

Analisis pemberlakuan per-24/PJ/2010 tentang perubahan per 61/PJ/2009 terhadap persyaratan administrasi dalam pemanfaatan tax treaty di Indonesia (suatu tinjauan untuk meningkatkan kepastian hukum memenuhi rasa keadilan dan mencegah double taxation dan = Analysis of the impact of the imposition of regulation per 24 pj 2010 regarding amendment per 61 pj 2009 on the administrative requirements to get the benefit of tax treaty in indonesia a review for improving legal certainty fulfilling the sense of fair

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Abstrak

Tesis ini menganalisis dampak PER-24/PJ/2010 terhadap kepastian hukum dan apakah persyaratan administrasi PER-24/PJ/2010 ini telah memenuhi rasa keadilan dan didasari "good faith" sesuai pasal 31 ayat 1 Vienna Convention on the Law of Tax Treaties (VCLT) dan OECD Model. Hasilnya PER-24/PJ/2010 memberikan panduan administratif pemanfaatan Persetujuan Penghindaran Pajak Berganda di Indonesia, namun persyaratan administratif yang diatur di dalamnya dapat menghalangi pemanfaatan tax treaty oleh Wajib Pajak Luar Negeri di Indonesia sehingga "good faith" dalam pasal 31 VCLT tidak dapat terpenuhi. Proses pengadaan Surat Keterangan Domisili (SKD) memakan waktu karena berhubungan dengan otoritas pajak negara lain. PER-24/PJ/2010 hendaknya direvisi dengan menambahkan sanksi administrasi bagi yang tidak melampirkan SKD sesuai batas waktu yang dipersyaratkan.

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This thesis analyzes the impact of Regulation No. PER-24/PJ/2010 on the legal certainty and services to tax payers and whether or not the administrative requirements of PER-24/PJ/2010 have fulfilled the principles of legal certainty, fulfilling the sense of fairness and are based on "good faith" pursuant to article 31 of Vienna Convention on the Law of Tax Treaties (VCLT) and OECD Model. The result are PER-24/PJ/2010 provides an administrative guideline to the utilization of Tax Treaty in Indonesia. However, the administrative requirements of PER-24/PJ/2010 may hamper the utilization of tax treaty by foreign tax payers in Indonesia, so that the definition of "good faith" as referred to in article 31 VCLT cannot be fulfilled. The process of procurement of Certificate of Domicile (COD) takes time since it relates with taxation authorities of other countries. PER-24/PJ/2010 should be revised by adding administrative penalty for those that fail to attach COD according to the time limit as required.