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"Permanent Establishment, The Digital Economy, and Transfer Pricing: *How International Tax Law Adapting to New Business Reality, especially facing the new normal on phase after the Covid 19 pandemic*"

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***Abstract*: This study tries to find out how International Taxation Law Adapt to New Business Reality, especially facing the new normal in the post-Covid 19 pandemic phase related to Permanent Establishments, and the Digital Economy and transfer pricing**

The discussion will be more emphasized on The Digital Permanent Establishment in Practice especially facing the new normal on phase after the Covid 19 pandemic

This study will put more emphasis on literature study approach and provide feedback to stakeholders

***Keywords:* Permanent Establishment, Digital Economy, International Tax Law, Transfer Pricing, New Normal, and Covid 19 pandemic.**

I. INTRODUCTION

Optimizing tax receipts is an important issue to fulfill the Government's tax receipts target. One of the potential tax niches that can still be explored is various information technology-based business activities. It is undeniable that the rapid development of information technology in recent years has caused various turbulent changes in social life, especially the use of the internet by the public. Currently the use of the internet is not only limited to computer devices and the like, but has become more mobile in nature.

Shopping and selling online has also become an interesting activity because it provides new experiences in shopping and selling for consumers and sellers. This is one of the reasons people have started to switch from offline transactions to online transactions. The growth of increasingly mobile internet user behavior has now given birth to many new internet service-based business schemes, including e-commerce.

The growth of the e-commerce market in the world continues to increase every year, especially in 2020 related to the pandemic.This growth is also inseparable from the development of infrastructure and digital penetration in several countries in the world. E-commerce is also an alternative for many people in the world to find, sell and buy products. In the period of 2020, almost all internet users in the world have bought and sold products online. According to iPrice data, the number of marketplace users in the 3rd quarter of 2020 increased compared to the 3rd quarter of 2019. E-commerce Purchase transactions increased by 18.1% to 98.3 million transactions for a total transaction of $ 1.4 million USD. It is estimated that there were around 12 million new e-commerce users during the pandemic. In 2019 (before pandemic covid 19) global ecommerce will rise 20.7% to $3.535 trillion. Despite its obviously strong growth rate, 2019 will experience a decline from the previous two years when ecommerce grew 28.0% in 2017 and 22.9% in 2018

According to a survey conducted by eMarketer in 2019, Indonesia is in seventh place with a growth of 20.6% after Mexico, India and the Philippines which are in the first to third positions. Indonesia is also the country with the highest e-commerce transactions in Southeast Asia, reaching 23.2 billion US dollars or the equivalent of 336.4 trillion rupiah according to Google and Temasek's research on the e-Conomy SEA 2018 report. Google Indonesia Managing Director

Randy Jusuf said that an increase of up to 114% compared to 2017, which only reached 10.9 billion US dollars. "GMV e-commerce in Indonesia alone in 2018 amounted to 12.2 billion US dollars," when met by Tempo at the Google Indonesia office on November 27, 2018. Through e-commerce, Indonesia contributed 1 billion US dollars out of every 2 billion US dollars spent in Southeast Asia. E-commerce in Indonesia can be predicted to continue to increase to 53 billion US dollars in 2025.

E-commerce is nothing new in the world of business, but it’s during the 2020 coronavirus pandemic that its prominence grew significantly. The stay-at-home orders implemented countrywide led to the closure of most brick-and-mortar businesses. With the pandemic, this growth is estimated to reach 91%. Based on the SIRCLO survey amount to 40% of new e-commerce users say that they will continue to use e-commerce after the pandemic ended (source: https://www.sirclo.com/jumlah-pengguna-e-commerce-indonesia-di-tahun-2020-meningkat-pesat/). Thus, in line with the increase in e-commerce users, it will drive the pace of digital economic growth.

II. THEORITICAL FRAMEWORK

A. E-COMMERCE & DIGITAL ECONOMY

What is E-commerce? This is simply the process of buying or selling goods and services over the internet. Some years ago, e-commerce was only used to refer to the sale of physical products on the web. Today, it encompasses all kinds of commercial transactions, including those involving the exchange of intangible things. E-commerce is a part of the digital economy. In 2017, the Organization of Economic Cooperation and Development (OECD) defined the digital economy as the result of a transformation process caused by technological and communication developments. This has a broad meaning and includes activities ranging from financial & technology (fintech), e-commerce, application stores, online advertising services to the use of computer technology and internet-based development or often called cloud computing.

The digital economy itself is not a separate area from the economic sector in general. So far, the use of the word "digital" seems to suggest differences (Stewart, 2015). In fact, the problem lies not in the difference between "digital" and "real" but that many "real" economies have developed into "digital" to some degree. Definition of the Digital Economy according to some experts are below

1. Malecki and Moriset

"The widespread (pervasive) use of information technology which consists of hardware, software, applications and telecommunications in every aspect of the economy which includes the internal operations of the organization (business, government and non-profit), transactions between organizations and transactions between individuals, who can act. both as consumers, communities and organizations "

2. Brynjolfsson and Kahin

"The overall change of all economic sectors caused by the digitization of information carried out by computers"

3. Kling and Lamb

"Goods and services that are in the process of developing, producing, selling and supplying have a strong dependence on digital technology"

The Digital Economy has several characteristics according to Don Tapscott, namely

1. Knowledge

If in the classical economy land, buildings, labor, and money are important production factors, then in a digital economy, knowledge or knowledge is the most important type of resource an organization must have. Given that knowledge is inherent in the human brain, the intelligence factor of the company's human resources is a determinant of the success or failure of the organization in achieving its objectives. This collective knowledge is the value of the company in the process of creating products and services. In addition, technological advances have been able to create various artificial intelligence products which are basically capable of helping company management and staff to improve their intelligence capabilities (knowledge leveraging). Examples of software and hardware products that can become decision support systems are decision support systems and expert systems. The concept of knowledge management will be the key to the success of a company in this era.

Source: Don Tapscott et al, 1996

2. Digitization

Digitazion is a process of transforming information from various forms into digit format (two-based numbers). Although the concept may seem simple at first glance, its existence has resulted in a major breakthrough and change in the world of business transactions. Look at how two-dimensional images such as paintings and photographs can be represented in the format of a set of bits so that they can be easily stored and exchanged via electronic media. This of course has been able to improve the efficiency of the company because it reduces costs associated with the process of making, storing and exchanging these media. Even the latest technology has been able to convert analog video and audio formats into digital format. The advancement of telecommunication technology that allows people to exchange information quickly via email to all corners of the world has made it easier for the process of sending and exchanging all kinds of digitable information. In other words, if the products and services offered can be represented in digital form, companies can easily and cheaply offer their products and services throughout the world. Electronic publishing, virtual book store, internet banking, and telemedicine are examples of the various products and services that can be offered on the internet.

3. Virtualization

Unlike running a business in the real world which requires physical assets such as buildings and production equipment, virtualization is known in cyberspace which allows a person to start his business with simple devices and can reach all potential customers in the world. In cyberspace, a customer is only dealing with an internet site as a company (business to consumer), as is the relationship between various companies that want to work together (business to business). In establishing this relationship, the process that occurs more in transactions is the virtual exchange of data and information, without a physical presence between the parties or individuals who carry out the transaction. In other words, business can be done anytime and anywhere 24 hours a day and 7 days a week on-line and real time.

4. Molecularization

The organizations that will survive in the era of the digital economy are those that succeed in applying molecular shapes. Molecular form is a system where the organization can easily adapt to any dynamic changes that occur in the environment around the company. As is well known, at this time the majority of organizations were managed using the concept of a hierarchical structure or a more advanced matrix structure. Both of these concepts are very susceptible to change so that it will slow down the company's movement in adapting to market developments. One thing to keep in mind is that going online means going head-to-head with companies around the world. Their behavior every day will greatly affect the structure of the market and related industries which will often change various conditions. This of course is a manifestation of free and tight competition that occurs as well as a strategy to win competition. In other words, change is a natural process that must be carried out by the company. Charles Darwin said that the nations that will survive are not the biggest or the strongest, but the ones most able to adapt to change.

5. Internetworking

No company can work alone without collaborating with other parties, that is one of the prerequisites for being successful in cyberspace. Based on the chosen business model, the company concerned must determine its core activity and collaborate with other institutions to help carry out supporting processes. Examples of parties that are commonly used as partners are technology vendors, content partners, merchants, suppliers, and so on. The concept of a business that wants to control its own resources from upstream to downstream will not last long in the digital economy.

6. Disintermediation

Another distinctive feature of the digital economy arena is the tendency to reduce the number of mediators (brokers) as intermediaries for transactions between suppliers and customers. For example, mediators in economic activity are wholesalers, retailers, broadcasters, record companies, and so on. Classic companies that depend on themselves as mediators are forced to go out of business by the internet business. The free market allows transactions between individuals without having to involve other parties.

7. Convergence

The key to a company's success in internet business lies in the company's ability and quality to converge three industrial sectors, namely: computing, communications, and content. Computers, which are the core of the computing industry, are the nerve centers for processing data and information needed in conducting business transactions. The most relevant products for the communications industry are information and communication technology infrastructure as a channel for channeling data and information from one place to another. The real competition lies in the content industry, which is a type of service or services offered by a company to markets in cyberspace. The three things above are absolute requirements that must be owned and controlled by the users to be able to successfully run a business successfully.

8. Innovation

Activity on the internet is a 24 hour business, not 8 hours like companies in the real world. Competitive advantage (competitive advantage) is very difficult to maintain considering that what someone or other internet companies do is very easy to imitate. Therefore, rapid and continuous innovation is needed for a company to survive. Company management must be able to find a way so that the key players in the organization (management and staff) can always innovate like the companies in Silicon Valley. The concept of learning organization should be considered and implemented within the company.

9. Prosumption

In the digital economy the boundaries between consumers and producers that have been clearly visible have blurred. Almost all information technology consumers can easily become producers who are ready to offer their products and services to the public and the business community Cialis without prescription. An example is someone who has to pay 5 US dollars to gain access to a mailing list system. Then the person concerned creates a community mailing list where each member must pay 1 US dollar to him. In a short time the person concerned has been able to make a profit from the small business. In this context, the individual concerned is categorized as a prosumer.

10. Immediacy

In cyberspace, customers are faced with various companies offering the same product or service. In choosing a company, they only used three main criteria. In principle, they will enter into transactions with companies that offer their products or services cheaper, better, and faster than similar companies. Given that switching costs on the internet are very easy and cheap, customers will continue to look for the company that provides the highest benefit for them. Seeing this, the company must always be sensitive to various customer needs that require certain service satisfaction.

11. Globalization

The essence of globalization is the collapse of the boundaries of time and space (time and space). Knowledge or knowledge as the main resource does not recognize geographic boundaries so that the existence of state entities is less relevant in running a business context in cyberspace. A pure capitalist will tend to conduct his business from a place that is cheap and comfortable, sell his products and services to a rich society, and the profits will be transferred and stored in the safest bank and pay the greatest interest. Market segmentation, which has often been carried out based on time and space boundaries, must be redefined considering that all people have become one in cyberspace, both producer and consumer communities.

12. Discordance

The last characteristic in the digital economy is the phenomenon of changing social and cultural structures as a logical consequence of changing a number of paradigms related to everyday life. The more compact the organization will cause unemployment everywhere, the livelihoods of the mediators (brokers) are lost, the workers become workoholics because of the intense competition, the influence of western culture is difficult to prevent because it can be freely accessed by anyone via the internet, and so on. is an example of a phenomenon that occurs in the digital economy era. The unpreparedness of an organization in facing all possible negative impacts that will result in bad consequences (boomerang) for the survival of the company.

The digital economy holds bigger challenges. In the era of globalization, business and digital economy transactions often involve two or more jurisdictions or countries. In an era of globalization and digitalization too, human operations are being slowly robotized and remotely operated from distance. The old case of ' Fixed place of business' to define a permanent establishment may well be obsolete and the work place may well be totally functional without any human involvement at all.

Therefore, we need to know whether in the digital economy era there really needs to be a permanent place that is permanent. The relevance of digital econimi to Determine the Permanent Place of Permanent Establishment.

B. What is Permanent Establishment ?

Art 5(1) of the Model Tax Convention and the contemporary bilateral tax treaties define a fixed place permanent establishment as follows: "Permanent establishment is a fixed place of business through which the business of an enterprise is wholly or partly carried on". In the context of tax treaty, Permanent Establishment is the limit of the authority of a country to impose taxes. Tax treaty usually also regulates that the taxation rights of business income are fully submitted to the country of domicile or the country where the taxpayer is registered as a domestic taxpayer. The exception to this provision is that the Permanent Establishment requirements are met according to the tax treaty. If the Permanent Establishment requirements are met according to the tax treaty, then a country has the right to impose taxes according to the tax treaty.

Permanent Establishments are grouped into four types:

1. Asset

Permanent Establishment with Asset type has a fixed place feature which can be broken down into three tests, namely:

1. Place of business, namely a place or infrastructure such as a place for company management, branches, offices, factories, workshops and mines, oil or gas wells, quarries or other places to extract natural resources. The place can be owned by yourself or just rented.

2. Fixed, The place of business must be permanent, that is, it must be in one permanent place.

3. Doing business through that fixed place, namely the company's business activities are carried out through said fixed place. And this fixed place requirement is widely used by digital companies. Fixed places have become the weakness of tax treaty since the internet industry developed.

Note :

Fixed place requirement is widely used by digital companies. Fixed places have become a weakness in tax treaty since the internet industry developed.

2. Activities

There are two types of permanent establishment activities:

1. Building project, construction, assembly, installation, or supervision activity for the project for 12 months. This is the one in the OECD model. But in the UN the model time test is only 6 months.

2. Service activities including consultancy conducted by companies in other countries for 6 months in 12 months. In the OECD this service model is not specifically regulated but in the UN the model is regulated, namely in Article 5 paragraph (3) letter b. The developed countries are of the opinion that technical services are imposed in the domicile country except through non-free agents. However, developing countries that are members of the UN tax experts group argue that this is detrimental to them so that service provision activities are designated as PEs if they pass the time test.

Unlike the physical projects above, the service time test does not need to be continuous. Can be intermittent which is important in 12 months to 6 months. The provision of these services can be performed by company employees or other persons employed by the company for this purpose. There is also a tax treaty that regulates the time test for exploration. Countries that state the time test for Drilling Rig or Working Ship are America, Australia, Croatia (120 days); Hong Kong (183 days); Sri Lanka (90 days); and China (6 months).

3. Agent

Not all agents are permanent establishments. Agents are divided into two, namely free agents and non-free agents. So, agents who become Permanent Establishment are non-free agents. That a person or body can be established as a Permanent Establishment if they carry out activities through non-free agents.

Non-free agent can be an individual or a body to become a Permanent Establishment with the following conditions:

1. Depends on the company it represents. This means always following the instructions and instructions of the company it represents.

2. Have the power / authority to sign contracts on behalf of the company. The authority is permanent or continuous. One of the decisive factors for knowing the fixed or continuous nature is whether the activity was originally intended to be long term or temporary.

3. Does not have the power as above, but he has the habit of keeping a stock of goods or merchandise and regularly delivers these goods on behalf of the company he represents.

4. Insurance

There is a difference between the OECD model and the UN model with regard to Permanent Establishment insurance. The OECD model suggests that an insurance company is considered to have a Permanent Establishment if the insurance company meets the provisions of paragraph (1) or paragraph (5), namely through a non-free agent. The UN model recommends regulating itself the limits of a Permanent Establishment for insurance businesses. The UN model regulates special insurance companies in Article 5 paragraph (6). This paragraph provides that an insurance company, except with respect to reinsurance, can be deemed to have a Permanent Establishment if the insurance company collects or receives premiums or bears risk in the source country through persons / entities who are not independent agents as referred to in paragraph (7). According to developing countries, insurance agents usually do not have the power to close the contracts referred to in Article 5 paragraph (5) letter a of the OECD model. So, according to the UN model for an insurance company agent, the conditions for Permanent Establishment are agents in the source country concerned collect or receive premiums and bear the risks that are located in the source country.

C. Permanent Establishment and Transfer Pricing during the Covid Pandemic 19

The concept of permanent establishment can be used in making double tax avoidance cooperation rules between countries in terms of imposing tax as the basis for whether the state in the agreement has the right to tax non-resident taxpayers (nonresident taxpayer). However, some categories of profit or income can be taxed in a country even if there is no taxpayer.

This can happen as in:

1) Income from immovable property, which in part of the treaty is taxed at the location the property is located;

2) Income or profit derived from certain payments such as dividends, interest, royalties or technical fees;

3) Insurance premiums;

4) Income or profit from certain services.

However, the principles and concepts of permanent establishment are now facing major challenges with the development of digital economic activities. The concept of permanent resident that has been recognized, is implemented not only based on the physical presence of the owner of the income (resident), but also based on a situation where a non-resident has a business advantage in the country through an agent or third party. Currently, with the development of digital technology, it is very possible for residents to carry out economic activities with buyers in other countries without being present in that country (because it is done via the internet). In an era when non-resident taxpayers can erode the income of customers located in other countries, the question arises how to create regulations to be able to tax these businesses, to avoid the possibility that the income can escape tax in various countries.

The challenge for international tax regulatory policies is also the spread of the digital economy. The digital economy is characterized by reliance on intangible assets, massive use of data (especially personal data), and difficulty in determining the jurisdiction in which value creation of goods or services occurs. This raises fundamental questions about how companies in the digital economy add value to goods and services and make profits. An effective and internationally coordinated approach is needed in order to prevent the practice of BEPS in a sustainable manner.

It should be noted, Base Erosion and Profit Shifting (BEPS) is a tax planning strategy that takes advantage of the gaps and weaknesses contained in domestic tax laws and regulations to "eliminate" profits or transfer these profits to other countries that have tariffs. low tax or even tax free. The end goal is that companies do not need to pay taxes or taxes that are paid very little value to overall company income (OECD, 2013). A strategy that is often referred to as Base Erosion and Profit Shifting (BEPS), is usually done by exploiting loopholes in domestic tax laws and regulations to "eliminate" or divert corporate profits to a jurisdiction that has a very low tax rate or is even tax free.

Another challenge is the challenge for global digital tax policies as well as the spread of the digital economy. The digital economy is characterized by the presence of intangible assets and difficulty in determining the jurisdiction in which the value creation of goods or services occurs. It raises fundamental questions about how companies in the digital economy add value to goods and services and make profits. An effective and internationally coordinated global digital tax regulation is needed in order to prevent the practice of BEPS in a sustainable manner. The Covid 19 pandemic has also created a multidimensional crisis with a real impact on trade and manufacturing activities due to a sharp decline. Thus, it is not only the practice of BEPS.

The Organization for Economic Co-operation and Development (OECD) has also warned that Covid-19 is the biggest danger to the world economy since the 2008 financial crisis. On a business scale, this multidimensional crisis is predicted to have a negative impact on the operating income of multinational companies, which in turn has an effect. the analysis of transfer pricing for affiliated transactions. Several tax authorities have the authority to make transfer pricing corrections to Taxpayer affiliated transactions. Especially, for transactions that are not in accordance with the principles of fairness and business normals (ARM's length principals). The correction is made by considering the price or profit obtained by independent parties. Technically, the correction will use the median number of the interquartile range of independent comparators. Then, what is the correlation with the conditions of the global economic crisis due to the Covid-19 pandemic ?

In 2015, the OECD through BEPS Action 13 encouraged taxpayers to compile transfer pricing documentation using an ex-ante approach or analysis was carried out before or at the time an affiliate transaction was carried out (*contemporaneous transfer pricing documentation*). If we look closely, the Covid-19 outbreak has seriously disrupted the global supply chain. This condition has a serious impact on the decline in overall business operations, which in turn will be reflected in a significant decline in company revenue and profitability. In this situation, with regard to transfer pricing, companies that lose money have the potential to be exposed. Therefore, companies with low profits or even losses, need to carry out a comprehensive transfer pricing analysis using the right economic indicators in order to present a hypothetical operating profit if there is no Covid-19 outbreak. By considering the dynamics of the crisis that occurred, in the end, taxpayers really need to prepare contemporaneous transfer pricing documentation so that the analysis of transfer pricing is more comprehensive and accurate. One more thing, so as not to trigger corrections which could lead to tax disputes in the future.

III. RESEARCH RESULTS AND DISCUSSION

A. The impact of covid 19 on the P.E and The Digital Economy

The meaning of Permanent Establishment applies to all situations where business activities are carried out in certain locations, which are physically present for the benefit of a business or company. However, in the understanding of OECD article 75, it has not been anticipated what if a pandemic condition occurs. Let us try to analyze how many obstacles in the business field cause taxation rules regarding permanent establishment and transfer pricing to be something that is far from the principle of justice for taxpayers if it is applied rigidly and tends to suppress taxpayers.

Regarding permanent establishment, the number of individuals or company management who are detained in a country will pose a risk of forming a permanent establishment if adjustments are not made. As was the case at the beginning of the Covid 19 pandemic, many countries implemented strict lockdowns and seemed very sudden to protect the health of their people. The work from home policy also causes many cross-border individuals to live in foreign countries and it should not lead to the formation of permanent residences for business activities. This is in line with the OECD guidelines published in April 2020 which state that the proliferation of work from home workers due to a pandemic will never lead to the formation of a Permanent Establishment. This is because all are in order to meet state policies in the management of the Covid 19 pandemic and not solely for business purposes. Then in another case, an individual or management representative of a foreign company who was found to have contracted Covid 19 or became a suspect, which caused them not to be allowed to carry out human movements and had to carry out independent isolation. This also applies to his family who is traveling together with the individual in that country at the same time. In other cases, there are individuals who are carrying out the obligation to sign a contract, but in reality the counterparty cannot attend, nor is it appropriate to apply in a pandemic like this.

In the context of the construction business it will be even more complex. The delay in the supply of raw materials which causes the suspension of construction work should not be included in the calculation of the project duration. So in the most recent tax treaty, the determination of the real management is where he is considered to be the tax subject. In the case of the large number of human resources that are detained in a country, it should be true that in the case of the Covid 19 pandemic it should not be considered to have formed a permanent establishment because this is not a normal cycle and is not a cross-jurisdiction journey.

To overcome these many tax problems, the OECD notes that there will be two main problems that will be of concern to many countries. The first is the impact of establishing a permanent establishment due to the Covid 19 pandemic and the impact of determining the residence status of a company. The OECD has also given its recommendation that each country should provide flexible guidance and not burden taxpayers by minimizing excessive requirements. The OECD provides guidelines such as how to determine the head office of a company, how a permanent establishment is formed, how the project location is determined, and how the actual management location is located. For head offices that spread employees in various countries or adopt a work from home policy, then this type of work should be considered as a permanent establishment condition. As for the activities of employees who sign long distance contracts and are not a habit, even this is considered unable to fulfill the conditions for the formation of a permanent establishment, as long as this does not become a new norm for the company over time. This also applies in determining where effective management occurs, as many company executives are stuck living in a country. Meanwhile, related to the project location, the obstruction of project work due to the many problems in the field due to the Covid-29 pandemic was not included in the calculation of the duration of his stay in a country.

There is no compulsion in carrying out the OECD guidelines in overcoming the many problems of permanent establishment in this covid 19 condition. It is expected that each country, whether member or non-member, can carry out the necessary adjustments regarding their tax laws according to their needs and conditions. For example in Australia, until 31 January 2021, any attendance of an employee of a state company, will not include that attendance as the duration of the permanent establishment. In the United States, the attendance of sixty consecutive days as a result of obstruction of cross-country travel is also not considered a requirement for determining the tax subject of domicile in the United States.

What about Digital Economy or e-commerce in the face of this Covid 19 pandemic ? In line with changes in the behavior of the world community in the era of the Covid 19 pandemic which changes the shopping pattern from direct shopping to shopping via the internet (e-commerce), digital economy services absolutely require a change in policy towards the status of permanent establishment. The amendment will determine the taxation rights of a tax subject, whether the taxation rights exist in the country of domicile or in the country of received income. Unlike the policies with the previous permanent establishment which require a physical presence and require relaxation, the existence of digital permanent establishment requires more serious attention from countries in the world. Its rapid growth in the era of the COVID-19 pandemic requires fast movements to capture the potential taxes that arise in large numbers.

The big obstacle in implementing the digital economy to become a permanent establishment is data dependency and user participation. Digital Business relies on data dependence in the form of server availability in a country but has widespread user participation throughout the world. Data for e-commerce is also not only related to customer data, but also related to supplier data, paid data in the form of the cloud, and so on. This data is useful for e-commerce to improve services and also to read trends and innovations. The existence of a Multilateral Instrument (MLI) can overcome obstacles that may arise due to tax treaties between countries in the world.

The OECD has also taken great strides by amending article 5 of the OECD Model Convention. This article provides a definition beyond the previous permanent establishment that requires physical presence, so it is called a negative list or an exception from the definition. In the case of the digital economy, this tax subject calls himself a specific activity of the dependent agent.

The old rules regarding physical presence required a change with a new concept, namely a significant economic presence or SEP. This change resulted in a nexus for tax authorities to exercise taxation rights through this instrument. As for the digital economy, this also allows the person concerned not to need to follow existing rules in a country. The existence of this SEP is like a bridge between a foreign entity and its taxation rights, however, SEP is not broad enough to accommodate many factors outside the physical business that is generally accepted for online businesses, namely about the basis of taxation for delivery services, after sales, and so on.

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B. Impact of Covid 19 on Transfer Pricing Policy

The impact of the economic changes caused by this pandemic is difficult to predict. What happens to the economy of a country is not the same, although it is the same in terms of decreasing economic activity and growth. In determining the selling price, there is a change, whether it has a small impact or a very large impact. In determining the price fairness playing level, it is not relevant if the authority uses the historical basis of the price of a product when using comparative analysis. Therefore, there must be a new approach that may be raised to anticipate significant errors in determining the fairness level of the selling price in the event of transfer pricing.

Regarding the COVID-19 pandemic, the OECD has published guidance for financial reports affected by pandemic conditions. This guide is also expected to be applied by tax authorities in assessing a transfer pricing policy. A comparative analysis needs to be carried out with care given the impact of this pandemic varies widely between countries. The first thing to note is how the policy is to share the specific losses caused by this pandemic. The second is how the local government policy towards a business that involves affiliated cross-border transactions. And lastly is about the policy for determining the fair price and how the authorities respond to changes in the principle of the arms length principle in facing the challenges that are very unique in this pandemic.

The impact of the Covid 19 pandemic may affect transactions specifically for business entities. The existence of an agreement related to royalty payments to the controlling entity. This royalty is paid because there is an active role of the controlling entity in overseeing the operation of the affiliated company, while the role of the controlling entity may not run due to limited supervision due to this pandemic. The existence of a contract in the beginning may not be fulfilled absolutely and requires further adjustments due to the many obstacles for business. As a result, the information generated can be biased.

But that doesn't mean that all the information management can provide is useless in this pandemic. There is still a lot of information that can still be used to measure the specific impact of the Covid 19 pandemic on businesses and helpful to asses the fair prices, such as analysis of changes in sales value during this pandemic and its consequences for the downward distribution chain, information about the additional costs for controlling entities due to the many communication barriers and under supervision. , information regarding the remaining production capacity due to the minimum level of demand, information on government incentives obtained by business entities, government intervention that causes changes in the selling value of production, state macroenonomic data on the growth rate of certain sectors, statistical data on the relevance of certain economic variables to industrial variables , budget data and differences arising from the COVID-19 pandemic, analysis of net business profits from the previous year, although somewhat less relevant, and others

In determining the selling price during this pandemic, of course, a new approach is needed that must be used by business entities. One thing that can be used is the covid 19 effect approach to how far the budget for income, costs and margins are affected by the actual sales figures, costs and margins. The steps that can be taken in outline are to prepare a detailed profit and loss analysis that explains in detail which posts experienced a spike up or down during this pandemic period. From the results of this analysis, it is then compared with the detailed profit and loss structure in the period before the Covid 19 pandemic occurred, then based on rational evidence of these additional costs it is necessary to make adjustments according to the risk of each affected affiliate in a country. For uncontrolled entities, it can take the same steps for affiliated transactions.

As we all know, the method that can be used in assessing the fairness of an affiliated transaction other than the method above is by using the TNMM method. This method relies on historical data taken from financial statement data for the previous year to set prices. Unfortunately, as we all know, for the tax year that has just passed, the availability of this financial statement database will be available as early as possible in the middle of the next year. As far as we know, the economic turnaround has been severely affected by this pandemic, from the very beginning to the present which has caused taxpayers to experience difficulties due to the possibly very long lag between controlling and affiliated entities related to its effect on the arms length principle. This causes database availability to be even longer.

In a pandemic situation like this, the tax authorities should be careful in correcting the determination of the fair selling price. It takes a high degree of flexibility and foresight and policies to produce fair decisions for taxpayers. In this pandemic period, transaction comparison data may not be sufficiently available because it has deviated far from the benchmark used, all because of the economic impact of the Covid pandemic 19.

IV. CONCLUSION

Every country in the world is affected by this covid 19 pandemic. These impacts are low, medium and large (fatal). It is necessary to relax the policy to determine the formation of a permanent establishment and to determine a fair price as a form of incentive for the business world. There are no standards or standard guidelines regarding the measurement of this impact, so tax authorities need to be very careful in placing too much emphasis on business players. The time test analysis that is generally used in the formation of the permanent establishment has faced many obstacles in the aspect of justice due to the hindered resource mobilization outside the company's business interests. Meanwhile, determining fair prices using comparative analysis which is generally used in determining fair prices actually faces a very complex challenge to be considered an objective analysis for taxpayers and tax officials, because of the extent of the impact caused by the covid 19 pandemic.

In contrast to common PE which requires a physical presence, Digital Economy in the form of E-commerce needs to get special treatment for each country with the principle of a Significant Economy Presence (SEP). With these guidelines, digital PE can make a significant contribution to tax revenue in this pandemic because their income is growing rapidly. The bridge for tax authorities to apply taxation rights became open after this fair concept became an entry point for growing tax revenue during the Covid 19 pandemic. The one must be carefully think is about their transfer pricing between countries.

The state must be very careful in determining priorities between economic rescue and achieving tax revenue targets. Things that are urgently needed by the business world today are its ability to maintain the continuity of business life itself, strive to avoid excessive employee layoffs, and record net income despite experiencing contraction from previous years. This is in line with the policies of country leaders in the world to issue huge amounts of incentive funds to businesses in their countries to avoid the fatal impact of the COVID-19 pandemic on a country's economy. So it will be very contradictory to this interest if it is linked to the absence of high flexibility from a country's tax authority in determining permanent establishment and determining fair prices in a transfer pricing scheme. It is hoped that with the survival of many business players during the covid 19 pandemic, in the following years these business players can record better profits and will automatically contribute back to a country's tax revenue, and the noble goal of economic recovery can be achieved after the pandemi of covid 19 is over.

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