

Analisis Penentuan Status Bentuk Usaha Tetap pada Multinational Company berbasis Over The Top di Indonesia = Analysis of the Determination of the Status of Permanent Establishment in Multinational Companies based on Over the Top in Indonesia

Averus Sina, author

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Abstrak

Skripsi ini bertujuan Untuk menganalisis penentuan status BUT pada Multinational Company berbasis Over The Top di Indonesia dan Faktor-faktor yang dapat mendukung penerapan kebijakan penentuan status BUT pada Multinational Company berbasis Over The Top di Indonesia. Analisis penentuan status BUT didasarkan pada kebijakan SE-04/PJ/2017, PMK 35/PMK.03/2019, Perppu 1 Tahun 2020 serta kesesuaiannya dengan tax treaty yang berlaku. Penelitian ini menggunakan pendekatan kualitatif. Data yang digunakan diperoleh dengan cara melakukan wawancara mendalam dengan narasumber yang relevan dengan permasalahan yang diangkat. Hasil penelitian ini menyimpulkan bahwa SE-04/2017, PMK-35/2019 dan perppu 1 tahun 2020 belum dapat diterapkan untuk dapat menimbulkan adanya BUT pada MNC berbasis OTT di Indonesia. SE-04/2017 dan PMK-35/2019 masih menjadikan UU PPh sebagai sumber rujukan terkait penentuan BUT dimana UU PPh masih terbatas pada physical presence untuk menentukan BUT, sementara itu regulasi Perppu 1 Tahun 2020 juga belum dapat diterapkan untuk menentukan BUT pada aktivitas bisnis MNC berbasis OTT, karena ketentuan Significant Economic Presence yang merupakan nexus rules untuk menetapkan BUT pada MNC berbasis OTT bertentangan dengan ketentuan BUT yang terdapat dalam tax treaty yang masih berdasarkan pada physical presence. Pemerintah juga perlu mempertimbangkan berbagai faktor pendukung yaitu, global konsensus atas inclusive framework, Renegosiasi tax treaty melalui instrumen bilateral ataupun multilateral, dan adanya sinergisitas antara lembaga pemerintah.

.....This thesis aims to analyze the determination of the status of PE in Multinational Companies based on Over the Top in Indonesia and the factors that can support the implementation of the policy for determining the status of PE in Multinational Companies based on Over the Top in Indonesia. Analysis of determining PE status is based on policies SE-04 / PJ / 2017, PMK 35 / PMK.03 / 2019, Perppu 1 of 2020 and its compliance with applicable tax treaty. This research uses a qualitative approach. The data used was obtained by conducting in-depth interviews with sources relevant to the issues raised. The results of this study concluded that SE-04/2017, PMK-35/2019 and Perppu 1 of 2020 could not be applied to be able to cause PE in OTT-based MNCs in Indonesia. SE-04/2017 and PMK-35/2019 still make the Income Tax Law as a reference source related to determining BUT where the Income Tax Law is still limited to physical presence to determine PE, meanwhile Perppu 1/2020 regulations also cannot be applied to determine PE in business activities MNC is based on OTT, because the provisions of the Significant Economic Presence which are the nexus rules for establishing PE on OTT-based MNC are in conflict with the PE provisions contained in the tax treaty that are still based on physical presence. The government also needs to consider various supporting factors namely, global consensus on inclusive frameworks, tax treaty renegotiation through bilateral or multilateral instruments, and the existence of synergy between government institutions.