

Taxation Provisions for Multinational Companies in Indonesia

Yuni Sofiyah

Magister Ilmu Hukum, Fakultas Hukum Universitas Indonesia

Article Info

Article history:

Received: 8 November 2024

Publish: 1 December 2024

Keywords:

Spin Off;

Taxation;

Multinational Companies;

Indonesia;

Company.

Abstract

The taxation of multinational corporations in Indonesia has a complex legal framework that integrates with international regulations. This article discusses various provisions governing taxes for companies operating in more than one country, including the obligation to collect income tax (PPh), value-added tax (VAT), and to fulfill transparent financial reporting requirements. In Indonesia, multinational corporations must comply with the rules stipulated in the Tax Law and implement transfer pricing principles in line with OECD guidelines. This regulation introduces new provisions related to income tax, tax collection, and more transparent reporting obligations for foreign entities. One key point is the update on the global minimum tax, aimed at preventing tax avoidance and strengthening a fair tax system. Additionally, the law emphasizes the need to fulfill substance requirements for intercompany transactions to reduce the potential for harmful transfer pricing. Consequently, multinational companies are expected to operate more responsibly and in compliance with the established regulations while continuing to contribute to Indonesia's economic growth.

This is an open access article under the [Creative Commons Attribution-ShareAlike 4.0 International License](#)



Corresponding Author:

Yuni Sofiyah

Magister Ilmu Hukum Universitas Indonesia

Email: yuni.sofiyah@ui.ac.id

1. INTRODUCTION

1.1 BACKGROUND

Multinational Companies or also called *Multinational Company* (MNC) has controlled almost all economic activities in the world, where Multinational Companies have utilized efficiency through international distribution channels. The increase in the number and quantity of Multinational Companies in world economic activities continues to grow significantly every year, causing Multinational Companies to develop rapidly in the industrial world. To meet the needs of society to fulfill the consumption desires of the wider community, business owners in various countries in the world form Multinational Companies. A multinational company is a large-scale company that has a head office where the company will coordinate the global management of companies which are usually established in developed countries, then create companies in developing countries through subsidiaries and branch companies to develop business in several countries by making various investments and international scale transactions. However, due to limited production capabilities and resources, both natural resources and human resources, Multinational Companies take advantage of the potential and capacity that exists in developing countries. Examples of multinational companies that have operated on a large scale in Indonesia include Google, Microsoft, Samsung, General Electric, Honda, Dell, Philips, Coca Cola, LG Electronics, Toyota and others, so we can see that multinational companies have developed a lot in Indonesia with various business sectors.

According to Law no. 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law no. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law, it is explained that tax is a mandatory contribution to the State that is owed by individuals or legal entities that is coercive based on the Law, without receiving rewards directly and used for State needs for the greatest prosperity of the people. Based on economics, tax is a contribution that can be imposed, taxes are collected by the State, both by the central government and regional governments, based on the law and its implementing regulations.

According to Mardiasmo, in his book, the definition of tax is the people's contribution to the State treasury based on law (which can be enforced) without receiving reciprocal services (contra-performance) which can be directly demonstrated and which are used to pay for general expenses.

The tax function is divided into two based on the results of tax collection, namely the first function is the Budget Function (*Budgetair*) which functions as a source of national income from the funding issued by the government for the production of the State and the second is as a Regulating Function (*Regulatory*) which functions as the regulation and implementation of government policies in a country in the social and economic fields.

According to Waluyo in his book, tax rates are defined as rates for calculating the amount of tax payable that should be paid and expressed in percentage form. Determination of tax rates in each country is different. In some states such as the United States, tax rates are set at high rates, but in some countries, such as Singapore and Taiwan, tax rates are set at low rates, and there are even some countries that impose a corporate tax of 0%, which is often used as an opportunity for companies to take advantage. service *tax haven*. This difference in tax rates is caused by differences in social, political, economic, geographical, cultural and other factors.

There are 2 (two) principles of international taxation adopted by countries in the world. The first is the tax principal *World Wide* which is a system that adheres to the domicile principle, that is, countries that apply this tax imposition principle are based on the imposition of Income Tax (PPh) on the taxpayer's domicile status for their residents. Then the second principle of taxation is territorial tax, namely a system that adheres to the source principle. Countries that implement a territorial tax system impose taxes based on PPh on the source where the income comes from. In Indonesia itself, a tax system is implemented *Worldwide* which we can see from the statutory regulations based on Law no. 7 of 1983 concerning Income Tax (UU PPh) has been amended several times, most recently by Law no. 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation Becoming a Law contained in Article 4 paragraph (1) states that the object of tax is income, namely any additional economic capacity received or obtained from Taxpayers, whether from Indonesia or from outside Indonesia. So, this requires Indonesian taxes to be subject to PPh on all income, whether originating from within the country or from abroad.

Legislation regarding income tax has been updated with Law no. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law or can be known as *All Law* which was ratified on March 31 2023. In the Job Creation Law, it can be said that Indonesia has experienced changes in the principles of tax imposition from the principles of tax imposition *World Wide* to the principle of territorial taxation. This is because the Law

on Job Creation changes several provisions in the Law that regulates income tax (UU PPh), one of which is the provisions regarding tax treatment of income from abroad. In the old Income Tax Law (UU PPh) before the Law on Job Creation came into force, all income from abroad was an object of income tax. While the policies regulated in the Law on Job Creation apply, dividends originating from abroad and after-tax income from a Permanent Establishment (BUT) abroad are excluded from income tax objects. The condition is that the profit after tax related to dividends and income is invested in the Unitary State of the Republic of Indonesia of at least 30%. In other words, now, foreign dividends and income from Permanent Establishments abroad are no longer subject to income tax (PPh) in Indonesia.

1.2 PROBLEM FORMULATION

Based on the background that the author has written above, the author would like to discuss the tax provisions for Multinational Companies in Indonesia based on the laws and regulations in force in Indonesia?

2. RESEARCH METHOD

Methods in research function to provide guidance for researchers on how to study, analyze and understand the environment they face. The research methods used by the author are as follows:

A. Form of Research

The form of research used in conducting this research is normative research. To support the research to be carried out, after finding the main problem and object to be researched, as stated in the problem formulation and research objectives, the author will collect the necessary data related to the problem.

B. Types of Legal Materials

Types of Legal Materials used include:

1) Primary Legal Materials

Primary legal materials, namely legal materials used to find a legal basis, namely:

- a. Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 6 of 2023;
- b. Law Number 7 of 1983 concerning Income Tax as amended several times, most recently by Law Number 6 of 2023;
- c. Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as has been amended several times, most recently by Law Number 6 of 2023;
- d. Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law; And
- e. Law Number 25 of 2007 concerning Capital Investment

2) Secondary Legal Materials

Secondary legal materials are legal materials that are not binding in nature, but explain primary legal materials, including those obtained by studying books, legal literature, research journals, etc. related to this research.

3) Tertiary Legal Materials

Tertiary legal materials are legal materials that the author will use to support secondary legal materials, namely: Legal Dictionary and Big Indonesian Dictionary (KBBI).

C. Data Analysis Method

In this research, the data analysis method used is a qualitative approach which produces descriptive data analysis. The research material that has been collected will be analyzed in accordance with applicable laws and regulations and will be compared with the reality in practice. Apart from that, the author will carry out a conceptual analysis by presenting expert views, in support of the arguments constructed in this paper. . After all the data is processed and analyzed, the author will take it.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Multinational Companies

Multinational Companies are companies that are domiciled in their country of origin but have branches or subsidiaries in various countries in the world. Term *Multinational* was first introduced in April 1960 by David E. in his paper on management and companies which was intended for a scientific meeting organized by *Carnegie Institute of Technology on "Management and Corporation"*. Lilienthal's paper was later published under the term *The Multinationals*. So, according to Lilienthal, a multinational company is a company that is domiciled in a country, but operates or runs the company based on the laws and regulations or customs of another country.

The main reasons for the emergence of many multinational companies are to expand market reach, search for sources of raw materials, search for new technology, achieve efficiency, avoid regulations or government policies and diversify. With the development of Multinational Companies, of course it can bring special problems that will be faced by Multinational Companies, for example the problems that will be faced by Companies are cultural differences (*cultural difference*) in each country, differences in the political field, up to *transfer pricing* and currency exchange rates (*exchange rate*).

Multinational Companies are a relatively new phenomenon in international trade and investment. Some authors refute this by referring to large companies such as the British East India Company (EIC) and the Dutch East India Companies (VOC), which operated in the past. Apart from large companies such as EIC and VOC, there are several similarities between Multinational Companies in the past and Multinational Companies in modern times. The organizational structure of Multinational Companies and the speed with which they can control a worldwide network of subsidiaries set modern Multinational Companies apart from the old colonial companies.

3.2. International Taxation Provisions for Multinational Companies

The problem of multinational company taxation provisions seems to need to be studied from a global perspective. The aim is to be able to solve problems not unilaterally, where each country enacts a Law without paying attention to how it may affect other countries, but, bilaterally, multilaterally or by enacting a complete global solution, where joint efforts are made with other countries. Before reviewing the problems and solutions to international taxation for Multinational Companies, it is important to identify the factors in the international economy that lead to the imposition of taxation for International Multinational Companies.

International tax is an aspect of taxation that was not born just like that. To improve the economy and trade in both countries and also to eliminate obstacles in foreign investment due to the imposition of taxes which are burdensome for taxpayers from both countries. The imposition of international tax is a tax agreement between countries that have an Agreement on the Avoidance of Double Taxation (P3B) and is carried out in accordance with the provisions of the Vienna Convention. This tax

agreement means that tax regulations in force in a country do not apply to foreign residents or organizations, if a special bilateral agreement has been agreed between the two countries that have this agreement.

Based on the agreement between countries in Western Europe or Anglo-Saxon countries, the term international tax law itself is divided into 3 (three), namely:

1. National tax law that regulates foreign tax law or *National External Tax Law*

Which is a tax law that contains provisions regarding the imposition of taxes that have legal force beyond national borders because there are foreign elements, both regarding tax sources abroad and tax subjects abroad.

2. Foreign tax laws or *Foreign Tax Law*

All tax laws and regulations from countries around the world.

3. International tax law (*International Tax Law*)

International Tax Law is a tax rule that is based on inter-country law and is well accepted by countries in the world to regulate taxation between countries that have interests.

Companies operating in multiple jurisdictions are not only subject to multiple sets of tax rates but also multiple sets of tax regulations. Indonesia, as a country that maintains relations with other countries, means that Indonesia cannot avoid industrial activities carried out by multinational companies, such as carrying out various kinds of transactions such as import and export activities and also various other activities that fall into the category of international trade activities. . This activity creates a transaction which will result in one country gaining income, so that if a Multinational Company has earned income in a country, then this transaction between countries can be subject to international tax.

Indonesia has followed and signed the Vienna Convention so that Indonesia is a subject of international law. International conventions have binding legal force between countries that sign the agreement. Therefore, if a Double Taxation Avoidance Agreement (P3B) is implemented, it will not only be because of Indonesia's own wishes but there will be a principle of reciprocity and the same wishes of the country entering into the agreement.

However, the tax rules for Multinational Companies in many countries are very similar. This is primarily due to the resulting conformity in tax treaties based on model agreements outlined by the Organization for Economic Co-operation and Development (OECD). So, although there are variations in specific tax rules across jurisdictions, the basic tax rules are very homogeneous.

3.3. Taxation Provisions for Multinational Companies in Indonesia

One of the factors that a Multinational Company can be taxed in Indonesia is because of the economic value of the company's activities carried out in a country, where the Multinational Company carries out business which causes the company to receive income from Indonesia. Multinational Companies may be subject to tax due to Foreign Investment activities. This has been regulated based on Law Number 25 of 2007 concerning Capital Investment in Article 1 paragraph (6) which explains the meaning of Foreign Investment, namely individual Foreign Citizens, Foreign Business Entities, and/or Foreign Governments who invest in the territory of the State. Republic of Indonesia.

Foreign investment provides capital to a country, this capital can be in the form of direct capital or indirect capital. The aim of foreign investment is to increase economic growth, in this case it is related to the principles of tax law, namely Economic

Principles. Economic principles in tax law are principles that have value and the existence of income received by taxpayers, both individuals and business entities.

Countries that receive capital from foreign investment have the right to monitor the entry of capital provided by foreign investment. When a foreign individual or business entity enters a country, whether a company or individual and their assets, they should be subject to the laws of the country receiving the capital.

International taxes that have been implemented in Indonesia are fully regulated in several tax regulations in Indonesia, such as those regulated in Law no. 7 of 1983 concerning Income Tax (UU PPh) has been amended several times, most recently by Law no. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law in Article 32A letter a which regulates Double Taxation Avoidance Agreements regarding the government having the authority to enter into agreements with governments of other countries in the context of avoiding double taxation and preventing tax evasion.

Furthermore, in Law no. 7 of 1983 concerning Income Tax (UU PPh) has been amended several times, most recently by Law no. 6 of 2023 concerning the Determination of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation Becoming Law also regulates what is not included in the Tax Subjects which have been regulated in Article 3. Regarding Foreign Tax Subjects and Permanent Establishments, it is regulated in Article 2 and Article 2A of Law Number 6 of 2023. In this Law concerning Income Tax it is stated that Foreign Tax Subjects are subject to tax in Indonesia through a Permanent Establishment (BUT) and also not through a Permanent Establishment (BUT) . This is regulated in Article 26 of the Law on Income Tax.

Apart from Law no. 7 of 1983 concerning Income Tax as has been amended several times, also regulated in Law Number 6 of 1983 concerning General Provisions and Tax Procedures, in Article 1 Article 1 paragraph (3) it is explained that an entity is a group of people and/or capital that is an entity whether carrying out business or not carrying out business which includes limited liability companies, limited liability companies, other companies, state-owned enterprises or regionally-owned enterprises with any name and in any form, firms, kongsi, cooperatives, pension funds, partnerships, associations , foundations, mass organizations, social political organizations, or other organizations, institutions and other forms of bodies including collective investment contracts and permanent business forms.

In Law no. 7 of 1983 concerning Income Tax as has been amended several times, most recently by Law Number 6 of 2023 in Article 5, it is explained that a Permanent Establishment is income from the business or activities of the Permanent Establishment and from assets owned or controlled as well as head office income from business or activity, sale of goods, or provision of services in Indonesia that is similar to that carried out or carried out by a Permanent Establishment in Indonesia. Because in essence the business or activity is included in the scope of business and activities and can be carried out by a Permanent Establishment, as for example if a bank outside Indonesia which has a permanent establishment in Indonesia, provides loans directly without going through its Permanent Establishment to the Company. in Indonesia. Then other examples include selling goods that are similar to those sold by a Permanent Establishment, for example a head office overseas which has a Permanent Establishment to buyers in Indonesia. And such as services provided by the head office which are similar to services provided by the Permanent Establishment, for example the head office of a consulting company outside Indonesia provides the same

type of consultation as the type of service provided by the Permanent Establishment directly without going through the Permanent Establishment to clients in Indonesia.

Permanent Business Establishment based on Law no. 7 of 1983 concerning Income Tax as amended several times, most recently by Law Number 6 of 2023, means the existence of a place of business (*place of business*) namely facilities which can be land or buildings including machines, equipment, warehouses or computers or electronic agents or automatic equipment owned or leased by electronic transaction organizers to carry out activities or business activities via the internet.

Based on Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation as has been amended several times, most recently with Law Number 6 of 2023, it regulates the principles in the tax collection system, these principles are that tax collection is based on Law. -National tax law, which in this case applies Law Number 28 of 2007, which regulation is the embodiment and dedication and participation of taxpayers to directly carry out their obligations for state financing and development. The existence of the right to seek and obtain as much income as possible for Multinational Companies carries with it an obligation in the form of taxes so as to develop the country in improving general welfare.

4. CONCLUSION

Based on the discussion outlined above, it can be broadly concluded that international tax is a taxation system determined between countries that have bilateral agreements. The terms and rates are also determined by the two interested parties. The agreement was made to improve a country's economy and reduce investment barriers. In terms of tax imposition on Multinational Companies, there are 2 (two) factors that influence international tax in a country, namely the status of Tax Subject and Tax Object in a Country.

The application of international taxes cannot be separated from international tax law. Meanwhile, the application of international tax specifically to the territory of Indonesia is regulated in several National Tax Regulations, namely regulated in Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, Law Number 7 of 1983 concerning Income Tax as has been amended several times and the latest statutory regulations are Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.

The imposition of taxes imposed in Indonesia on Multinational Companies is basically due to Multinational Companies carrying out business activities or activities through company facilities resulting in profits or income for Multinational Companies located in Indonesia.

5. BIBLIOGRAPHY

Rules:

Indonesia, Law Number 6 of 1983 concerning General Provisions and Tax Procedures, LN RI Number 59 of 1994, TLN RI Number 3566.

_____, Law Number 7 of 1983 concerning Income Tax, LN Number 50 of 1983, TLN No. 3263.

_____, Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, LN RI Number 41 of 2023, TLN RI Number 6856.

Book:

B. Ilyas, Wirawan dan Waluyo. 2013. Perpajakan Indonesia. Jakarta: Salemba Empat.

Chandrawulan, An An, Hukum Perusahaan Multinasional, Liberalisasi Hukum Perdagangan Internasional dan Hukum Penanaman Modal, Bandung: P.T. Alumni Bandung, 2011

Fahmi, Irham, Manajemen Keuangan Perusahaan dan Pasar Modal, Jakarta: Mitra Wacana Media, 2014.

M. Sornarajah, The International Law on Foreign Investment, cet. 2, (Cambridge: Cambridge University Press, 2004)

Mardiasmo, Perpajakan, Yogyakarta: CV. Andi Offset, 2013.

Sutedi, Adrian, Hukum Pajak, Jakarta: Sinar Grafika, 2013.

Journal:

Jafri, Hasan Effendi, dan Elia Mustikasari, Pengaruh Perencanaan Pajak, *Tunnneling Incentive* Dan Aset Tidak Berwujud Terhadap Perilaku *Transfer Pricing* Pada Perusahaan Manufaktur Yang Memiliki Hubungan Istimewa Yang Terdaftar Di Bursa Efek Indonesia Periode 2014-2016, *Berkala Akuntansi Dan Keuangan Indonesia*, Vol. 3 No. 2, 2018.

Jennifer L. Blouin, Taxation of Multinational Corporations., 2012

Khotimah, Siti Khusnul, Pengaruh Beban Pajak, *Tunneling Incentive*, Dan Ukuran Perusahaan Terhadap Keputusan Perusahaan Dalam Melakukan *Transfer Pricing* (Studi Empiris Pada Perusahaan Multinasional Yang Listing di Bursa Efek Indonesia Tahun 2013-2017), Vol. 1 No. 1, 2018.

Melmusi, Zerni, Pengaruh Pajak, Mekanisme Bonus, Terhadap *Transfer Pricing* Pada Perusahaan Yang Tergabung Dalam Jakarta Islamic Index, *Jurnal EKOBISTEK*, Vol. 5 No. 2, 2016.

Nagian Toni, *Pengaruh Tarif Pajak, Peraturan Pajak Dengan Atau Etika Sebagai Variabel Moderator Terhadap Keputusan Transfer Pricing Pada Perusahaan Multinasional Di Indonesia*, Jurnal Ilmiah Skylandse., Vol. 3 (No.1), 2019Prafula Fernandez and Jeff Pope, International Taxation of Multinational Enterprises (Mnes).