

Analisis Penentuan Hak Pemajakan pada Putusan Banding atas Sengketa Pajak Penghasilan Pasal 26 berdasarkan Substance Over Form dan Asas Clarity: Studi Kasus pada PT XYZ = Analysis of Determination of Tax Right on Appeal Decision on Income Tax Dispute Article 26 based on Substance Over Form and Clarity Principle: Case Study PT XYZ

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Abstrak

Sengketa pajak dapat terjadi karena adanya perbedaan interpretasi antara Wajib Pajak dan DJP. Perbedaan interpretasi tersebut terjadi baik terhadap peraturan perpajakan maupun kontrak transaksi. Penelitian studi kasus bermanfaat untuk mengatasi masalah pada situasi yang berbeda secara teknis dalam konteks kehidupan nyata secara kontemporer. Penelitian ini menggunakan studi kasus PT XYZ yang bertujuan untuk menganalisis konsep imbalan jasa teknik dan royalti, penerapannya menurut Wajib Pajak, DJP, dan Majelis Hakim, dan konsep imbalan jasa teknik dan royalti berdasarkan substance over form dan asas clarity. Penelitian ini menggunakan pendekatan kualitatif dengan studi kepustakaan dan wawancara mendalam sebagai teknik pengumpulan data. Dalam peraturan perpajakan, terdapat irisan antara konsep imbalan jasa teknik dan royalti yang dapat menyebabkan sengketa pajak. Dalam menerapkan konsep imbalan jasa teknik dan royalti, Wajib Pajak menggunakan konsep active income dan passive income dan P3B Indonesia-Jepang, DJP menggunakan interpretasi perjanjian dan rujukan paragraph 11.6 OECD Commentary on Article 12, dan Majelis Hakim menggunakan konsep active income dan passive income dan P3B Indonesia-Jepang, serta keyakinan Hakim yang bersifat independen. Konsep imbalan jasa teknik dan royalti berdasarkan substance over form dan asas clarity, untuk meminimalisasi terjadinya sengketa pajak terkait dengan perbedaan interpretasi, maka seharusnya imbalan jasa teknik dan royalti didefinisikan di dalam peraturan perpajakan dengan membedakan secara jelas mengenai ruang lingkup aktivitas (scope of activities) terkait pemberian informasi dan bantuan tambahannya, kriteria yang memperhatikan adanya konsep active income dan passive income, dan adanya penegasan mengenai bentuk-bentuk jasa yang dapat dikategorikan sebagai bantuan tambahan atas pemberian know how.

.....Tax disputes can occur due to differences in interpretation between the Taxpayer and the Tax Authorities. The difference in interpretation occurs in both tax regulations and transaction contracts. Case study research is useful for addressing problems in technically different situations in contemporary real-life contexts. This research uses a case study PT XYZ which aims to analyze the concept of technical service fees and royalties, its application according to taxpayers, Tax Authorities, and the Judges, and the concept of technical service fees and royalties based on substance over form and the principle of clarity. This research uses a qualitative approach with literature study and in-depth interviews as data collection techniques. In tax regulations, there is a wedge between the concept of technical service fees and royalties that can lead to tax disputes. In applying the concept of technical service fees and royalties, Taxpayer uses the concepts of active income and passive income and Indonesia-Japan Tax Treaty, Tax Authorities use the interpretation of agreements and references to paragraph 11.6 OECD Commentary on Article 12, and Judges use the concepts of active income and passive income and Indonesia-Japan Tax Treaty. The concept of technical service fees

and royalties based on substance over form and the principle of clarity, to minimize the tax disputes related to differences in interpretation, then technical service fees and royalties should be defined in tax regulations by clearly distinguishing the scope of activities related to the provision of information and ancillary services, criteria based on the concept of active income and passive income, and the affirmation of forms of services that can be categorized as ancillary services for the provision of know how