the ways to drive the national economy is by increasing investment. With the need for investment funding in Indonesia, the contribution of the private sector needs to be increased by providing incentives in the tax sector. The tax incentive is given to reduce the tax burden that must be borne by taxpayers, so that there is room for domestic funding to increase investment and increase direct investment from abroad (Foreign Direct Investment or FDI). The tax incentive is also intended to ensure the maintenance of domestic capital and encourage the inflow of foreign capital to drive the economy. The formulated incentives should provide an attraction so that the difference between the tax burden and the investment returns abroad, either in the form of dividends or other income, is willing to be invested in Indonesia to drive the domestic economy. The tax incentive is given to reduce the tax burden that must be borne by taxpayers, so that there is room for domestic funding to increase investment and increase direct investment from abroad (Foreign Direct Investment or FDI). The tax incentive is also intended to ensure the maintenance of domestic capital and encourage the inflow of foreign capital to drive the economy. The formulated incentives should provide an attraction so that the difference between the tax burden and the investment returns abroad, either in the form of dividends or other income, is willing to be invested in Indonesia to drive the domestic economy. The tax incentive is given to reduce the tax

burden that must be borne by taxpayers, so that there is room for domestic funding to increase investment and increase direct investment from abroad (Foreign Direct Investment or FDI). The tax incentive is also intended to ensure the maintenance of domestic capital and encourage the inflow of foreign capital to drive the economy. The formulated incentives should provide an attraction so that the difference between the tax burden and the investment returns abroad, either in the form of dividends or other income, is willing to be invested in Indonesia to drive the domestic economy. so that there is room for funding from within the country to increase investment and increase direct investment from abroad (Foreign Direct Investment or FDI). The tax incentive is also intended to ensure the safeguarding of domestic capital and to encourage the inflow of foreign capital to drive the economy. The formulated incentives should provide an attraction so that the difference in tax burden and investment returns abroad, either in the form of dividends or other income, is willing to be invested in Indonesia to drive the domestic economy. so that there is room for funding from within the country to increase investment and increase direct investment from abroad (Foreign Direct Investment or FDI). The tax incentive is also intended to ensure the maintenance of domestic capital and encourage the inflow of foreign capital to drive the economy. The formulated incentives should provide an attraction so that the difference between the tax burden and the investment returns abroad, either in the form of dividends or other income, is willing to be invested in Indonesia to drive the domestic economy.

The passing of the work copyright law will have a positive impact on the growth of investment value, which is one of the factors in assessing domestic economic growth, and changes the principle of income taxation that has been applied in Indonesia. It is hoped that it will become a legal certainty for foreign investors to want to do business and invest in Indonesia. The Indonesian Minister of Finance, Sri Mulyani Indrawati, stated that the omnibus law in the field of taxation only contains 28 (twenty-eight) articles and is divided into 6 (six) clusters. The first cluster is about how to increase investment through lowering corporate income tax (PPh) rates and interest income tax. The second cluster, the territorial system, is how foreign dividend income will be tax exempt, as long as it is invested in Indonesia. The third cluster deals with individual tax subjects (OP), which regulates the OP for Foreign Citizens (WNA) and Indonesian Citizens (WNI). The fourth cluster, on how to improve tax compliance, namely rearranging sanctions and interest compensation. The fifth cluster, for the digital economy, is the taxation of electronic transactions which is made the same as ordinary taxes. And the sixth cluster, As is known, the elimination of income tax on domestic and foreign dividends is one of the instruments in the taxation omnibus law which is used to increase the attractiveness of Indonesia as an investment destination country. Dividends, both domestic and foreign, are officially exempted from the income tax (PPh) object. Part of the revision of the Income Tax Law which is included in the Job Creation Law is one of the legal breakthroughs. on the other hand, the existence of the double tax avoidance agreement (P3B) which has been the reference in taxation of those who are tax objects and tax subjects in Indonesia, will refer to the work copyright law on dividend income received from abroad provided it is invested in Indonesia in certain time. The

requirements referred to are first, dividends and after-tax income that are invested at least 30% of the profit after tax. Second, dividends come from overseas business entities whose shares are not traded on the stock exchange and invested in Indonesia before the tax director general issues a tax assessment letter on the dividends. With the enactment of the work copyright law on income received from abroad that is not the object of tax can be enforced with the double tax avoidance agreement (P3B). The author hopes that this journal will add insight to those who read and add to scientific writings on the omnibus law, especially in the field of taxation.

This study aims to analyze the impact of the omnibus law on the income tax annulment on dividends abroad. Furthermore, this study also aims to analyze the impact of income tax on dividends received from abroad on the avoidance of double tax (P3B).

II. THEORETICAL REVIEW

The Omnibus Law theory on the elimination of income tax (PPh) on dividends is a very positive plan and policy from the government with a lower effective tax rate that allows potential to attract investors to invest in Indonesia. The Taxation System in each country is different in regulating taxation of the company in relation to shareholders belonging to private individuals based on the provisions of Indonesian Income Tax currently adopting a Classical system where the company is seen as a separate entity system where the company's income will be subject to separate taxes and separate from the shareholder. In this classical system, the income resulting from the company is taxed twice, namely the company and the shareholders where at the time the dividend is distributed to individual shareholders the income received will be taxed back on the individual shareholders and the same system will be applied at the enactment of the Income Tax Law Number 17 of 2000. If the Omnibus Bill law on legal taxation is enacted, then this classical system regime ends in Indonesia and through the policy of eliminating income tax on dividends, based on Article 4 paragraph (4b) and Article 4 paragraph (5) the Indonesian Tax Omnibus Law Bill will change from a classical system to an integration of distributed profit in the form of a single tier dividend system which is better known as the One-tier system. So based on the company's income system, it is only taxed once at the corporate level.

Theory of Taxation Origin of Income Sources The interaction of the tax system between countries is largely determined by the international tax regime adopted by each interacting country. Thus, although it only applies to the extent of the country's tax jurisdiction, the tax provisions of each country have an international aspect that has a cross-border impact (Darussalam et al., 2010). This is no exception in the case of cross-border financial investments. The amount of tax burden ultimately borne by investors will depend on two things. First, the tax regimes adopted by the two countries concerned. Second, how the two countries coordinate to agree on the distribution of tax allocation rights. This section will focus on discussing the first aspect.

With the more openness and development of cross-border investment, the effective tax rate charged to investors will increasingly have an effect on the volume of incoming investment. The effective tax rate in this case is defined as the total tax paid by investors, both to the country of income sources and to the country of residence. So, it should be noted that the tax

rates that support economic competitiveness are not solely determined by the tax provisions of one state party alone. For that, we need to understand how a country's tax system interacts with other countries.

The interaction of the tax system between countries is largely determined by the tax regimes of the two countries concerned. There are two kinds of international tax regimes that we know, namely the worldwide and territorial tax regimes. The worldwide taxation system imposes taxes based on the nationality of a person. In other words, if an individual or entity is a citizen of a country adhering to a worldwide regime, that individual or entity will be taxed regardless of the source of revenue generated by that individual or entity. Meanwhile, the territorial regime imposes taxes based on the source (sources) principle, which is that only income originating from the country can be taxed.

Alternative taxation systems that a country can choose according to economic conditions and the objectives to be achieved, namely the worldwide, territorial, or hybrid taxation system.

1) Worldwide taxation system

"In a true worldwide system, a residence country imposes its regular income tax on its residents' entire foreign-source income at the time the income is earned (Fleming et al., 2008)." A country that adopts a purely worldwide tax system will impose taxes on all income of its taxpayers, both income originating from within the country and abroad. Thus, all income from a multinational company having a domicile in a country that adheres to the worldwide tax system may be taxed, including income originating from its branch located in another.

In addition to taxing all income received by domestic taxpayers, countries that adhere to the worldwide tax system also impose taxes on income received by foreign taxpayers who come from these 27 countries (Razin & Slemrod, 1990).

Table 1: Pros and Cons of Worldwide Taxation System

No	Pros	Cons
1.	Stable state revenue.	Complex tax system.
2.	Protecting small and medium scale domestic business.	The occurrence of capital accumulation.
3.	Encouraging cooperation in the exchange of financial information between countries.	Additional tax burden for taxpayers on abroad income.
4.	Obligations of citizens to the state.	Additional administrative supervision for tax authorities.

Source: Hastings (2017)

2) Territorial taxation system

Countries that adhere to a territorial tax regime impose taxes based on the source of income (i.e. sourced from the territory of the country concerned) obtained by an individual or entity, regardless of the citizenship status of the individual or entity. According to Fleming, Peroni, and Shay (2008), countries that adhere to a purely territorial tax system cannot impose taxes on income originating from abroad. A similar opinion was expressed by Rohatgi (2005) who stated that countries with a fully territorial tax system only impose

taxes on income received or originating from within the country's jurisdiction. Meanwhile, income from abroad is not taxed in that country.

According to Hastings (2017) in his article, Tax Systems: Territorial vs. Worldwide there are several advantages and challenges from an application of the territorial tax system as presented in Table 2.

Table 2: Pros and Cons of Territorial Taxation System

No	Pros	Cons
1.	Prevent company inversion.	Less relevant to the era of information disclosure.
2.	Prompt repatriation of income from abroad, or overcome capital accumulation.	Less tax revenue for the government.
3.	Encouraging taxpayer transparency.	Incentives for taxpayers to transfer income to the lower tax countries.
4.	Encouraging domestic taxpayers to expand overseas.	Risk for domestic business from large foreign entities.

Source: Hastings (2017)

Thus, based on the explanation above, in general it can be seen that the positive side for a country from the application of the territorial system is to encourage repatriation because the income from abroad that is brought in is not taxed. In addition, these countries can increase their competitiveness in attracting international business actors to place their headquarters in the country or move their head office which has resident status to a country with a territorial tax system. This system can also encourage business actors to expand or invest abroad.

However, it should be noted that the application of the territorial tax system will have an impact on reducing the tax base which will also reduce state revenues. The application of this system can also have an impact on income that is not taxed at all if an income is not taxed in the source country nor is it taxed in the country of its residence. The application of this system is also considered to be able to trigger unfair competition between countries in attracting international business actors due to the tax exemptions and facilities offered.

3) Hybrid Taxation System

In applying a tax system, both the worldwide tax system based on the principle of citizenship or residential or the territorial tax system based on the source principle, in practice a country does not apply the tax system purely, but makes some adjustments (Mullins, 2016). Comparison of taxation to tax subjects on income received from within the country or abroad, using the worldwide and territorial systems, is presented in Table 3.

Table 3: The Differences of Worldwide and Territorial Taxation System

Type of Tax Subject	Domestic Income	Foreign Income
1. Worldwide tax regime*		
a. Resident Tax Subject (SPDN)	t_D	t_f
b. Non-Resident Tax Subjects (SPLN)	t_N	Not taxed
2. Territorial tax regime*		
a. Resident Tax Subject (SPDN)	t_D	Not taxed
b. Non-Resident Tax Subjects (SPLN)	t_N	Not taxed

*Note:

t_D : tax imposed on the income of domestic taxpayers originating from within the country.

t_f : tax imposed on the income of domestic taxpayers originating from abroad.

t_N : tax imposed on foreign taxpayers originating from within the country.

Source: Mullins (2016)

III. ANALYSIS AND FINDINGS

The impact of Omnibus Law on the elimination of dividend tax received by foreign taxpayers received from Indonesia must meet the conditions that dividends received must be invested in the territory of the State of Indonesia within a certain time as stated in the product of the work copyright law or better known as the Omnibus Law on application of tax treaty which has been used as the principle of taxation of income in every binding country. (worldwide system).

The plan to write off Income Tax on dividends received abroad in the tax omnibus law means that the system will switch to using a one-tier system, which is projected to eliminate double taxation. Maybe so far, income in the form of dividends has not been reported to Indonesia because of our worldwide income system. With this exception, that is, with the condition that it is invested in the country, the taxpayer will report on a self-assessment. CPB noted, Indonesia lost 53.8% of the total potential tax revenue from dividends. The agreements with the Netherlands and Hong Kong contributed 58.2% and 41.8%, respectively, to the total potential tax revenue from lost dividends (Indonesian business). Judicial double taxation can occur for various reasons. These reasons can occur because of a conflict of interest between one country and another in the form of differences in taxation systems or principles between these countries.

According to Holmes (2007), conflicts between a country and another that can cause double taxation are as follows:

First, a conflict between a country and another country to become the source country of a certain income (source-source conflict);

Second, a conflict between the country of domicile and the source country to impose a tax on certain income (source-residence conflict);

Third, a conflict between a country and another country to become a country of domicile (residence state) for certain tax subjects (residence-residence conflict); and

Furthermore, no country that imposes income tax voluntarily relinquishes its taxation rights on income earned in its territory, even though the income is earned by non-residents of that country, who has limited relations with that country (Vogel, 1988). In connection with this, the state generally designs taxation systems using residential and source principles (Graetz, 2003). In practice, many countries adopt a hybrid tax system, with elements of the worldwide and territorial tax systems (Kwak, 2012).

Clausing (2015) writes that many countries do not apply a purely worldwide or territorial tax system, but implement a modification of the two systems. The factors that are considered in determining the tax system are: (1) how much income from abroad is taxed; (2) effective tax burden on income from abroad; (3) the tax implications of repatriation; and (4) tax incentives (or disincentives) for earning in a low-tax (or high-tax) country. For these countries, capital outflows will increase if the destination country also excludes the tax base on income from that capital in the destination country. Thus, the investor's income on that capital is not a tax base for both the resident country and the country of income.

Fourth, conflict between the country of domicile and the source country over the characterization of a certain type of income (characterization of income conflict).

Regarding the rights of the source country, the reason why the source country feels entitled to tax is based on the benefit theory of taxation. Namely, the benefits that have been provided by the source country of income against the income earned in the country.

With the existence of the work copyright law, Indonesia has changed the principle of taxation on income, which before the birth of the work copyright law adhered to the worldwide principle, but with the birth of the copyright law, Indonesia became adherent of the territorial principle.

The conditions of domestic investment and unsupportive regulations have also led to the development of interstate tax avoidance practices by transferring profits received from foreign business entities through the establishment of subsidiaries abroad that are controlled by domestic tax subjects (SPDN) directly or indirectly, to receive dividend income distributions and hold said dividends overseas. Because the imposition of tax income (PPH) and regulations related to investment in the country that is not conducive, has created a tendency for entrepreneurs to invest abroad, but never bring back the dividends they receive or receive to Indonesia.

IV. CONCLUSION

The elimination of dividend tax in the tax omnibus law is a positive policy plan with a lower effective tax rate, which will have the potential to encourage investors to invest in the country. On the other hand, the risk of revenue forgone must still be mitigated. So, the requirements for domestic investment should be put forward. Otherwise, the tax savings earned by shareholders will appear to increase the wealth of the rich and create further inequality.

The government needs to evaluate the effectiveness of double tax avoidance agreements (P3B) or tax treaties with a number of countries following the large number of corporations that have committed violations through treaty shopping practices. In a report released by the Netherlands Bureau for Economic Policy Analysis (Centraal Planbureau/CPB), it was written that Indonesia suffered losses from the practice of tax treaty or tax treaty with the Netherlands, Hong Kong, and the United Arab Emirates. Especially for agreements between Indonesia and the Netherlands, writes the report, it is often used by multinational corporations to avoid tax obligations.

REFERENCES

- [1] Darussalam, J. Hutagaol, D. Septriadi, Concept and Application of International Taxation. Jakarta: Danny Darussalam Tax Center, 2010.
- [2] A. Razin, J. Slemrod, Taxation in the Global Economy. Chicago: University of Chicago Press, 1990.
- [3] J. C. Fleming, R. J. Peroni, S. E. Shay, "Worse Than Exemption", *Emory Law Journal*, 59, 2008, 80-150.
- [4] A. Hastings, *Tax Systems: Territorial vs. Worldwide*. 2017. <https://aaronhastings47.files.wordpress.com/2017/04/tax-systems-territorial-vs-worldwide.pdf>
- [5] P. Mullins, *International Tax Issues and the Extractive Industries*. Washington DC.: Fiscal Affairs Department, 2016.

- [6] K. Vogel, *Worldwide vs. Source Taxation of Income: A Review and Reevaluation of Arguments*. Intertax, 1988.
- [7] M. Graetz, *Foundations of International Income Taxation*. Fund Press, 2003.
- [8] D. Kwak, *America's Refusal to "Race to the Bottom": Worldwide vs. Territorial Taxation*. Tax Notes International, 2003, 390.
- [9] K. A. Clausing, "Beyond Territorial and Worldwide Systems of International Taxation", *Journal of International Finance and Economics*, 2015, 43-58.
- [10] K. Holmes, *International Tax Policy and Double Tax Treaties: An Introduction to Principles and Application*. Amsterdam: IBFD Publications BV, 2007.

AUTHORS

First Author – Dewi Shintawati Kusnadi, Student of Master of Administration Science, STIAMI Institute, dsk.usakti@gmail.com.

Second Author – Denny Kurniawan, Student of Master of Administration Science, STIAMI Institute, dennykurniawan@yahoo.com.

Correspondence Author – Dewi Shintawati Kusnadi, dsk.usakti@gmail.com.