

Analisis perbandingan kedudukan production sharing contract dengan perjanjian penghindaran pajak berganda pada sengketa branch profit tax bentuk usaha tetap hulu migas = Analysis of legal standing comparison between production sharing contract and tax treaty in upstream oil and gas permanent establishment branch profit tax dispute

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Abstrak

Ketentuan reduced rate yang berlaku dalam tax treaty berlaku khusus terhadap pengenaan Branch Profit Tax (BPT) pada UU PPh berdasarkan asas *lex specialis derogat legi generali*. Namun, dalam praktiknya kerap terjadi sengketa mengenai penerapan reduced rate yang dilakukan oleh kontraktor migas, alasannya karena penerapan reduced rate dianggap mengakibatkan ketentuan bagi hasil yang tercantum dalam Production Sharing Contract (PSC) menjadi tidak terpenuhi. Penelitian ini bertujuan untuk menganalisis kedudukan tax treaty dengan PSC agar mengetahui ketentuan mana yang harus diacu pada penyelesaian sengketa BPT Bentuk Usaha Tetap hulu migas dan mengetahui desain bagi hasil yang menciptakan kepastian hukum dalam pengenaan BPT. Metode penelitian yang digunakan berupa pendekatan kualitatif dengan melakukan studi literatur dan studi lapangan. Hasil penelitian menunjukkan bahwa karena ketentuan perpajakan dalam PSC dikembalikan kepada UU PPh yang berlaku, maka ketentuan tax treaty dapat diterapkan dalam PSC berdasarkan Pasal 32A UU PPh, lalu untuk menciptakan kepastian hukum diperlukan penegasan terkait penggunaan *tax treaty* dalam ketentuan PSC.

.....Reduced rate provisions in tax treaty are applicable to the imposition of Branch Profit Tax (BPT) of the Income Tax Law based on the *lex specialis derogat legi generali* principle. However, in practice there are often tax disputes regarding the application of reduced rates towards BPT by oil and gas contractors because the implementation of reduced rates is presumed to result in the non-fulfillment of the production sharing provisions stated in the Production Sharing Contract (PSC). This study aims to analyze the comparison of legal position between tax treaty and PSC in order to find out which provisions should be referred to in the dispute resolution of BPT imposition towards oil and gas Permanent Establishments and to know the production sharing design that creates legal certainty in BPT imposition. The research method used is a qualitative approach by conducting literature studies and field studies. The result of this research indicates that because tax provisions in the PSC are based on the prevailing Income Tax Law, therefore tax treaty provisions can be applied toward PSC based on Article 32A of the Income Tax Law, and then to create legal certainty it is necessary to affirm in the PSC clauses the use of tax treaty provisions.