

Analisis dan interpretasi pasal 7 ayat 1 P3B Indonesia- Tiongkok (studi kasus but "electric" = Analysis of interpretation on article 7 para (1) tax treaty between Indonesia and Tiongkok / I Ketut Gede Sucipta Pendit

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Abstrak

ABSTRAK

Tesis ini membahas tentang analisis atas interpretasi pasal 7 ayat 1 P3B Indonesia-Tiongkok. Untuk mengilustrasikan analisis digunakan studi kasus BUT "Electric" dalam lingkup Engineering Procurement Construction contract. Pokok permasalahan penelitian adalah tidak adanya penegasan tentang pemahaman frasa directly or indirectly dan frasa not undertaken or have no relation dalam OECD dan UN Model. Penelitian dilakukan dengan pendekatan kualitatif dan analisis deskriptif. Hasil penelitian adalah bahwa frasa directly or indirectly merupakan perluasan atribusi, dan frasa not undertaken or have no relation merupakan pembatasan/syarat dari perluasan tersebut. Penerapan pada studi kasus BUT "Electric", penghasilan kontrak EPC yang dapat diatribusikan kepada BUT "Electric" hanya dari aktivitas Construction. Hasil analisis diharapkan dapat menjadi dasar penerbitan Surat Edaran Direktur Jenderal Pajak untuk menghindari sengketa pajak dikemudian hari. Untuk menjamin dan mengamankan penerimaan negara maka perlu bersinergi dengan Kementerian Teknis untuk membuat peraturan yang memperbesar porsi aktivitas EPC di Indonesia.

ABSTRACT

The thesis analyzes the interpretation on article 7 paragraph 1 Tax Treaty between Indonesia and Tiongkok. In order to obtain the comprehensive view, the case of EPC contract "Electric" Permanent Establishment is used as an example on this study. The problem is the absence of affirmation, interpretation, of article 7 paragraph 1 terminology "directly or indirectly" and "not undertaken or have no relation" on Indonesia China Tax Treaty. The terminology has not adopted terminology and definition at OECD UN Treaties Model. This research is conducted with qualitative approach and descriptive analysis. The conclusions of the research show that terminology "directly or indirectly" is an extension of attribution, and the terminology "not undertaken or have no relation" is a restriction of the extent. The application of the interpretation on EPC Contract for "Electric" PE elaborates that profit attributable to "Electric" PE are profit from Construction activity only. In order to avoid disputes in the future Directorate General of Taxation as Tax Authority needs to provide guidance of interpretation of the terminology in the form of circular of the DGT. DGT needs to Minister of Public Works to stipulate a regulation about the proportion of activities of the EPC contract should be performed in Indonesia.