Analysis Of Controlled Foreign Company (Cfc) Rules In Indonesia To Prevent Tax Avoidance Practises

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Abstract: To counter deferral tax payment as one of tax avoidance scheme, some countries have a set of rules called CFC (Controlled Foreign Company) rules. On July 26 2017, Indonesia issued the latest regulation on CFC rules which is Minister of Finance Regulation (MFR) number 107. This research aims to analyze how the newest CFC rules in Indonesia, MFR No. 107/MFR.03/2017, can be used to counteract tax avoidance practices and what are the constraints in implementing these newest CFC rules in Indonesia. This research conducted with qualitative approach. Data collection using literature research and interview. This research concluded that the latest CFC rules in Indonesia, MFR No. 107/MFR.03/2017, can be used to counteract tax avoidance practices by already improve the deemed dividend mechanism, has covered provision on indirect ownership, has covered provisions on trusts, and has covered provisions on foreign tax credit. The constraints in implementing CFC rules in Indonesia, MFR No. 107/MFR.03/2017, are the scope about CFC is too extensive so it become ineffective to implemented, complication in detecting indirect ownership and joint ownership, complication in obtaining data and information on supervisory process by Directorate General of Taxes (DGT), and the lack of awareness about CFC issue by DGT officials.

1 INTRODUCTION

Base erosion and profit shifting have become the latest tax issues for countries around the world. The shifting of income to countries that provide tax advantages causes many other countries to experience a stripping of tax base. This will affect the economic conditions of a country, especially countries whose most of their funding comes from taxes.

Indonesia is one of the countries whose source of the State Budget (APBN) mostly comes from taxes.

Table 1: State Budget of Indonesia

	2017	2016	2015	2014
A. Government Revenue	1750,3	1822,5	1793,6	1667,2
I. Domestic Income	1748,9	1820,5	1790,3	1665,8
1. Tax Revenue	1498,9	1546,7	1380	1280,4
2. Non-Tax State Revenue	250	273,8	410,3	385,4
II. Grant Revenue	1,4	2	3,3	1,4
% tax revenue to total government revenue	86%	85%	77%	77%

Based on the above table, more than 75% of the state budget of Indonesia comes from taxes. It continues to increase from year to year.

Tax avoidance practices that cause erosion of the tax base in Indonesia should be prevented so as not to disrupt the financing of the development process. One of the ways of tax avoidance is done by defer the payment of taxes using Controlled Foreign Company (CFC). Some countries already have a set of rules to counteract tax avoidance practices in the form of deferral tax payments using CFC. This set of rules is called CFC rules.

On July 26, 2017, the Directorate General of Taxes (DGT) has issued the latest regulation as part of CFC rules in Indonesia which is Minister of Finance Regulation (MFR) number 107 (PMK No.107/PMK.03/2017). This latest MFR about CFC rules are expected can improve the weaknesses of previous regulations (MFR No. 256/MFR.03/2017).

Some previous studies have concluded that previous CFC rules in Indonesia have weaknesses that used by taxpayers to conduct tax avoidance practices. MFR No. 107/MFR.03/2017 is implementation of BEPS Action Plan 3 recommended by OECD. Recommendation in BEPS Action Plan 3 aims to assist tax authorities in a country in order to be able to set up CFC rules that strong enough to counteract tax avoidance practices

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in the form of deferral tax payments using CFC. How does this new regulation work to be said strong enough to counter tax avoidance practices? Is there any constraint in implementing it?

This research aims to analyze how the latest CFC rules in Indonesia can be used to counteract tax avoidance practices and to find out what kind of constraints encountered in its implementation. This research is expected to provide input to the DGT in preparing the next CFC rules policy tool. This research also expected become additional literature for the subsequent research.

2 LITERATURE REVIEW

2.1 Tax Avoidance and Tax Evasion

Frans Vanistendael (1997), Michael J. McIntyre and Brian J Arnold (2000), Kessler (2004) in Hutagaol and Tobing (2007) stated that tax evasion is a tax savings made by taxpayers in a way that violate the regulations. According to Sophar Lumbantoruan (1996), Carlos A Silvani (1992), Erli Suandi (2003), Kwaai Faat (2003), and James Kessler (2004) as stated in Hutagaol and Tobing (2007) tax avoidance is an effort of tax savings made by the taxpayer in accordance with regulations. The difference between tax avoidance and tax evasion lies in whether the tax savings made by the taxpayer are violate the regulation or not. If it is against the regulation then it is included as tax evasion, whereas if the tax savings made by the taxpayer is not violate to the prevailing regulations then it is tax avoidance. Slamet (2007) distinguishes tax avoidance into two categories, acceptable and unacceptable.

2.2 Deferral Tax Payment Using CFC as Tax Avoidance Scheme

According to Arnold in Rahayu (2008), Rohatgi (2007), and OECD (2015), one of tax avoidance mechanism commonly used by taxpayers is deferral tax payments using CFC. This is done by, first, establishing a controlled subsidiary abroad called Controlled Foreign Company (CFC). CFC usually establised in tax haven country. The next step is shifting income from tax payer to CFC, then postponed dividends distribution from the CFC for a long term period. The advantages obtain from this tax avoidance scheme is time value of money from postponed paying taxes in residence country. The impact of this tax avoidance scheme is shifting of income to tax haven countries and the erosion of tax bases in many other countries.

2.3 BEPS Action Plan 3: Designing Effective Controlled Foreign Company (CFC) Rules

Recommendation in BEPS Action Plan 3 aims to assist tax authorities in a country in order to be able to set up CFC rules that strong enough to counteract tax avoidance practices in the form of deferral tax payments using CFC. The recommendations compiled by the OECD are organized into six parts:

1. The definition of CFC, including the definition of control
   It is recommended to includes transparent entities and Permanent Establishment (PE). Not only regulate controls legally but also economically control. And most importantly the CFC rules must include both direct and indirect control.
2. Exemption and threshold
   The OECD recommends that exemption and threshold can be done in three ways establish a minimum amount of ownership so that the taxpayer jointly deemed to have ownership of a CFC is limited to a certain amount of participation, only applicable when known CFC is established with the motive of tax avoidance, and determine that CFC rules apply only to CFCs in countries that have lower tax rates than the tax rates on which the parent company is located
3. Definition of CFC income
   The OECD recommends that CFC income be clearly defined in CFC rules so as not to generate multiple interpretations and consistent with domestic policy.
4. Computing CFC income
   The OECD recommends that CFC income be calculated on the basis of the applicable provisions of the country where the parent company is located. It is also recommended that the loss of a CFC can only be offset with income from the same CFC or from another CFC residing in the same country.
5. Attribution of earnings
   The OECD recommends the atribution should be tied to minimum control threshold, the amount of income atributed to each shareholder calculated referring to their proportion of ownership and actual period of ownership, jurisdiction can determine when income should included in tax payer returns, and CFC rules should apply tax rate of the parent jurisdiction.

6. Elimination of double taxation
   A main consideration in setting up CFC rules is to avoid double taxation among the jurisdictions involved. The OECD recommends the elimination of double taxation may be made by including provisions concerning foreign tax exemptions or credits tax.

2.4 Specific Anti-Tax Avoidance Rules (SAAR) in Indonesia

There are several ways of tax avoidance that are often used by taxpayers among others. Thin Capitalization, deferral tax payment using CFC, Transfer Pricing, Treaty Shopping, Special Purpose Company, etc.

Against these specific tax avoidance forms, some countries have rules to counter them. According to Alhusnieka (2011), Indonesia also has a set of rules to counter such specific tax avoidance practices. It is regulated in Article 18 of the Income Tax Law. Article 18 paragraph 1 is a provision to counter the practice of tax evasion in the form of Thin Capitalization, Article 18 paragraph 2 is a provision to counter the practice of tax avoidance in the form of deferral tax payment using CFC, Article 18 paragraph 3, 3 (a), and 4 is a provision to counteract the practice tax avoidance in the form of Transfer Pricing, Article 26 paragraph 1a is a provision to counter the practice of tax avoidance in the form of Treaty Shopping, and Article 18 paragraph 3b and 3c is a provision to counter the practice of tax avoidance using special purpose company, and Article 18 paragraph 3d is a provision to counteract the practice of tax avoidance in the form of private persons who have a special relationship with employers abroad. Tax laws that are specifically designed to counteract certain tax avoidance schemes are called Specific Anti-Tax Avoidance Rules (SAAR). Each of the provisions in the Income Tax Law will then be made implementing regulations as technical guidance and implementation guidance in form i.e. Minister Finance Regulation or Director General Regulation.

As mentioned above, CFC rules in Indonesia is part of SAAR which stated in Article 18 paragraph 2 Income Tax Law. The latest implementation guidance is MFR number 107/MFR.03/2017.

2.5 Deemed Dividend Mechanism

There are several mechanisms that can be used to attain taxes from CFC schemes and schemes using offshore holding companies as described by Gunadi (2007) ie market to market approach, deemed rate of return approach, deemed distributrion approach, and deferral charge approach. The market to market approach is done by incorporating the increase / decrease in value of taxpayer investments in CFCs into taxable income (capital gain accumulation per accrual basis). The imputed income or deemed rate of return approach is made by requesting tax payer having a CFC to report CFC earnings on a certain percentage regardless of the actual income of the CFC. The deemed distributrion approach is made by imposing a tax according to the percentage of capital participation in CFC income whether the dividend has been actually distributed or yet. The deferral charge approach is conducted by delay the taxes of domicile until dividend is actually distributed. Upon receipt of actual dividend from CFCs will be added with a certain amount of interest that will reduce the profit from the delay of taxation.

CFC rules in Indonesia use the deemed distribution mechanism to impose a tax on CFC income. It is called deemed dividend.

3 RESEARCH METHODOLOGY

The research methodology is conducted to gathered information and data, analyze it, and then draw conclusions about how CFC regulations in Indonesia are used to counteract tax avoidance practices and constraint in the implementation.

3.1 Research Method

Qualitative methods views social reality as something comprehensive, holistic, dynamic, full of meaning, and the relationship of symptoms is interactive (Sugiyono, 2017). In this study, researchers used qualitative methods because the researcher believes the application of a taxation law and its relationship with the community is something that comprehensive, holistic, interactive, and dynamic relationship.

3.2 Data Collection

Data collection techniques used in this research are literature studies and field studies. Literature studies conduct by gathered information and data using literature, books, articles, and journals on topics related to international taxation, tax planning, tax

evasion, CFCs, BEPS Action Plan 3: Designing Effective Controlled Foreign Company Rules, and other topics related to CFCs. Field studies conduct through in-depth interviews with key informants which is competent in this topic study. According to the researchers, competent key informant in this topic are the parties from academics who knows about international taxation, practitioners from tax consultant especially international tax, and DGT.

3.3 Data Analysis

According Sarwono (2006), in research using qualitative methods, conducting data analysis is to process and analyze the data that has been collected into data that is systematic, organized, structured, and meaningful. It can be done by organizing the data, by reading repeatedly the data collected so that researchers find useful data for research and eliminate useless data, then test the theory that comes with the existing data, then give explanation for the data collected, then write the report.

4 RESEARCH FINDING AND DISCUSSION

4.1 Analysis of CFC Rules in Indonesia in Countering Tax Avoidance Practices

According to Arnold in Rahayu (2008), Rohatgi (2007), and OECD (2015), one of tax avoidance mechanism commonly used by taxpayers is deferral tax payments using CFC. This is done by, first, establishing a controlled subsidiary abroad called Controlled Foreign Company (CFC). CFC usually establised in tax haven country. The next step is shifting income from tax payer to CFC, then postponed dividends distribution from the CFC for a long term period. The advantages obtain from this tax avoidance scheme is time value of money from postponed paying taxes in residence country. The impact of this tax avoidance scheme is shifting of income to tax haven countries and the erosion of tax bases in many other countries.

In Indonesia, based on data from Investment Coordinating Board/Badan Koordinasi Penanaman Modal (BKPM) regarding Indonesian companies that are established abroad or companies that doing outward investment, there are as many as 631 companies. After comparison with the list of tax haven countries, the result obtained is that most companies abroad are established in tax-haven countries or countries with lower tax rates than Indonesia.

Table 2: List of Indonesian Companies Abroad

No.	Country	Amount of Companies	Tax Haven Country		Tax Rates (2016)
			Yes	No	
1	Australia	9	-	V	
2	Barbados	1	-	V	
3	Brazil	1	-	V	
4	British Virgin Island	43	V	-	-
5	Cayman Island	16	V	-	-
6	China	13	-	V	
7	Denmark	1	V	-	22
8	France	1	-	V	
9	Germany	1	-	V	
10	Hong Kong	15	V	-	16,5
11	Hongaria	1	V	-	19
12	India	5	-	V	
13	Italia	2	-	V	
14	Japan	3	-	V	
15	Korea	1	V	-	24,2
16	Liberia	3	-	V	
17	Luxembourg	1	-	V	
18	Malaysia	100	V	-	24
19	Malta	1	-	V	
20	Marshall Islands	5	-	V	
21	Mauritania	2	-	V	
22	Mauritius	10	V	-	15
23	Myanmar	5	-	V	
24	Netherlands	41	-	V	
25	New Zealand	1	-	V	
26	Panama	15	-	V	
27	Phillippines	23	-	V	
28	Saudi Arabia	2	V	-	20
29	Serbia	2	V	-	15
30	Seychelles	9	-	V	
31	Singapore	100	V	-	17
32	Taiwan	31	V	-	17
33	Thailand	100	V	-	20

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No.	Country	Amount of Companies	Tax Haven Country		Tax Rates (2016)
			Yes	No	
34	Timor Leste	1	-	V	
35	Tortola	1	-	V	
36	Tunisia	1	-	V	
37	UAE	11	-	V	
38	United Kingdom	4	V	-	20
39	USA	10	-	V	
40	Uzbekistan	1	-	V	
41	Vanuatu	2	V	-	-
42	Vietnam	31	V	-	20
43	Yemen	5	V	-	20
	Jumlah Perusahaan	631	464	167	

A total of 464 companies from 631 Indonesian companies abroad or 74% were established in countries with lower tax rates than Indonesia. While the remaining 167 companies or 26% established in countries whose tax rates are not lower than Indonesia. This indicates that tax planning using CFC scheme is commonly used by Indonesian tax payer.

CFC rules are terms used for a specific tax avoidance rule regarding a transaction. The specific transaction targeted by this rule is a transaction for the tax deferral payments using CFC. Indonesia also has a set of rules regarding efforts to prevent tax avoidance practices using CFC schemes. According to Alhusnieka (2011) and Rahayu (2008) the provisions to prevent the practice of tax avoidance using the CFC scheme are regulated in Article 18 paragraph (2) of Law No. 36 of 2008 on Income Tax. Anti tax avoidance stipulated in Article 18 of Law Number 36 Year 2008 regarding Income Tax is Specific Anti Tax Avoidance Rules (SAAR). SAAR regulates the prevention of tax avoidance limited to the forms mentioned in the provisions. How the latest CFC rules in Indonesia are used to counteract tax evasion practices will be described below.

4.1.1 Improved Deemed Dividend Mechanism

The main characteristic of the CFC rules is to immediately tax when tax payer already has income. CFC rules in Indonesia used deemed distributrion approach called deemed dividend (Gunadi, 2007). It is made by imposing tax every year in set of time regardless whether dividend has been actually distributed or not. The amount of tax imposed depends on the percentage of ownership in CFC and the income after tax of the CFC.

In this latest CFC rules, PMK-107/PMK.03/2017, the deemed dividend arrangement is more consistent. Deemed dividends that must be reported every year by Indonesian taxpayer reflect real income of CFC which is income after tax of the CFC and percentage of ownership of the Indonesian taxpayer. This makes taxpayers unable to avoid provision by distribute the dividend in a insignificant amount before the set time as happened before as a result of the weakness of the previous CFC rules. The fact that there is actual distribution of dividend before the set time does not invalidate the obligation to report the deemed dividend in that year.

At the same time, there is a provisions concerning deemed dividend which can be calculated for the period of 5 years back in a row since the year of receipt of dividend. Indonesian tax payer can also take the tax credit from the income tax section of the deemed dividend. Given this arrangement, the existing deemed dividend mechanisms become more consistent. Taxpayers also get certainty and clarity in the implementation of this provision.

4.1.2 Includes indirect ownership

Fajriyan (2017) states that one of the recommendations of the OECD to be adopted in strengthening the CFC rules is the extension of the definition of control which is not only limited to direct controls but also indirect control. According to the OECD (2015) when setting limits on control, there are two things to be noted, the control type and the control level. There are several types of controls: legal control, economic control, de facto control, and consolidated control. In preparing a CFC rule in a country, the tax authorities are expected to cover the whole type of control. PMK-107 / PMK.03 / 2017 as latest CFC rules already covered provision about indirect ownership. This provision closes the gap for taxpayers who want to exploit weaknesses on 'indirect control'

4.1.3 Includes Trust and Other Similar Entities

According to interviewee, a trust is a type of entity commonly used in countries with common law

systems that can be used as a means of controlling the assets of a CFC. According to OEDC (2015) recommendation should include permanent establishment (PE) and transparent entity. Weakness in the previous regulation used by taxpayers to avoid tax obligation is by using intermediary of trust. In the latest CFC rules in Indonesia, this weakness has been fixed. Article 4 paragraph (8) of PMK No. 107/PMK.03/2017 stipulates that in the case of equity participation in CFC do through trusts or other similar entities abroad, such capital participation shall be deemed performed by the party participating in capital. This means that the use of trust to avoid previous CFC rules is no longer effective. The scheme using trust as CFC can be seen in the figure below.

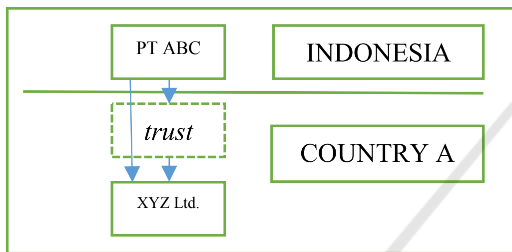

Figure 1: CFC in Trust Form.

Based on the picture above, PT ABC has ownership in XYZ Ltd. through trust. Under the terms of previous CFC rules, PT ABC does not have to comply to reporting deemed dividends on XYZ Ltd. because its direct ownership is in trust entities. Under the latest CFC rules, PT ABC shall report deemed dividends on its ownership in XYZ Ltd. because its ownership in trust entity is considered not existent and considered as if PT ABC has direct ownership to XYZ Ltd.

4.1.4 Regulates provisions on Foreign Tax Credits

A cross-border transaction involving two or more countries has the potential to generate international double taxation (Gunadi, 2007). For taxpayers, the emerge of double taxation will become burden for their business and investment activities. Therefore international double taxation must be eliminated or granted. In line with that, the OECD (2015) states that the primary consideration in drafting the CFC rules is not to create double taxation among jurisdictions involved. The emergence of double taxation can affect the competition, growth, and economic development of countries in the world. The potential for the inclusion of double taxation may be made by including provisions concerning foreign tax exemptions or credits. Double taxation may arise from a number of conditions: one CFC income is also subject to income taxes abroad, one CFC income being the tax subject of several countries that have CFC rules, and when the CFC actually distributes dividends from earnings previously imposed by deemed dividend. In Indonesia the provision to avoid double taxation is done by foreign tax credit mechanism. The provisions concerning the crediting of income tax in CFC rules in Indonesia are arranged in article 7 PMK No. 107/PMK.03/2017. With this provision the taxpayer avoids from getting burden of double taxation.

4.2 Constraints In Implementing CFC Rules In Indonesia

4.2.1 The Scope is Too Extensive So It Become Ineffective

CFC rules become too wide-ranging. CFCs as SAAR should be more specifically targeted to certain tax avoidance scheme only, in this case is in scheme of deferral tax payments using CFC. According Gunadi (2007) deferral payment of tax using CFC is giving benefit if the tax rate in CFC jurisdiction is lower than the tax rate in Indonesia. One indication of tax avoidance intentions using CFCs is to choose a country that provides tax benefits or tax-haven state.

The OECD (2015) recommends setting limits on who these CFC rules apply to:

a. Establish a minimum amount of ownership (de minimis threshold)
b. Only applicable when known CFC is established with the motive of tax avoidance
c. Determine that CFC rules apply only to countries which has a lower tax rate than the country where the parent is located.

This limitation aims to reduce administrative burdens and make CFC rules more targeted and more effective.

According to Gunadi (2007) there are two approaches that can be used to limit the criteria of anyone subject to the terms of the CFC by means of designated jurisdiction approach and a transactional approach. The designated jurisdiction approach is conducted by determining which countries are considered tax havens then made a list of these countries in the rules. Determination of the criteria of tax haven country can be done by comparing Indonesian tax rate with state tax rate indicated as tax haven. The comparable tax rate may be the

nominal tax or the effective tax rate. While the transaction approach is done by differentiating the category of income regardless whether the CFC is in a country with lower tax rates or not.

In differentiating the category of income of the CFC, can be used two approaches: entity approach or certain earnings approach / tainted income. The entity approach typically uses some exceptions such as exceptions for earnings from actual businesses, exceptions to certain percentages, exclusions for listed companies, exceptions for companies that are not intended to avoid taxes (have valid business purposes). While certain income approaches specify only the types of tainted income are considered CFC income which is usually a passive income (dividend, interest, royalty).

The terms of the latest CFC rules in PMK No.107/PMK.03/2017 in Indonesia are not differentiated by jurisdiction or by type of income. CFC rules in Indonesia uses a global approach so that all countries and all CFC income both active income and passive income are included in the CFC's terms. The use of global approach makes the scope of this provision to be extensive.

The effect of the extent of the scope of this provision is that if there is a CFC company that actually undertakes business activities and assumes business risks and resides in a country where the tax rate is not lower than Indonesia, the company will still be subject to the terms of this CFC. For such CFCs and for existing capital owners in Indonesia this may result in excessive tax burdens.

In the opinion of some key informans, the terms of the CFC rules must be maintained to be targeted, ie targeting CFCs located in countries with lower tax rates than Indonesia or can also be more targeted on the type of income that passive income only because this type of income is widely used in tax avoidance efforts.

Provisions on low tax jurisdiction can be set forth in the form of implementing regulations under the provisions of PMK-107 / PMK.03 / 2017, for example in the Director General Regulation.

4.2.2 Difficulty in Detecting Indirect Ownership and Joint Ownership

According to interviewee, one of the important changes in PMK No. 107/PMK.03/2017 is the regulation of indirect ownership. In the previous provision, PMK No. 256/PMK.03/2017, indirect ownership is not regulated. It is used by taxpayers to avoid provision in CFC rules by creating ownership schemes where income is put on a company that is formally owned indirectly by Indonesian tax payer but is actually a company controlled by Indonesian tax payer. This is done solely to avoid the provisions of CFC rules. By doing so Indonesian tax payer may be spared from the obligation to report the deemed dividend of its existing overseas company in accordance with the provisions stipulated in PMK No. 256/PMK.03/2017.

In the latest terms PMK No. 107/PMK.03/2017 taxpayers can not do such a thing anymore. Indirect ownership schemes are already regulated in PMK No. 107/PMK.03/2017, exemplified by the scheme and how it is defined as a direct and indirect controlled CFC. However, this will lead to obstacles in the implementation process later. The DGT will find it difficult to obtain data on indirect ownership schemes as exemplified in the PMK No. 107/PMK.03/2017. The more stratified the scheme of ownership trees undertaken by Indonesian taxpayer, the more difficult it is for the DGT to detect the existence of the chain of ownership. Moreover, the tree of ownership is information about entities abroad. To obtain information about foreign entities have certain obstacles because it involves two jurisdictions. This requires a long and complicated process through Exchange of Information (EOI) activities. By improving EOI processes and mechanisms, it is expected to assist in detecting indirect ownership schemes.

Furthermore, in its recommendations, the OECD (2015) provides restrictions on which CFC rules apply, one of which is to set a minimum threshold. In the terms of the minimum threshold, the taxpayer jointly deemed to have ownership of a CFC is limited to a certain amount of participation. In Indonesia, the provisions on de minimis threshold can not be implemented because it will limit the powers granted to the Minister of Finance by Article 18 paragraph (2) of the Income Tax Act regarding CFC rules.

Absence of minimum threshold in PMK No. 107/PMK.03/2017 in addition to not wanting to limit the authority granted by Article 18 paragraph (2), also used to avoid taxpayers who want to avoid the regulation by doing fragmentation. Fragmentation is done by deliberately splitting its ownership to be below 50% so it is not considered to have CFCs abroad. By performing fragmentation, tax payer expect to avoid the provisions of the CFC rules because of its ownership under 50% threshold

despite the fact that the taxpayer along with the other party still has control over the CFC.

The absence of a minimum threshold will increased administrative costs by the DGT, incurring compliance costs for taxpayers, and also creates difficulties in its oversight process. DGT as a party exercising supervision over the implementation of this provision shall have sufficient data and information on anyone who has a share of the joint investment of a CFC overseas. Whereas for the exchange of data and information between Tax Office (KPP), DJP is still having difficulties. If the Indonesian taxpayer owning an overseas CFC and it registered in different KPP, the DGT will find it difficult to detect it.

4.2.3 Difficulty in Obtaining Data and Information for The DGT Supervisory Process

Oversee the implementation of this provision requires accurate information and data on CFCs owned by the taxpayer. As for the current, DGT does not have a special tool to capture information related to these matters. For now the provisions on CFC are still highly dependent on self-assessment of taxpayers.

Constraint to supervision by the DGT in particular such data and information can be addressed in several ways, namely the provision of CbCR (Country by Country Report) in the Transfer Pricing Rules. Information gathering conducted by the DGT can also be done with the EOI (Exchange of Information) mechanism. As well as the consolidated financial statements reported by the taxpayer may serve as a trigger for collecting CFC related data and information in Indonesia.

4.2.4 Lack of Awareness of CFC Topic by DGT Officials

Not all tax officers are aware and understand about CFC topic. Moreover, because the CFC case is usually found only in the Middle Tax Office and Large Tax Office whose taxpayers are likely to do outward investment. Limitations of knowledge and understanding by tax officials on these CFC topics can be overcome by providing regular socialization and learning to tax officials on these CFC topics. Socialization on CFC issues is also given to the taxpayer so as to achieve the same understanding between the taxpayer with the DGT.

5 CONCLUSIONS

5.1 Conclusions

From the analysis of CFC rules in Indonesia, it can be concluded as follows:

1. CFC rules in Indonesia may be used to counteract tax evasion practices by improvements to deemed dividend mechanism, including indirect ownership, include provisions on trusts, and has regulated provisions on foreign tax credits.
2. The constraints in implementing CFC rules in Indonesia are:
    a. the scope of this provision becomes too extensive so it become ineffective to implemented
    b. difficulty in detecting indirect ownership and joint ownership
    c. difficulties in obtaining data and information for monitoring process by DGT
    d. lack of awareness of tax officials on CFC topics

5.2 Recommendations

This research recommendation are:

1. In order for the provisions in the CFC rules to give results as expected, it is recommended that the DGT as a tax authority to create a special unit of supervision to ensure that this provision is strictly adhered by the taxpayer.
2. The constraints in implementing latest CFC rules can be addressed by:
    a. To overcome the ineffectiveness of CFC rules due to their overly extensive coverage, it is recommended that the provisions in the CFC rules be targeted using a designated jurisdiction approach. Provisions on low tax jurisdiction can be set forth in the form of implementing regulations under the provisions of PMK No.107/PMK.03/2017, for example in the Director General Regulation,
    b. To overcome the difficulties of detecting indirect ownership and joint ownership it is advisable to improve the Exchange of Information mechanism to be more efficient and effective and improve the exchange of information between KPPs.
    c. To overcome difficulties in obtaining data and information for monitoring process by DGT it is suggested to collect data from

CbCR, EOI, and taxpayer consolidated financial statements.

d. To overcome the lack of understanding of tax officers on CFC topics it is suggested to provide continuous socialization to the internal DGT and eksternal DGT in order to achieve the same understanding within the internal DGT and the same understanding between the DGT and the taxpayer.

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