

# **Penanggulangan Praktik Penghindaran Pajak Perusahaan Digital Asing Di Indonesia = Addressing The Tax Avoidance Practices Of Foreign Digital Companies In Indonesia**

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## **Abstrak**

Tulisan ini menganalisis bagaimana perlakuan ketentuan perpajakan yang ada saat ini terhadap perusahaan digital asing yang beroperasi tanpa kehadiran fisik di Indonesia dan bagaimana pilar satu *amount A* menjawab isu perpajakan internasional terhadap kegiatan usaha perusahaan digital. Tulisan ini disusun dengan menggunakan metode penelitian doktrinal. Hak pajak perusahaan digital asing sebagai subjek pajak luar negeri ditentukan berdasarkan kehadiran fisik yang diatur melalui konsep Bentuk Usaha Tetap (BUT). Perkembangan ekonomi digital memungkinkan perusahaan digital dapat beroperasi tanpa adanya kehadiran fisik di Negara pasar, akibatnya Negara pasar tidak berhak untuk mengenakan pajak atas laba yang dihasilkan perusahaan digital. Situasi ini menyebabkan beberapa Negara di Eropa mengenakan pajak layanan digital secara sepihak terhadap laba bisnis perusahaan digital yang dihasilkan dari negaranya. Aksi sepihak ini mengakibatkan ketegangan dagang antar negara. Celaht aturan BUT memicu praktik penghindaran pajak secara yang berpotensi menggerus basis pajak. OECD/G20 menyusun dan mengimplementasikan suatu rencana aksi melalui *inclusive framework* BEPS, dimana rencana aksi satu dimaksudkan untuk mengatasi tantangan perpajakan sehubungan dengan digitalisasi melalui solusi dua pilar. Pilar pertama bagian *amount A* yang membahas tentang alokasi pembagian hak pajak. 140 negara yang telah tergabung dalam *inclusive framework* BEPS telah menghasilkan draft kesepakatan *multilateral convention* (MLC) untuk menerapkan *amount A*. Grup Perusahaan Multinasional (MNE) yang tercakup dalam MLC berdasarkan aturan ambang batas peredaran usaha dan profitabilitas tertentu. Aturan nexus menggunakan ambang batas pendapatan tertentu yang dihasilkan dari negara pasar berdasarkan kategori tertentu. Laba yang dialokasikan kepada negara pasar sebesar 25% dari sisa laba yang dihitung melalui suatu mekanisme. Eliminasi pajak berganda diatur agar grup MNE tidak terbebani dengan pajak yang dikenakan atas objek yang sama lebih dari satu kali. Mekanisme yang diatur dalam MLC diharapkan mampu menjawab tantangan perpajakan akibat perkembangan ekonomi digital.

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This paper analyzes how the current tax provisions treat foreign digital companies operating without physical presence in Indonesia and how the pillar one amount A answers the issue of international taxation of digital companies' business activities. This paper is prepared by using the doctrinal research method. The taxation rights of foreign digital companies as foreign tax subjects are determined based on physical presence regulated through the concept of Permanent Establishment (PE). The development of the digital economy allows digital companies to operate without a physical presence in the market country, as a result, the market country is not entitled to tax the profits generated by digital companies. This situation has led some countries in Europe to unilaterally impose digital service taxes on the business profits of digital companies generated from their countries. This unilateral action resulted in trade tensions between countries. The loophole in the PE rule triggers tax avoidance practices that have the potential to erode the tax base. The

OECD/G20 developed and implemented an action plan through the inclusive framework of BEPS, where action plan one is intended to address tax challenges related to digitalization through a two-pillar solution. The first pillar is Part A, which addresses the allocation of taxing rights. The 140 countries that have joined the inclusive framework of BEPS have produced a draft multilateral convention (MLC) agreement to implement amount A. Multinational Enterprise (MNE) groups covered by the MLC are based on certain business turnover and profitability threshold rules. The nexus rules use certain thresholds of revenue generated from the market country based on certain categories. The profit allocated to the market country is 25% of the remaining profit calculated through a mechanism. Double taxation elimination is regulated so that MNE groups are not burdened with taxes imposed on the same object more than once. The mechanism stipulated in the MLC is expected to be able to answer the taxation challenges due to the development of the digital economy.