REVIEW OF CERTAINTY ASPECT AND REVENUE PRODUCTIVITY PRINCIPLES IN THE SECONDARY TRANSFER PRICING ADJUSTMENT POLICY IN INDONESIA

[1]Iman Santoso, [2]Ning Rahayu, [3]Gunadi

[1,2,3]Department of Fiscal Administration, Faculty of Administrative Sciences, Universitas Indonesia, Indonesia

imansa1969@gmail.com[1]
ning.rahayu@gmail.com[2]
triguna.gunadi@gmail.com[3]

*Corresponding Author: imansa1969@gmail.com[1]

Abstract
This article reviews the developments of secondary transfer pricing adjustment (STPA) regulations in Indonesia following the enactment of Law Number 7 of 2021 concerning the Harmonization of Tax Regulations and the dynamics of tax disputes surrounding the determination of STPA in the Indonesian Tax Court. This article contains a comprehensive analysis of the phenomenon of STPA policy in the practice of transfer pricing audits in Indonesia, with a particular focus on the principles of certainty and revenue productivity in taxation. Several ideas and recommendations related to improving STPA policy to provide greater certainty and support tax revenue contributions are also presented in the closing section of the article.

Keywords: Secondary Transfer Pricing Adjustment (STPA), Legal Certainty in Taxation, Revenue Productivity Principle, Tax Disputes in Indonesia

INTRODUCTION

Globalization of the world economy has led to an increase in the volume of international trade and foreign direct investment (FDI) [1]. FDI plays a strategic role in economic growth through job creation and/or expansion, increased productivity, the introduction/transfer of knowledge and technology, and an increase on national revenue [2]. Multinational Enterprises (MNEs) play an important role in the development of global economic integration, which involves numerous cross-border transactions between companies within the MNE group. As business entities operating in multiple countries, MNEs engage in complex cross-border transactions, whether through branches, subsidiaries, or affiliates. These transactions include the sale and purchase of goods, the provision and use of services, the transfer of intangible assets such as patents, trademarks, licenses, and technology, as well as other royalty payments. Transactions conducted by MNEs with affiliated entities raise transfer pricing issues, particularly concerning the allocation of business risks among group members, the compensation or reimbursement each entity should receive for its contributions, and the managerial and financial control of business units within the group.

In the context of taxation, the issue of transfer pricing arises because the opportunistic behavior of MNEs affects how profits and costs are allocated among various entities within an MNE group, which directly impacts the calculation of tax liabilities in the countries where the MNE conducts its business operations. Without strict transfer pricing rules, there is concern that MNEs could shift profits to countries with lower tax rates in order to reduce their global tax burden [3]. Although the growth of global economic activity has had a positive impact on society, it has also facilitated the erosion of tax revenues in many countries—particularly in developing countries—through tax avoidance practices. One such method of tax avoidance is transfer pricing between members of a multinational enterprise group at values that deviate from what would be consistent with the arm's length principles (ALP or fairness and sound business norms principles) [4].

Based on an empirical study conducted by Ernst & Young in 2010 on 850 MNEs in 24 countries, it was found that 40% of respondents mentioned transfer pricing as the most important and widely discussed issue in taxation. Later in 2019, EY conducted another survey on transfer pricing and international taxation and found the following: (i) The global environment is becoming increasingly dynamic and uncertain, resulting in higher transfer pricing risks, which have become a top priority. (ii) Transfer pricing documentation (TPD) is becoming increasingly important, even though in practice, some tax jurisdictions still do not meet global standards; and (iii) Efforts to mitigate transfer pricing risks are becoming increasingly important because they are related to the prevention of double taxation or even double non-taxation. In this case, transfer pricing has become a crucial issue for developing countries, which view their tax revenues as being eroded by the opportunistic behavior of MNEs engaging in unfair transactions between their business entities [5]

Transfer pricing is indeed one of the biggest taxation issues faced by tax authorities around the world. In addition to the potential erosion of the tax base, where MNEs can use transfer pricing to shift profits to low-tax jurisdictions, thereby reducing their overall tax burden and potentially eroding the tax base in countries with higher tax rates, the reasons why transfer pricing has become the most important issue in taxation in the last decade are: (i) the complexity of pricing: determining fair prices for transactions between affiliated companies is very complex because it involves in-depth economic analysis, comparisons with similar transactions between independent parties, and complex adjustments for special conditions; (ii) compliance and supervision: tax authorities in various countries are increasingly monitoring transfer pricing. This includes strict documentation requirements and intensive audits, which require significant resources from the company; (iii) controversy and disputes: differences in the interpretation and application of transfer pricing rules often trigger disputes between companies and tax authorities. This can result in lengthy and costly litigation processes; and (iv) changes in international regulations: international initiatives such as Base Erosion and Profit Shifting (BEPS) by the Organization for Economic Cooperation and Development (OECD) have significantly changed the transfer pricing regulatory landscape, requiring companies to continuously adapt to these changes. Due to these factors, transfer pricing has become one of the most challenging and far-reaching taxation issues for MNEs and tax authorities around the world [6].

Secondary Transfer Pricing Adjustment (STPA)

The concept of an affiliated relationship can be described as a condition in which one party or company has direct or indirect involvement in the control, management, or capital participation of another party or company [7]. On the other hand, Epstein and Mirza in Ramadhani [8] stated that affiliated relationship can be defined as: "*Entities are considered related party when one of them either has the ability to control the other, or can exercise significant influence over the other in making financial and operating decisions. Related party transaction are dealings between related parties involving transfer of resources or obligations between them, regardless of whether a price is charged for the transaction*."

From these two definitions, it can be concluded that a relationship between entities is categorized as an affiliated or special relationship if one entity has control, significant influence, or involvement in the management or capital of another entity, either directly or indirectly, which can affect the financial or operational decisions of that other entity. Globally, the terminology commonly used to describe affiliated or special relationships is associated enterprise. Referring to Article 9 of the 2017 OECD Model Tax Convention on Income and on Capital, these relationships can occur due to two main situations, namely:

1. When a company in one country (contracting state) participates, either directly or indirectly, in the management, control, or ownership of capital of a company in another country (other contracting state); or
2. When the same individual or group directly or indirectly involved in the management, control, or ownership of capital of one company in one country and the other country

The determination of a reasonable value for transactions between related parties, in the context of taxation, is often referred to as transfer pricing adjustments. According to Indonesian tax regulations, these adjustments consist of three types of transfer pricing adjustments, namely: primary, secondary, and corresponding adjustments [9].

Based on the OECD - Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TPG) 2022, primary adjustment is an adjustment made by the tax authority in one jurisdiction as a result of applying the arm's length principle to transactions involving affiliated parties in another jurisdiction. Meanwhile, secondary adjustment in transfer pricing is defined as a further adjustment made by a country's tax authority after conducting primary adjustment on related party transactions deemed not by the arm's length principles (or fairness and business prevalence). Secondary adjustment in transfer pricing is an additional adjustment made by the tax authority after conducting a primary adjustment to correct the transfer price between companies that are affiliated or have an affiliated or special relationship according to taxation [10].

Primary adjustments correct the prices of transactions between related companies to reflect fair market conditions. If these primary adjustments result in excess or shortfall payments between affiliated companies, secondary adjustments may be necessary to ensure that such gains or losses are treated appropriately in accordance with tax rules [11]. More specifically, secondary adjustments aim to: (i) reflect the cash flow that should have occurred: if, after the primary adjustment, it is found that one of the companies has overpaid or underpaid, secondary adjustments are useful to ensure that the payment is corrected in line with what should have occurred in a free market; (ii) avoid double taxation or undue taxation. By adjusting these payments, companies can avoid double taxation or other taxation issues that may arise from primary adjustments. For example, if the primary adjustment shows that an MNE, let's say A Co sells goods to its affiliate, B Inc., below market price, the tax authorities may increase the price for tax purposes. A secondary adjustment may then be necessary to record the actual cash flow, for example by adding the amount considered as dividends or loans between the companies. This secondary adjustment is important to ensure that all transactions between affiliated companies comply with the arm's length principle and are not used for tax avoidance purposes. Meanwhile, corresponding adjustments in transfer pricing are adjustments made by tax authorities in other countries to avoid double taxation after primary adjustments have been made in the country of origin [12].

It should be noted that the provisions regarding STPA are an effort by the government or a tax jurisdiction to prevent base erosion and profit shifting (BEPS). According to the OECD TPG, secondary adjustment is an adjustment that arises from imposing tax on a secondary transaction. A secondary transaction is a constructive transaction that some jurisdictions will assert under their domestic legislation after having proposed a primary adjustment in order to make the actual allocation of profits consistent with the primary adjustment. Secondary transactions may take the form of constructive dividends, constructive equity contributions, or constructive loans [13].

STPA Rules and Guidelines in Indonesia

As a follow-up to the enactment of Law Number 7 of 2021 concerning Harmonization of Tax Regulations, the Indonesian government issued Government Regulation (GR) Number 55 of 2022 concerning Adjustments to Regulations in the Field of Income Tax, which in principle regulates STPA policy in detail as follows: (i) The Director General of Taxes (DGT) has the authority to redetermine the amount of income and/or deductions to calculate the amount of taxable income if the ALP is not applied; (ii) The determination of transfer prices in accordance with the ALP is carried out using: a) the independent arm's length price comparison method; b) the resale price method; c) the cost-plus method; or d) other methods, such as the profit split method, the transactional net profit method, the independent transaction comparison method, the tangible and/or intangible asset valuation method, or the business valuation method; selected based on accuracy and reliability; and (iii) The difference between the transaction value affected by a affiliated/special relationship that is not in accordance with the ALP and the transaction value affected by a affiliated/special relationship that is in accordance with the ALP constitutes a form of indirect profit sharing to affiliated entities and is therefore treated as (constructive) dividends subject to Income Tax in accordance with the provisions of tax laws and regulations [14].

Further regulation regarding the secondary adjustment policy in the field of transfer pricing are set forth in Minister of Finance Regulation (MoFR) 172/PMK.03/2023 concerning the Application of the Arm’s Length Principles in Transactions Affected by Affiliated or Special Relationships. Articles 36 to 38 of MoFR 172/2023 reaffirm the application of the secondary adjustment policy in the event of transfer pricing corrections, as initiated in GR 55/2022. The provisions of MoFR 172/2023 regulate the following matters: (i) In the event that a difference is found between the value of transactions influenced by affiliated or special relationships that are not in accordance with ALP and the value of transactions influenced by affiliated or special relationships that are in accordance with ALP, the difference constitutes an indirect distribution of profits to affiliated parties which is treated as a constructive dividend subject to income tax in accordance with the provisions of tax laws and regulations. (ii) The constructive dividend is subject to income tax when: a) the income is paid; b) it is made available for payment; or c) the payment of the income falls due, whichever occurs first. (iii) This STPA policy applies to: a) transactions in the form of cross-border transactions and domestic transactions; and b) all forms of affiliated or special relationships. (iv) The imposition of income tax on constructive dividends may benefit from the Double Taxation Avoidance Agreement (Tax Treaty). Interestingly, STPA corrections do not apply in the following cases: (i) there is an addition and/or return of cash or cash equivalents equal to the difference between the value that does not comply with the ALP and the ALP value (primary adjustment) prior to the issuance of the tax assessment letter; and/or (ii) the taxpayer agrees to the transfer pricing determined by the DGT [15].

Based on the regulations above, if X, Co – Indonesia, which is engaged in the household appliance manufacturing sector, sells its final products to its majority shareholder (80%) of a company in Singapore at a price of IDR 10,000 million, but based on the ALP analysis held by the DGT when conducting a tax audit on X, Co – Indonesia, it is found that the fair sale price should be IDR 14,000 million. As a consequence, the DGT makes a primary adjustment of IDR 4,000 million and applies it in determining the corporate income tax calculation of X, Co – Indonesia, resulting in an additional corporate income tax of IDR 880 million. In addition, the primary adjustment of IDR 4,000 million will also become an STPA that is treated as a constructive dividend in Indonesia and is subject to Income Tax Withholding Article 26 of 10% based on the provisions of Article 10 paragraph (2) of the Double Tax Treaty between Indonesia and Singapore so that X, Co – Indonesia is exposed to a withholding income tax under Article 26 of IDR 400 million. The tax calculation consequences due to transfer pricing adjustments in the illustration above are presented in the following table:

Table 1 Perhitungan Pajak

No.	Description	X, Co – Indonesia	X, Co – Indonesia after TP adjustment by DGT	X, Pte. Ltd – Singapore	Remarks
1	Sales	10.000	14.000	17.000	The excess of IDR 4,000 (=14,000–10,000) is due to the primary adjustment made to X, Co – Indonesia which is treated as a constructive dividend.
2	Costs of Goods Sold (COGS)	6.000	6.000	10.000	
3	Gross Profit (1-2)	4.000	8.000	7.000	
4	Operational Expenses	1.000	1.000	2.000	
5	Taxable Profit (3-4)	3.000	7.000	5.000	
6	Corporate Tax Due (22%)	660	1.540		
	Additional taxes due to TP adjustments:				
7a	Primary adjustment – Corporate tax (22%)	-	880		
7b	STPA – WHT Article 26 on Constructive Dividend (Reduced rate Tax Treaty – 10%)	-	400		

In practice, the implementation of this secondary adjustment policy has raised a number of concerns for taxpayers [16]. First, the existence of secondary adjustments is feared to be problematic if the primary correction is not convincing but is still enforced. Second, taxpayers face the risk of double taxation if transfer price adjustments are considered dividends and subject to income tax, while on the other side of the transaction, income tax on those dividends cannot be credited or deducted. This risk may occur not only in cross-border or cross-jurisdictional transactions, but also for transfer pricing adjustments within the country. Third, the existence of secondary adjustments also allows for excessive transfer pricing adjustments, because when the value of the primary income tax adjustment is huge or material, the secondary adjustment is also huge and material due to the element of tax penalties, in the form of interest and/or fines [17].

Furthermore, based on the Tax Court's decision data as of July 2024 [18], there were 430 disputes related to STPA corrections that had been decided in favour of the taxpayer in 329 cases (76.5%). Most of the STPA corrections made by the DGT were rejected by the Tax Court Judges due to the inaccurate application of the adjustments, which also indicated a lack of understanding on the part of DGT officials in applying the provisions of the STPA. Meanwhile, another study relevant to this STPA issue was also conducted by Hubaya Arif Auliya and Arifin Rosid, who analysed the root causes of disputes using a root cause analysis (RCA) approach and a Fishbone diagram [19]. The findings show that from data covering 358 tax court decisions, the main causes of STPA disputes are related to: (i) the unclear definition of constructive dividends adopted as a consequence of STPA according to Indonesian regulations, (ii) the limited competence of tax auditors, particularly in terms of transfer pricing corrections, and (iii) aggressive audit targets [20].

Based on STPA regulations and several empirical studies on transfer pricing audit practices above, this article attempts to review existing STPA policies from the aspects of certainty and the principle of revenue productivity in taxation [21].

METHOD

This article uses a qualitative approach, which, according to Creswell [22], is used to explore and gain a deeper understanding of social issues. Qualitative studies are a type of research in which the discovery procedure is carried out without using statistical or quantification procedures. This article also uses a qualitative approach because it seeks to explain whether the existing STPA policy has fulfilled the aspects of certainty and revenue productivity. This paper is not intended to test theory, but rather to conduct inductive data analysis, with theory used only as a tool to provide ideas related to the concepts to be written. Therefore, data analysis will depend entirely on field data collected through literature studies and in-depth interviews. This study is classified as pure research and is descriptive in nature because it aims to identify and describe, based on empirical facts, existing STPA policies by reviewing aspects of certainty and the principle of revenue productivity in taxation. This study was conducted between April and August 2025, and no other research was conducted at different times for comparison.

This study uses qualitative data collection techniques with primary and secondary data sources. Primary data is data obtained directly from competent sources consisting of regulatory representatives from the tax authorities, MNE taxpayers who have been subject to STPA during tax audits conducted by the tax authorities between 2023 and 2025, academics and tax practitioners to answer research questions, or original data that can be obtained from in-depth interviews. Meanwhile, secondary data is obtained from literature studies in the form of journals, reports from the Indonesian tax authorities, books, and other relevant sources.

The Certainty and Revenue Productivity Principles in Taxation

From a legal and economic perspective, the principles of certainty and revenue productivity are fundamental principles that form the basis for the formulation, implementation, and evaluation of legislation and policy in the field of taxation. The principle of legal certainty emphasizes and underscores the principle that the law must be clear, consistent, and easily predictable. Thus, in tax law, taxpayers must know their rights and obligations clearly, and tax officials (tax collectors) must enforce the law consistently and not arbitrarily. The principle of legal certainty in tax law requires that tax laws and regulations be drafted in unambiguous language, that payments, deductions/collections, audits, and tax assessments be carried out in accordance with applicable regulations, and that taxpayers be given a sense of security in planning their economic activities and tax obligations [23].

The principle of legal certainty aims to create order in society and is an inseparable feature of law, especially for written legal norms. Legal certainty is defined as the clarity of norms so that they can be used as guidelines for the community subject to these regulations [24]. Certainty also means that there is clarity and firmness regarding the application of law in society, so that it does not give rise to many misinterpretations. This principle ensures that the tax system must be clear, not arbitrarily changed, and implemented consistently in accordance with the regulations or laws on which it is based.

Legal certainty in taxation is divided into 2 (two) categories, namely:

1. Material/substantive legal certainty in taxation

This covers the norms that determine the subject of taxation, the object of taxation, and the tax rate or amount of tax to be paid. This includes aspects such as the origin, amount, and cancellation of tax debts, as well as the relationship between tax authorities and the taxpayers.

2. Formal-administrative legal certainty in taxation

This relates to the procedures for implementing substantive tax law. It covers the mechanism for determining taxes, government supervision, taxpayer obligations, the role of third parties, and tax collection procedures.

Meanwhile, the principle of revenue productivity (sometimes referred to as revenue adequacy or the productivity principle) is one of the principles in the formulation of a tax system that emphasizes that the taxation system must be able to generate sufficient state revenue to finance government expenditure needs, both routine and for development expenditure. This means that taxes are not only a regulatory instrument but must primarily be productive in contributing to stable and sustainable state revenue (budgetary function) that is in line with and elastic to the economic growth of nation.

RESULT AND DISCUSSION

Review of the Certainty Aspects of STPA Policy

The DGT, as Indonesia's tax authority, stated that MoFR 172/2023 combines transfer pricing provisions from various regulations (DGT Regulation 22/PJ/2013, DGT Circular 50/2013, MoFR 213/2016, MoFR 22/2020, etc.) so that taxpayers and the DGT can use it as a single reference that increases normative certainty because they no longer have to interpret many separate rules. As a legal basis for the STPA policy, MoFR 172/2023 also strengthens the scope of transfer pricing regulations in Indonesia because it consolidates various previous provisions into a single, more comprehensive regulation with a higher hierarchy, from the previous DGT regulations or DGT circular letters, to a minister of finance regulation with a legal basis in the prevailing Law and Government Regulation above it as the legal foundation.

The formal certainty aspect of this STPA policy is also evident in its assertion that STPA in Indonesia does not only apply to transactions with parties that have affiliated or special relationships abroad (cross-border) but also covers domestic affiliated or special relationship transactions. In addition, the option to cancel STPA is also accommodated, provided that the taxpayer agrees to the primary adjustment and/or is willing to return the cash before the tax assessment letter is issued. This option is considered by some tax experts to provide clarity on the resolution of STPA disputes, reduce the potential for double taxation, and provide better predictability than the previous “gray area.” However, some argue that the option to cancel the STPA because the taxpayer agrees to the primary adjustment is contradictory in theory. This is due to the basic understanding that STPA originates from primary adjustments, which in Indonesian law are treated as constructive dividends subject to Income Tax Withholding Article 26 (if the counterparty to the affiliated or special relationship transaction is with a foreign taxpayer) or subject to Income Tax Withholding Article 23 if the affiliated or special relationship transaction is between domestic taxpayers. In principle, the STPA will be determined or continued if the primary adjustment is proven. Doesn't the taxpayer's agreement to the primary adjustment in a transfer pricing audit confirm the determination of the STPA, rather than canceling it?

Despite the positive view of the STPA policy, which is considered to provide greater certainty, there are several issues that still leave material uncertainty. First, the STPA policy, which treats primary adjustment of transfer pricing as a constructive dividend, is theoretically and legislatively inappropriate when applied to parties with affiliated or special relationships who are not shareholders. Second, Indonesian tax provisions exempt dividends paid to fellow domestic taxpayers from taxation, rendering the STPA policy on domestic related-party transactions ineffective. Third, there is uncertainty regarding the definition of dividends under the provisions of Double Tax Treaty, and whether it also includes the definition of constructive dividends resulting from the application of the STPA policy.

Article 4 paragraph (1) of the prevailing Income Tax Law stipulates that: “*The object of taxation is income, namely any additional economic capacity received or obtained/accrued by a taxpayer, whether originating in Indonesia or outside Indonesia, which can be used for consumption or to increase the wealth of the taxpayer concerned, under any name and in any form, including: .... g. dividends, under any name and in any form, including dividends from insurance companies to policyholders, and distribution of cooperative surplus; Furthermore, the elucidation or explanatory memorandum to the above article states that: "Dividends are a portion of the profits <u>obtained by shareholders</u> or insurance policyholders or the distribution of cooperative surplus obtained by cooperative members. Included in the definition of dividends are:*

1. *Distribution of profits, either directly or indirectly, under any name and in any form;*
2. *Repayment due to liquidation exceeding the amount of paid-up capital;*
3. *Granting of bonus shares without payment, including bonus shares originating from share premium capitalization;*
4. *Distribution of profits in the form of shares;*
5. *Additional capitalization without payment;*
6. *Amounts exceeding the amount of share capital received or obtained by shareholders due to the repurchase of shares by the company concerned;*
7. *Full or partial repayment of paid-up capital, if profits were earned in previous years, unless such repayment is the result of a lawful reduction in the authorized (statutory) capital;*

Payments in connection with profit shares, including those received as redemption of such profit shares;

8. *Profit shares in connection with bond ownership;*
9. *Profit shares received by policyholders;*
10. *Distribution of surplus earnings to cooperative members;*
11. *Company expenditures for the personal needs of shareholders charged as company expenses.*

In practice, it is common to find concealed dividend distributions or payments, for example in cases where shareholders have fully paid up their capital and provided loans to the company in exchange for interest rates that exceed reasonable levels. If this occurs, the difference between the interest paid and the prevailing market interest rate is treated as a (constructive) dividend. The portion of interest treated as a (constructive) dividend may not be charged as an expense by the company concerned (treated as non-deductible expense for corporate tax calculation).

Similarly, when it comes to regulations on dividends under Law No. 40 Year 2007 on Limited Liability Companies (LLC Law), as lastly amended by Law No. 6 of 2023 on the Stipulation of Government Regulation instead of Law on Job Creation Law, the term "dividend" is not explicitly defined in a specific article governs the meaning of dividends. However, regulations concerning dividends can be found in several articles, particularly in Article 71 of the LLC Law, where paragraph (2) of Article 71 states that *"all net profits after deductions for reserves shall be distributed to shareholders as dividends, unless otherwise determined by the General Meeting of Shareholders (GMS)"*.

From the above formulation, dividends are the distribution of the company's net profit after deducting provisions for reserves, which is decided by the GMS to be distributed to shareholders.

The two legal references above confirm that the recipient of dividends is the shareholder, not an affiliated company that does not own (shares in) a corporation. Therefore, the STPA policy of applying constructive dividends to parties that have affiliated or special relationship but are not shareholders creates uncertainty.

In general, dividends are the distribution of profits to shareholders, namely individuals or entities that own shares in a company in proportion to their (shares) ownership. From a financial perspective, dividends can be considered a return on investors' services for having invested capital in a company's stock. This is what motivates companies that earn profits to distribute dividends as part of their profits to investors or shareholders. Dividends can also be considered as the right of a company's shareholders to receive a portion of a company's profits, which will be distributed proportionally to all shareholders according to the amount (proportion) of their ownership. In the context of taxation, Article 10 paragraph (3) of the OECD/UN Model Tax Convention states that *"the term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.* An explicit translation of Article 10 paragraph (3) of the OECD/UN Model Tax Convention states that "dividends" in this article refer to income derived from shares, 'jouissance' shares or "jouissance" rights, mining shares, founder shares or other rights that are not debt claims, profit sharing, and income from other corporate rights which, according to the laws of the country where the distributing company is located, are subject to the same tax treatment as income from shares. MoFR 172/2023 confirms that the determination of

Income Tax Withholding Article 26 on constructive dividends as a consequence of the implementation of the STPA policy may use a lower rate in accordance with the applicable Double Tax Treaty provisions with the country where the affiliated company is domiciled. However, it is not explained whether the substantial anti-treaty abuse and beneficial ownership test requirements, as well as the administrative requirement of providing a DGT Form that validates the domicile information of the dividend recipient signed by an authorized person of the foreign affiliate company and also approved and endorsed by the competent authority of the treaty partner country, need to be fulfilled or not. Not to mention the problem if the tax that has been applied in Indonesia on the STPA is not allowed to be credited or deducted in the country of domicile of the affiliate, causing international double taxation.

Based on the above provisions, it is uncommon, from both a general understanding and an international tax perspective, to use the term dividend to refer to the distribution of a portion of a company's profits to non-shareholders. Moreover, if the transaction involves a payment from a parent company to a subsidiary, the terminology of dividends becomes imprecise and confusing, thus weakening tax assessments.

Since the enactment of Law Number 11 of 2020 concerning Job Creation, Indonesia has provided income tax exemptions on dividends received by domestic taxpayers, both individuals and entities, subject to certain requirements. For domestic corporate taxpayers, dividends from fellow domestic taxpayers are exempt from income tax without any reinvestment requirements, meaning that the company receiving the dividends does not need to reinvest them in order to be tax-exempt. Meanwhile, for domestic individual taxpayers, dividends from fellow domestic taxpayers are exempt from income tax as long as they are reinvested in Indonesia. If dividends are not reinvested in Indonesia, they remain subject to income tax at the progressive rates specified in Article 17 of the applicable Income Tax Law. On that basis, the constructive dividend treatment of STPA to parties with special domestic relationships becomes ineffective because dividend payments to fellow resident taxpayers are exempt from income tax. It would provide greater certainty if the STPA policy in the form of constructive dividends were only applied to cross-border affiliated or special relationship transactions.

As for practical implications, from a fiscal perspective, this STPA policy provides certainty and administrative convenience because all STPAs will automatically be subject to Income Tax Withholding Article 26 on dividends. However, from the taxpayer's perspective, this STPA policy causes an excessive tax burden, thereby increasing the potential for tax disputes, particularly international tax disputes. This creates a more one-sided certainty, namely certainty for the tax authorities, not for taxpayers.

Review of the Revenue Productivity Principle in Relation to STPA Policy

MoFR 172/2023 which implements constructive dividends as a form of STPA, has advantages, primarily to prevent base erosion because without this STPA, transfer pricing adjustment differences can “hang” on the balance sheet without tax consequences. The dividend treatment will ensure and guarantee additional revenue in the form of dividend tax, which will go to the state treasury. In addition, this treatment also provides administrative simplicity, as it creates a uniform treatment that makes tax collection administration easier.

However, simplifying STPA as a constructive dividend can lead to excessive tax burdens (risk of over taxation), especially if the tax cannot be credited/deducted in affiliated or special relationship transactions, thereby preventing the effective achievement of the goal of avoiding international double taxation. Technically, the OECD TPG provides more flexibility in that the STPA policy can take the form of a constructive loan, capital contribution, or dividend, so that the single approach of treating it as a constructive dividend applied in Indonesia is less flexible than international practice. This can affect investment competitiveness and potentially lead to the imposition of double taxation. Some observers also argue that enforcing the STPA policy always as dividends may indeed increase short-term revenue productivity. However, if this discourages investors from investing in Indonesia or triggers many tax disputes, long-term tax revenue productivity may be disrupted. The single approach of implementing the STPA policy as a constructive dividend is considered too rigid because it is not accommodative to variations in intra-group affiliated or special relationships, thereby undermining the principle of efficiency, potentially suppressing the long-term tax base, and contradicting the principle of tax revenue productivity.

The diverse approach to STPA policies, as initiated by the OECD TPG, is considered more balanced, creating more stable revenue productivity in the long term because it can minimize tax disputes between the tax authorities and taxpayers, even though revenue is expected to be lower in the early stages of implementation. STPA policies with a diverse approach are also more investor-friendly because of their flexibility in accordance with economic facts, as their treatment follows the substance of the transaction, so that if the affiliated or special relationship transaction is between affiliates (sibling subsidiaries) or payments from a parent company to its subsidiary, for example, constructive loan provisions can be applied rather than forcing the application of constructive dividends, which is contrary to commercial logic and tends to be unsuccessful if the taxpayer files a tax litigation in the form of tax objection and/or appeal/lawsuit to the Tax Court.

CONCLUSION AND RECOMMENDATION

Conclusion

The STPA policy implemented in Indonesia based on Law Number 7/2021, GR Number 55/2022, and MoFR Number 172/2023 has provided formal-administrative certainty with a sole (uniform) treatment approach that all STPAs will be treated as constructive dividends. However, it is still considered weak in maintaining material/substantive certainty because it does not take into account the variations in affiliated or special relationships. As a result, even though the rules are clear on paper, in practice, there is still new uncertainty in the form of potential tax disputes related to the definition of dividends for affiliated or special relationship transactions between taxpayers who do not have share ownership relationship (non-shareholders) and the risk of international double taxation. The certainty that is produced is also asymmetrical: it provides administrative convenience for the tax authorities, but creates uncertainty for taxpayers, thereby increasing the potential risk of cross-jurisdictional tax disputes. This condition can be categorized as a form of illusory or pseudo certainty that emphasizes procedural uniformity but ignores alignment with the substance of international tax law and practice.

The implementation of the STPA policy, which explicitly treats it as a constructive dividend, is in principle in line with the principle of revenue productivity because it provides certainty regarding the tax base and ensures the creation of tax revenue in the short term through the determination of withholding income tax on dividends. This policy also closes the potential for tax base erosion and simplifies tax administration, thereby effectively increasing the productivity of state revenue. However, this rigid approach has the potential to cause over-taxation and double taxation, especially if the constructive dividend treatment is not recognized by partner jurisdictions. As a result, in the long term, the effectiveness of the revenue productivity principle may be reduced due to the increased risk of international tax disputes and a decline in investment attractiveness.

Recommendation

The current STPA policy needs to be directed towards fulfilling the principle of certainty and achieving the principle of revenue productivity, which not only provides short-term state revenue guarantees but also ensures long-term tax productivity sustainability. Therefore, several recommendations can be considered, such as:

1) Diversify the treatment of STPA so that it is not limited to constructive dividends. As recommended in the OECD TPG, the range of STPA treatments can be expanded to also include constructive loans if the substance of the relationship is more akin to financing, or constructive capital contributions if the special relationship funds are considered additional capital. This option provides tax treatment that is more in line with economic substance, thereby minimizing the risk of over-taxation and international double taxation. It is also necessary to strengthen the analysis of economic substance to emphasize that the application of STPA corrections must take into account the commercial nature and actual conditions of the transaction.
2) Provide a corresponding adjustment mechanism so that STPA corrections in Indonesia can be recognized by partner jurisdictions, which, if necessary, can be opened through the Mutual Agreement Procedure (MAP) under the Double Tax Treaty provision to reduce international tax disputes and support long-term revenue productivity. Alternatively, a safe harbor rule may be applied by providing a certain tolerance limit or amount threshold that does not result in STPA corrections, for example by limiting the materiality of certain transactions involving special relationships. This will also reduce the administrative burden on both the tax authorities and taxpayers, while maintaining the investment climate.
3) The tax authorities need to conduct periodic reviews and evaluations of the fiscal impact of the STPA policy so that the amount of additional revenue secured and the number of disputes and/or MAP requests filed as a result of this STPA policy are known with certainty. The results of these reviews and evaluations will form the basis for balancing tax revenue certainty and the long-term effectiveness of the STPA policy.

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