

Analisis putusan banding atas koreksi keuntungan penjualan kapal pada bentuk usaha tetap milik perusahaan pelayaran asing : studi kasus but aml = Appeal decision analysis for the gain on vessel sale correction of the permanent establishment owned by the foreign shipping company : case study in aml pe

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Abstrak

Dalam praktiknya, penerapan ketentuan peraturan perundang-undangan perpajakan sering menimbulkan perbedaan interpretasi. Salah satunya adalah yang terjadi pada kasus banding atas koreksi keuntungan penjualan kapal yang dianggap sebagai penghasilan bagi BUT AML menurut ketentuan Pasal 5 ayat (1) huruf c UU PPh. Penelitian ini bertujuan untuk menganalisis kesesuaian antara koreksi keuntungan penjualan kapal dalam putusan banding BUT AML dengan effectively connected income principle. Tujuan kedua adalah untuk menganalisis kesesuaian dasar-dasar pertimbangan Majelis Hakim Pengadilan Pajak dalam memutus sengketa banding menurut peraturan perundang-undangan perpajakan yang berlaku. Secara umum, konsep yang digunakan dalam penelitian ini adalah prinsip effectively connected income menurut UN Model dan OECD Model. Penelitian ini dilakukan dengan pendekatan kualitatif, jenis penelitian deskriptif, dan teknik pengumpulan data melalui studi kepustakaan dan penelitian lapangan (wawancara mendalam).

Hasil penelitian menunjukkan bahwa koreksi keuntungan penjualan kapal yang dilakukan oleh Direktorat Jenderal Pajak tidak sesuai dengan effectively connected income principle dan dasar-dasar pertimbangan Majelis Hakim dalam memutus sengketa banding telah sesuai dengan peraturan perpajakan yang berlaku. Saran pertama dari penulis adalah adanya penegasan mengenai penghasilan Pasal 26 dan prinsip effectively connected income yang dimaksud dalam Pasal 5 ayat 1 huruf (c) UU PPh, serta penegasan mengenai definisi harta di Indonesia dalam Pasal 26 ayat (2) UU PPh. Saran kedua, perlunya mengkaji sistem positive list yang diatur dalam peraturan pelaksana terkait penghasilan dari penjualan/pengalihan harta di Indonesia menurut Pasal 26 ayat (2) UU PPh.

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In practice, the implementation of tax regulation often raises the different interpretation. One of the cases is the tax appeal case about the gain on vessel sale correction regarded as an income for AML Permanent Establishment (PE) in accordance with Income Tax Article (ITA) 5 Paragraph (1) Letter c. The purposes of this research are, first to analyze the suitability between the gain on vessel sale correction that become a tax appeal case of AML PE and the effectively connected income principle. Second, this research analyzes the consideration basics of the judges based on the prevailing tax regulations. This research uses the term of effectively connected income principle based on UN Model and OECD Model. This research also uses qualitative approach, descriptive as research type, and data collection techniques through library and field research (in-depth interview).

The result shows that the correction's done by the DGT is not suitable with the effectively connected income principle and the consideration basics of the judges are compatible with the prevailing tax regulations. The first recommendation, there are confirmation about the incomes in Article 26 and

effectively connected income principle for the purpose of Article 5 Paragraph (1) Letter c, also the confirmation about the definition of assets in Indonesia which are stated in Article 26 Paragraph (2) of Income Tax Law. The second recommendation, there is need to assess the positive list system regulated in implementing regulation related with the income from the sale/transfer of assets in Indonesia based on Article 26 Paragraph (2) of Income Tax Law.