THE PROFITS DIRECTLY OR INDIRECTLY ATTRIBUTED TO A PERMANENT ESTABLISHMENT

Gunadi
Universitas Indonesia, Indonesia

This paper discussed a real case arising from the audit of a namely permanent establishment (PE) CHE operates by a CHE Ltd an enterprise residing in The People Republic of China (China). Having regular business of construction in Indonesia, this PE maintains a place of management in Jakarta from where her businesses are managed. In 2018 this PE has finished a one year construction project which was obtained under subcontract with an Indonesian company, namely, PT RDP at the costs of Rp 4,5 Trilyun (T). PT RDP concluded the main contract from another Indonesian State Owned Enterprise at the cost of Rp 5T. As this PE has already maintaining a local place of management in this country, CHE PE may be called a aset-type PE' (Gunadi, 1992, Taxation of Inbound Investment in Indonesia, APTIRC). Most of the construction materials, i.e., at least 60% of the total project costs, were imported by PT RDP from CHE Ltd (the PE's Head Office). This was done by Indonesian resident company under the import fees of 5%, as this company may claim the import facilities in respect of taxations. Keywords: Profits Directly, Indirectly Attributed, Permanent Establishment

INTRODUCTION

Similar to many other countries, in respect of income taxes Indonesia applies both global/unitary taxation under Art 4(1) of the Income Tax Act (ITA), and a scheduler taxation under Art 4(2) ITA. While under global income tax, income from all sources are aggregated at the individual (or family unit) level then are taxed at a single progressive rate (or flat general corporate tax rate), under scheduler income tax, income items are divided into different categories and each of them is taxed under a certain schedule (computation or rate; International Tax Glossary, 2005). In order to apply this scheduler system, according to Art 4(2)(d) ITA, a Government Regulation (GR) 51 of 2008 was issued. Qualifying as a medium size construction enterprise, according to Art 3(1) of this GR CHE PE is subject to a 4% income tax on gross contract value. Art 3(2) of the GR 51/2008 provides that where the construction enterprise is a local PE of a nonresident, in addition to the gross basis corporate tax of 4%, a branch-profit tax of 20% or lower rate according to the applicable Tax Treaty must be paid. This tax is based on the commercial accounting profit minus that 4% gross basis corporate tax.

Indonesia has already concluded a Tax Treaty with China in 2015. Art 7(1) of the Treaty provides the profits of an enterprise of a Contracting State (CS) shall be taxable only in that CS, unless the enterprise carries on business in the other CS through a PE situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other CS but only so much of them as is directly or indirectly attributable to the PE. The provisions of this paragraph shall, however, not apply if the enterprise proves that the above activities are not undertaken by the PE or have no relation with the PE. In 2019 this PE was audited by the District Tax Office (KPP). Irrespective of the provisions of Paragraph 2 and 4 of Art 7 of the Treaty, on the basis of their understanding of the term 'indirectly attributable to', the auditors consider that the materials imported by RDP and delivered to the PE shall be...
taxable as attributable by force of attraction thereto. It is questionable whether this
understanding is justifiable under the applicable income tax laws as restricted by treaty's provisions?

**TREATY LIMITATION ON DOMESTIC INCOME TAX ON CROSS-BORDER BUSINESS PROFITS**

Unlike the OECD and UN Model Double Taxation on Income and on Capital and in individual tax treaty which employ a concept of 'PE' to determine the right of a CS to tax the business profits of an enterprise of the other CS, Art 2(3)(c) ITA uses the term of 'PE' to designate a special category of taxpayer similar to individuals and companies. Therefore, Art 5(1) ITA provides attributable taxable income of a local PE operated by nonresidents. Namely are: (a) business profits of such PE and income from property controlled thereby (attribution by fact); (b) profits of the head office from business activities, sales of goods and/or the provision of services in Indonesia similar to the business activities or sales of goods and/or provision of services carried on by the Indonesian PE (attribution by force of attraction – FOA rule); and (c) income items referred to in Art 26 ITA received or obtained by the head office provided an effective connection exists between PE and property or rights giving the income items (attribution by effective connection).

It appears that in respect of a PE, similar to the UN Model Convention on Double Taxation in order to tap the taxable potential income of a nonresident enterprise doing business in this country, Art 5(1) ITA applies three types of profit attribution, those are: (1) income items attribution on the basis of fact that they are 'obtained' from business actually carried on by the PE, (2) income derived by the head office from Indonesia but they are forcibly attracted to be attributable to the PE on the basis that they are obtained from the similar business activities, similar sales of goods and/or similar services which could be capable of being carried on by that PE; and (3) income items referred to in Art 26 ITA that are effectively attributed to that PE on the reason that an effective connection exists between the PE and the property or rights giving rise to the income items. Those three category of income items are legally taxable to the PE on a net basis. However, as the ITA applies the 4% gross basis taxation in respect of income from construction industries, and a net basis tax on income items referred to in Art 26 ITA, therefore a separate taxation applies.

It was stated above, that in this particular case (CHE PE), a tax treaty between Indonesia and China has already exists since 2015 and has been in effect thereon. A tax treaty is a bilateral (or multilateral) convention concluded between countries for the primary purpose of resolving double taxation problems arising from the assertion of both countries' tax claims on the same objectundr their domestic laws (Kees van Raad. 1988, Dual Residence, European Taxation). The relationship between tax treaty and domestic tax legislation is a complex one in many countries (Brian J Arnold & Michael J McIntyre, 2002, International Tax Primer, Kluwer Interational Law). In principle the treaty should prevail in the event of a conflict between the provisions of domestic law and a treaty. The domestic law and treaty policies of the treaty countries shape the provisions of the taxation of cross-border business income obtained by nonresidents. In respect of this taxation, a tax treaty imposes a taxation limits requiring the existence of a PE. Unlike treaties which are drafted in line with the UN Model Convention applying the FOA rule, those are drafted in according to the OECD Model Convention donot. A treaty may not extend but limits the application of domestic tax laws. If an income items are not taxable under the domestic law, a treaty provision allocating the tax claim on such income items to a CS may not in effect. Roy Rohatgy (2002, Basic International Taxation, Kluwer Law International) states...
that a treaty can restrict the taxing power or the amount of the tax due under the domestic law, but neither increase them nor how to compute the tax. A CS cannot levy a tax, if (i) the other CS does not exercise its allocated rights to tax under a treaty, or (ii) a treaty gives the CS the rights to tax, but no tax is due under the domestic law.

Art 5(1)(b) ITA provides the application of FOA rule. Whether this rule is restricted by the 2015 Indonesia-China treaty, it is important to look Art 7(1), (2) and (4) of the treaty. Art 7(1) Treaty provides that if the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other CS but only so much of them as is directly or indirectly attributable to that PE. With the opinion that indirect attributable is similar to FOA rule, auditors attributed the profits derived from the exportation building materials of 60% of the total construction subcontract of Rp 4,5T amounting to Rp 2,7T. However, Art 7(2) Treaty provides that subject to the provisions of paragraph 3, where an enterprise of a CS carries on business in the other CS through a PE situated therein, there shall in each CS be attributed to that PE the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a PE. It means that enterprise operating an Indonesian local PE when doing business with that PE then between both of them should be regarded as done by independent parties dealing each other in an arm's length basis. Hence the profits attributable to that PE should the arm's length's one which is comparable to those obtained by independent parties in independent dealings. As Art 7(1) of the Indonesia-China treaty does not provide for the FOA rule similar to Art 5(1)(b) ITA, accordingly under the principle of treaty limits the domestic law the application of FOA rules of profits attribution is prohibited. Hence, the treaty provisions should prevail over the domestic rules. Under this treaty limitation, Indonesia's tax auditors may not forcedly attract the income from exportation of construction materials by CHE Ltd China as the PE's taxable income. According to Art 7(1) Treaty those income items shall be taxable only in the country of CHE's residence.

**PROFITS WHICH ARE DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO PE**

In respect of the term 'attribution of profits', International Tax Glossary (2005) states that it is similar to the term 'allocation'or 'apportionment' of profits. The Glossary provides that a State's right to tax a nonresident business income (profits) is generally restricted in treaty or even under domestic laws to the case where the nonresident carries business in the source state through a PE situated therein. The amount to be taxed in the source state is also restricted to those which would be expected if the PE were a distinct and separate enterprise in the circumstances dealing independently, i.e. arm's length, with the of which company it is a PE. This principle of attribution is variously referred to as the 'direct method', 'separate accounting method', or 'separate enterprise theory'. However, treaties or domestic laws often give alternative methods under which the profits to be allocated to PE and determined on fraction of the company's worldwide corresponding to the involvement of the PE in generating those profits and computed by refererence to factors such as relative gross income, assets and payroll. This method may be called as the 'indirect method', 'fractional apportionment', or 'formulary apportionment'. While this method is less generally applied, but may be found in certain industries or some jurisdictions. For instance, under the scheduler income tax system of Art 4(2) ITA income from construction project is taxed on a 4% of income tax on a gross basis Art 3(1) of GR 51/2008 provides for hat 4% gross basis taxation. Art 3(2) of the GR 51/2008
states with respect to a local PE of a nonresident, in addition to the gross basis corporate tax of 4%, a branch-profit tax of 20% or lower rate according to the applicable Tax Treaty must be paid. As the corporate tax rate is 25%, this tax perhapis based on the commercial accounting profit is 16% of gross receipt. In respect of the use of indirect means to ascertain ax liability, differing from the usual rulesbased on the taxpayer accounting records, Victor Thuronyi (1996, Tax Law Design and Drafting, IMF) called as presumptive taxation. Some methods of presumptive taxation, include: (i) reconstruction of taxpayer's income (e.g., net worth method, bank deposit method, expenditure method), (ii) percentage of gross receipts, and (iii) percentage of assets. It looks that according to Victor Thurony, the Indonesian taxation on construction income may be regarded as using the indirect method of computing taxable income on percentage of gross receipt basis of presumptive taxation.

With regard to income attribution to a PE, Art 7(2) Teaty provides if an enterprise of a CS carries on business in the other CS through a PE situated therein, there shall in each CS be attributed to that PE the profit which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of whuch it is a PE. Meanwhile, Art 7(4) Treaty rules where it hs been customary in a CS to compute the profits attributabke to PE on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in para 2 shall preclude that CS from determining the taxable profits by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such tat the resultshall be in accordance with the principles contained in this Article. According to the Glossary's description on the business profit attributions, while the rules of profits attribution under Art 7(2) Treat may be called as using arm's-length-method or direct method, the rules of profits attribution under Art 7(4) Treaty can be mentioned as using formulary apportionment or indirect method. Where it is connected to At 7(1) Treaty that governs... the profits of the enterprise may be taxed in the other CS but oly so much of them as is directly or indirectly attributable to that PE ...'. It means that, as the source state Indonesia may tax the profits attributable to the CHE PE by way of direct method attribution (according to the accounting profits) or by way of indirect method attribution (using percentage of gross receipt as an approach to allocate the total profits of the enterprise to the PE by estimating 16% of gross receipt may be regarded as the profits of the PE similar to the enterprise of a resident). Hence, the term indirect method of profits attribution may not be regarded as the FOA profits attribution rule.

**INDIRECT ATTRIBUTION OF PROFITS MAY NOT BE REGARDED AS FORCE OF ATTRACTION RULE**

The Glossary advises to use of the term 'attributable' where it is connected with the direct method and the use of the tem 'allocation' in relation to the indirect method of determining taxable profits of the PE. However, in practices, including in the Indonesian-China Treaty those terms are used interchangebly. Above, it was said that under the indirect method (the term is used in Art 8(1) of the Treaty) the profits that will taxable to the PE is the fractional allocation of the total enterprise's worldwide profits according to the role or involvement of the PE in the realization of that profits. The more the role of the PE the greater the profits to be taxable to the PE. In addition, to the indirect allocation of profits just really allocating the total profits of
the enterprise to the various parts thereof, the indirect means or tools may be used to determine the taxable profits of an enterprise just by estimating profits thereon using profit indicators. This indirect means of determining taxable profits, according to Keenan Bulutoglu (1995, in Parthasarathi Some (ed), Tax Policy Handboo, IMF) may be called as presumptive taxation. It is a concept of taxation according to which income tax is based on ‘average’, ‘estimate’ or a ‘notional amount’ of income instead of actual income (International Tax Glossary). Meanwhile, Roy Rohatgy (2002, Basic International Taxation, Kluwer International) mentions that force of attraction rule (FOA) is the concept under which a PE is taxed by the source country not only on the income and property of the PE, but also on all other income obtained by its foreign head office from sources in the locus country where the PE is situated. Whereas, Henry J Gumpel (1978, in John E Bischel (ed) The US-German Tax Convention, New York) is of the opinion that under the FOA rule certain income items of a company from sources within the country where it operates a PE are generally attributed to that PE irrespective of whether it is connected therewith. Unlike the OECD Model Treaty which does not allow its application, the UN Model Treaty allows it in some extends. Art 7(1) of the Indonesia-China Treaty does not provide for this FOA rules. Under this treaty’s provision, consequently, the application of FOA rules in Art 5(1)(b) ITA is restricted. The FOA rule is aimed at preventing the foreign enterprise from avoiding taxation by source country by directly conducting business similar to those engaged in by the PE (circumventing the PE), and eliminating some administrative problems in determining whether particular activities are attributable to the PE (Gunadi, 1992).

Back to the real case above, in 2018 this PE finished a one year construction which was concluded under subcontract with PT RDP at the costs of Rp 4,5 T. Most of the construction materials, i.e., at least 60% of the total project costs, were imported by PT RDP from CHE Ltd (the PE’s Head Office). As importing by this resident company may obtain import tax facilities, import fees of 5% is agreed upon. Under the Indonesian text of Treaty the term ‘only so much of them as is directly or indirectly attributable to the PE’ is translated into bahasa as atas bagian laba yang berasal dari BUT tersebut baik secara langsung maupun tidak langsung’. The Indonesian mistranslated sentence ‘berasal dari BUT baik langsung maupun tidak langsung’ is similar to the English sentence ‘only so much of them as is both directly and indirectly attributable to the PE’. The term ‘directly or indirectly’ denotes the choice between ‘direct method’ or ‘indirect method’ of attribution. It means that Art 7(1) Treaty governs the application of either direct method of attribution or indirect method thereof. While Art 7(2) Treaty provides for the direct method of profits attribution, whereas Art 7(4) provides for the indirect method of profits attribution. The tax auditors are of the opinion that the term ‘indirectly attributed to PE’ found in Art 7(1) Treaty is similar to the FOA rule. Disregarding that under Art 7(1) the use of direct or indirect method of attribution is a matter of choice between Art 7(2) and Art 7(4) Treaty, the Indonesian translation of cumulative direct plus indirect method of attribution has guided the tax auditors to consolidate the direct attribution of construction income and indirect method of attribution of exporting income of construction materials. Therefore in addition the the incomefrom construction works (16% of Rp 4,5T). The auditors were regarding that the income of 16% from construction materials of Rp 2,7T (60% of Rp4,5T) exported by CHE Ltd China must be attributed to the PE under the FOA rule. According to the auditors the direct attributable income of the PE is Rp 0,72T, and the indirect attributable income to the PE is Rp 0,432T = Rp 1,152T, and the income tax due is Rp 0,288T. However, as Art 7 of the treaty does neither allow he use of FOA rule nor the acumalaton of
both direct and indirect attribution of income, therefore the attribution of PE’s profits by the auditors is prohibited by treaty rules.

**CONCLUSION**

Under the clear provision of Art 7(1) treaty that provides where the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other CS but only so much of them as is directly or indirectly attributable to that PE, not as is both directly and indirectly attributable to that PE. While Art 7(2) provides for the method of direct attribution of income to the PE, Art 7(4) rules the application of indirect method of attribution of income thereto. Under the treaty limitation of taxation, as Art 7(1) prohibits the use of both direct and indirect method of attribution and the use of FOA rule as well, therefore the consolidation of indirect attribution of income for construction work and the use of FOA rule in respect of income from exportation of construction materials done by CHE limited is restricted by Art 7 of the treaty. It appears that the auditors understanding of the term indirect attribution is similar to the FOA rule may not be justifiable under the applicable income tax laws and even is restricted by Art 7 Indonesia-China Treaty.

**A LITTLE VIEW OF THE INDONESIAN TAX SYSTEM**

By: GUNADI

of The Tax Centre of The Faculty of Administrative Science of University of Indonesia

**INTRODUCTION**

According to the revised state budget by Presreg (President Regulation) 72/2020 the spending will Rp 2.732,92 Trilyun (T), whereas the targeted income will only Rp 1.699,9T resulting in a deficit that will be financed by debt of Rp 1.039,2T. By September 2020, the accumulated State's debt has already Rp 5.756,87T which was about 36,4% of GDP (including Treasury Securities (TS) of Rp 4.892,57T). Pandemic Covid-19 spreading out almost the whole globe might constitute one of the fast increase in any State's debt. Ronny P Sasmita (Kompas, 171120) stated that this debt is still safe level compared to other countries e.g., US's 131,2%, China's 61,7%, India's 89,3%, Malaysia's 67,6%, and Thailand's 50,4%. Out of the revenue Rp 1.699,9T about 82,62% comes from taxation. Within this term 'taxation' includes revenue collected by the Directorate General of Customs and Excises (e.g., customs and excises, VAT and income tax on imports) and other taxes.

While a double taxation between Government levels is avoided, so as to enhance the Local Government self financing capability, Law Number 28/2009 Re Local Government Tax and Retribution Act (LGTRA) allocates the tax jurisdiction to the local authorities. Table 1 below shows the types of taxes collected by each level of authorities. In order to gear some spendings of their revenues, three of the local taxes are earmarked.
Table 1 The Kinds of Taxes Collected by National and Local Governments

| No | National Level            | Provincial Level                          | Cities and Regency Levels       |
|----|----------------------------|-------------------------------------------|---------------------------------|
| 1  | Income Tax                | Motor Vehicle Tax                        | Hotel Tax                       |
| 2  | Value Added Tax and Sales Tax on Luxury Goods | Motor Vehicle Transfer Duty              | Restaurant Tax                  |
| 3  | Land and Building Tax on Mining, Gardening and Forestry (PBBP3) | Motor Vehicle Fuel Tax (Earmarking)     | Entertainment Tax               |
| 4  | Stamp Duty                | Surface Water Tax                        | Advertisement Tax               |
| 5  | Custom and Excises        | Cigarrete Tax (Earmarking)                | Street Illumination Tax (Earmarking) |
| 6  | Import and Export Duties  |                                           | Nonmetal and Nonstone Mineral Tax |
| 7  |                            |                                           | Parking Tax                      |
| 8  |                            |                                           | Ground Water Tax                 |
| 9  |                            |                                           | Walet Bird's Nest Tax            |
| 10 |                            | Urban and Rural Land and Building Tax (PBBP2) |                                |
| 11 |                            | Land and Building Acquisition Duty        |                                |

Within the fifteen member countries of RCEP (Regional Comprehensive Economic Partnership) the Indonesian competitive level is in the 9th, with per capita income of USD 4,100, and unemployment rate of 9.6%. Therefore, irrespective of the almost country wide protest made by the Labor Union and the students, the Parliament approved the Bill and the Government enacted the Law No 11/2020 Re Employment Creation Act (ECA). Articles 111, 112 and 113 ECA amend several articles of the General Tax Act (GTA), Income Tax Act (ITA), Value Added Tax Act (VATA), and LGTRA. Aimed at creating employment opportunities, fastering increase in GDP and per capita income, improving business and investment climates, developing the small enterprises (UMKM), and gaining higher and faster economic growth, the character of the ECA tax rules are facilitating, ease of doing business and debeurocratization so as to alleviate the tax burden. Whether the ECA provides tax incentives on Carbon Tax will be discussed bellow.

**THE ROLE OF PERSONAL INCOME TAX AND HOW TO INCREASE TAX RATIO**

As appears in Table 2 bellow, unlike some developed countries, including USA, Australia and Japan having personal income tax (PIT) of more than 35% of revenues, the role of the Indonesian PIT, excluding Payroll Taxes, is very low, i.e., 0.74%. Whereas the role of the Corporate Income Tax (CIT) almost doubled of the US' and Australia's, and one and a half of Japan's. Why this could be happen in this country populated more than 250 million people? Some reasons could be mentioned, inter alia, income per capita USD 4100 which is equivalent to Rp 59.450.000 [minus Job Allowances 5% (Rp 2,972,500) + Exempt Income Rp 54,000.000] resulting in tax per capita of Rp 123,850. As the State's gini ratio is high, i.e., 0.39% and 10% of the people hold 84% of the total wealth of this nation, and most of the wealthy individual businessmen (WIB) are likely to behave as the employees. According to the reversal rule,
employee’s fringe benefits may neither taxable to the employees nor deductible to the employer. Hence, those WIB may gain the reversal rule tax shelter. Especially, when the companies are always in business losses. As the WIB may gain the lower tax rate from the companies nondeductible fringe benefits, especially in case of making loss companies, the taxation of fringe benefits may increase the role of PIT. Another options, include: (1) keep continuing the use of joint/family tax return, (2) as to increase the amount of WIB, instead of applying nontransparent system for partnership and the like entities, it would be advisable to apply the transparent one, (3) the use of of Art 22 income tax on the buying for reseling merchandises made by individual traders, (4) integrating of PIT with CIT, and (5) automatic compliance control applying to trader on B2B transactions by using IT (e-review of at least 50% of commercial/ tax invoices). According to Arifin Rosyid (2017, Dissertation, NSW Univesity), Table 2 bellow shows the structure of this State's Revenue. More than 70% of revenues are collected via the Withholding Tax (WT). The IRS Study on Taxpayer Compliance Measurement Program (TCMP) 1996-2006 (Matthijs Allink & Victor van Kommer, 2015, Handbook on Tax Administration) found that taxpayers who subject to WT and Third Party's Reporting (TPR) are more complaint than the two other groups who are only subject to either WT or TPR, or neither both of them.

Table 2 The Structure of Indonesian Tax Revenues in 2017

| No | Description                                      | Percentage |
|----|--------------------------------------------------|------------|
| 1  | Personal Income Tax                              | 0,74       |
| 2  | Corporate Income Tax                             | 20,85      |
| 3  | Property Tax (PBBP3)                             | 2,17       |
| 4  | Payroll Tax                                      | 11,22      |
| 5  | Withholding Tax on Deposit Interest              | 7,47       |
| 6  | Withholding Tax on Importation                   | 5,41       |
| 7  | Withholding Tax on Dividend, Interest and Royalty| 4,17       |
| 8  | Withholding Tax on Nonresidents Dividend, Interest and Royalty | 3,53 |
| 9  | Consumption Taxes                                | 40,00      |
| 10 | Tax on Oil and Gass                              | 4,44       |
| 11 | Total                                            | 100,00     |

Business Indonesia (11 August 2020) as demonstrated in Table 3 bellow estimated of the probable 2020 tax revenue performance.

Table 3 Tax Revenue Budegeted and Realized in SM I 2020

| No | Description                                      | Presreg 72/20 Budget | SM I 2020 |
|----|--------------------------------------------------|----------------------|-----------|
| 1  | Income Tax                                       |                      |           |
|    | - Non Oil and Gas                                | 670,38               | 330,23    |
|    | - Oil and Gas                                    | 638,52               | 312,21    |
|    |                                                  | 31,86                | 18,06     |
| 2  | VAT and Sales Tax on LG                          | 507,52               | 189,52    |
| 3  | PBBP3 and Other Taxes                            | 20,93                | 11,93     |
| 4  | Total Tax Revenue                                | 1,198,82             | 531,71    |
Many years experiences, indicates revenue in SM II at least will be similar to SM I, due to the bussy months of November, December, Mary Christmass, New Year and the end of spending year [Republika 021220 informs MoF (Ministry of Finance) will spend Rp 1.000T in the rests of this fiscal year], plus the extra effort made by tax officials (i.e., audit, collection and extensification) to achieve target. Business Indonesia (13 August 20) was estimating that revenue in 2021 budget will between Rp 1.232,3 – Rp 1.331,8T with an increase of 2,8 – 11% from the 2020 realization. Accordingly, it was estimated the realized budget of 2020 will between Rp 1.170, 7 – Rp 1.247,9T. Hence, it may be expected that The DGT will be able to get the target.

As the formal compliance (i.e., the return filing) is about 72,9%, and the substantive compliance appears in Table 4 bellow (most of tax audits resulted in under payments), another crucial tax problem of this State's is whether tax ratio could be uplifted to 15-17% (as under the 2019 OECD Report)?

| Year | Individual Filer | TR | Entity Oughter | Filer | Audit Audit | Revenue | Role |
|------|------------------|----|----------------|-------|-------------|---------|------|
| 2017 | 11.273.778       | 8.757 | 0,45 | 774.118 | 34.148 | 2,90 | 0.36 | 53,93 T  | 1.161,60T | 4,68 |
| 2018 | 11.697.090       | 12.235 | 0,62 | 854.354 | 50.640 | 3,23 | 0.51 | 56,36 | 1.344,10 | 4,19 |

The theory of the level of tax determinant introduced by Musgrave (in Alex Radian, 1983, Revenue Mobilization in Poor Countries) dictates that the development of economic structure, may improve the tax structure, revenue and tax ratio as well. A good tax structure may facilitate the use of fiscal policy to gain economic stability and growth. This development may increase GDP, per capita income, promote the movement of informal-hard-to tax sector to formal-easy-to tax sector economic resulting in the migration of taxing potential. By using effective and efficient tax handles (WT and TPR), these potentials may be mobilised to increase revenue and tax ratio as well. Table 4 shows that the 2018 audited of 0,51% filing taxpayers resulting in revenue of Rp 56,36T. It implies that should the audit coverage be increased, e.g., up to 25% of the filers may give revenue of Rp 3.408,8T. With GDP of Rp 16.000 may resut in tax ratio of more than 17%. This increase in coverage from 0,51% may not be achieved without modernizing tax administration by integrating IT so as to enable replacing the outdated little coverage manual audit by massive e-review of at least 25% of e-commercial/tax invoice of VAT and e-bupot (WT) of income tax. By enlarging the audit coverage via e-review more than 80% commercial/tax invoices implies the use of Compliance Risk Management (CRM) to force the taxpayer automatic voluntary fully comply as required by the Self Assessment System (SAS).
WHETHER THE ACE PROVIDES RELIEVES FOR ENVIRONMENTAL SUSTAINABILITY

As to stimulate Foreign Direct Investment (FDI), a general relief for instance decrease in CIT rate is offered by Law 2/2020 Re Stipulation on the Government Regulation (GR) Subtituting Law Number 1 Year 2020 Concerning Policy on State Financial and Stability of Financial System for the Handling of Pandemic Covid-19 and/or In The Framework of Facing the Dangerous Threatening National Economic, and/or the Stability of Financial System to Becoming Act (Law 2/2020). Study made by AT Keamey (2019) found that the first tax determinant on FDI includes the rate and the paying as well, whereas another World Bank study (2018) states that tax rate is considered very important 19%, important 39%, important enough 31%, and less important 9%. Accordingly, Art 3(1) of Law 2/2020 provides the reduction of CIT rates from 25% to: (a) 22% will effective in year of 2021 and 2022; and (b) 20% will effective in 2023. Whereas Art 3(2) states that qualifying resident corporations with at least 40% of the paid up shares listed in the capital market may gain 3% lower rate of the CIT rate. While unlisted corporations and local permanent establishment may pay CIT at 20% in 2023, those with 40% stocks listed in the capital stock market may gain the 17% lower rate. The ITA offers tax holidays (TH) for pioneer FDI industries and activities in Special Economic Zone, whereas 30% tax allowances (TA) are made available for other FDI, plus accelerated depreciations, longer loss carry forward, and 10% WT on dividends. MoF Decree No-96/PMK/0.10/2020 states that the application of this TA may be submitted to the Investment Coordinating Board (ICB) via OSS (Online Single Submission). This relief is available for 166 sector businesses in 17 Business Field Standard Classifications (KBLI) in some zones according to Appendix I and II of MoF Decree-78/2019. An increase in installment tax of Art 25 from 30 to 50% will soon be issued.

Art 111 of the ECA amending Art 4(3)(f)1 ITA provides that Indonesian source dividends received by resident entities are tax exempt, whereas those obtained by resident individuals are tax free, provided that they are being invested in this country. In respect of resident aliens having special experties, Art 111 ECA amending Art 4(1a) ITA provides that during 4 years since becoming residents they are subject to tax on the Indonesian source income only. Hence, they are tax free on income items sourced out side this country. Meanwhile nonresidents deriving TS interest, according to Art 26(1b) ITA the 20% WT rate may be reduced by GR.

Article 112 ECA amending some articles of VATA provides VAT stimulus, inter alia: (1) deleting the taxation on delivery of taxable goods on consignment to consignee, (2) exempting VAT on taxable goods transfered for exchange of shares, (3) making coal directly extracted from the ground is taxable, (4) where it is lawfull, taxable firms not having deliver taxable goods/services or export taxable goods/services may credited input tax obtained from the acquisition of taxable goods/services, importation of taxable goods, the usage of foreign taxable intangibles/services at home, (5) creditability of input tax obtained by non taxable firms from the acquisition of taxable goods/services, the usage of foreign taxable intangibles/services at home, the acquisition of taxable goods/services that their input taxes are collected by tax bill, those that are not reported in the tax return, and tax input on the acquisition of taxable goods other than capital ones before the taxable firms starting production.

Article 113 ECA amending some articles of GTA provides punishments relieves, including: (1) reduction in fines on tax return adjustment, voluntary disclosure on careless and deliberate crimes, disclosure of wrong doing during audit with interest fine reference (4-4,5%) decreed by MOF instead of fixed rate (2% monthly), (2) the extension periods for tax delay and instalment
more than 12 months, (3) no double fines (interest or surcharge), (4) the delete of Art 13A GTA (decriminalisation of careless crime) by incorporating thereof (plus deliberate crime) in the voluntary disclosure rule and reducing the 150% surcharge to 100%, (4) giving interest on the late refund payments according to the reference decreed by MoF, (5) deleting the possibility of issuing tax bill after 5 years expiring time according to a final crime decisive, (6) reducing the 2% fine of Art 14(4) GTA to 1% of VAT tax base, (7) determine the expired time of the Tax Collection Notice within 5 years, (8) ruling the 24 months limitation on interest fine of tax bill late payment, and (9) reducing the 400% maximum fine on tax investigation stopping under Art 44B GTA to 300%.

WORLD RECOVERY WITH GREEN STIMULUS AND INDONESIA’S FORESTRY GREENING PROGRAM

November 2020 Report of the World Meteorology Organization (WMO) indicates that pandemic may reduce green house gas emission including carbon dioxida (CO2), but accumulated past and current high CO2 concentration exceeds the upper threshold of 410 ppm (part per million). The daily area lockdown may reduce 17% of CO2. However, as the globe now has 7,7 billion inhabitant this reduction may not able to decrease CO2 at the atmosphere. Emission of CO2 comes from the burning of fossil fuel, coal and other mineral, deforestation, area and forest burnt. Therefore, irrespectif of the UK using of Covid-19 vaccine in 23 December 2020, some economists state that Covid-19 and economic recovery package must take broader priorities so as to make people more recilient facing sum risks and other uncertainties primarily with the global warming and climate changes. A survey pooling from more than 200 of Central Bank Governors, G20 MoFs, and top academicians of 53 States concludes that where the leaders neglected the carbon emission control in their funding policy, the world risks great disaster in the future. For this purpose, some countries allocate their green stimulus budget during pandemic era, whereas Indonesia spent her budget on area and forestry greening. Hence, while Table 5 bellow provides some countries' budget on green stimulus, Table 6 therafter indicates the Indonesian spending on area and forestry greening 2015-2019.

Table 5 The List of Countries Allocating Green Stimulus During Pandemic Era

| States | France | China | UK | Canada | Japan | South Korea | Italy | Switzerland | Pakistan |
|--------|--------|-------|----|--------|-------|-------------|------|-------------|----------|
| USD Million | 9,7 | 2,5 | 2,5 | 1,8 | 1,0 | 0,185 | 0,132 | 0,048 | 0,047 |
| Description | Bail-out on air fiance-KLM+ environment, cycling +electric vehicle | Dev station el energy + vehicle, subside taxon + renewabl e energy | Promoting cycling, pedestrian | Creatin g 10,00 0 employm ent enhanc e in + emies red | Support on d ev sustai n renew able energy , e.g, solar energ y | Subsid y for friendly env ironme nt house | Green vehicle bail out vouch er on 60% cycl e, scooter + vaious vehi | Additiona l fu nding for sol arenergy pro gram | Employe es creitmen to plant 10mily tsunami tree in isoated areas |
The Indonesian Forest Watch (IFW) discloses that few decades recently, there was continuing deforestation of this country's natural forest. Between 2000-2017 the forest lost about 1,1 - 1,4 million hectares, however IFW found that there were movement of forest destruction from Sumatera and Kalimantan to Molucas and Papua. Although the result of replanting movement projects are able to alleviate the forestry destruction, however this may not be able to recovery the function thereof as the world's lung and the water absorption keeping down flood and landslide. Even though, replanting programs must be promoted to gain the process of foto sintesis resulting in dioxide carbon penetration and oxigeen release. Ministry of Forestry and Environmental releases data on area and forestry greening spending 2015-2019 in Table 6 bellow. In average the Ministry spent Rp 5 T in this forestry greening projects and this was doubled in 2019.

| Tahun | 2015 | 2016 | 2017 | 2018 | 2019 | Total |
|-------|------|------|------|------|------|-------|
| Dana Trilyun | 5,6  | 5,2  | 5,23 | 4,9  | 10,3 | 31,23 |
| USD Million | 40   | 37   | 37   | 35   | 73   | 223   |

PROMOTING THE USE OF THE NEW AND RENEWABLE ENERGY

In order to make society enjoy clean energy by achieving target of new renewable energy (NRE) with national energy mixed (NEM) 23% in 2025, as until Semester I 2020 Indonesia has already reached 14,17%, some choices used to promote the employment of green energy. One of them is the replacement of fossil base electric raising (FBER) producing high emision by NRE base electric raising (NREBER) which more environment friendly. To this purpose, two alternatives are available: (1) replacing FBER with solar power electric raising (SPER) which are less maintenance, quick building, and pricing goes down, and (2) co-firing biomass instead of coal. As to gain energy transition and decarbonisation in 2050-2060 according to Paris Agreement target, hence in 2050 the NRE must be 60-70% and no need to uild a new FBER. To attract investors in order to attain 23% NEM in 2025, the Government will improve NRE investment climate by making available incentives and ease of doing investment.

COAL GASIFICATION PROGRAMS

Regardless of the increase in demand coal from new export destination South Korea, Ministry of Energy and Mineral Resources noted that four new coal-gasification projects will be developed: PT Kaltim Prima Coal, PT Arutmin Indonesia, PT Bumi Resources Tbk and PT Adaro Energy Tbk. In addition to these four projects, there is an underground gasification project taken by PT Kideco Jaya Agung. Not only increases the domestic supply of coal, the downstream coal to gas (gasification), coal to methanol, and coal to DME (dimethyl ether) projects will be able to creat a bigger value added for the coal mining industries. PT Bukit Asam estimates coal to gas project may contribute 30-40% total revenues in 2024-2055. Therefore, according to Business Indonesia (27 November 2020) the per share market price goes up from Rp 50 to Rp 76. Moreeven, when the government is willing to make available tax stimulus for this gasification projects more coal manufacturings will joint thereon.
Converting coal to gas projects must be taken as a more broader priorities in order to gain people more resilient facing sum risks primarily from the global warming and climate changes.

**THE CHALLENGES OF GARBAGE MANAGEMENT**

In 2019 the Indonesian inhabitant was 267 million. One of it impact is the mountaining of household garbages, which according to Jaktranas (Business, 201120) amounting from 67,8 million ton in 2020 rising to 70,8 million in 2025. Effort to solve the garbage's challenges needs collaboration between government, producer, retailer, and society. Two approaches of collaboration: (1) reducing the garbage volume at the level upstream (household) and middle stream (place of the garbages management). Although 88,17% out of 189.000 ton monthly rural plastic garbages can be recycling, however only 11,83% are collected for that purpose. The optimization of this garbage's recycling may create circular economy in the garbage management. This management may result in derivative product of garbage, inter alia, plastic seeds, and electricity. It appears that from the garbage management can be build a garbage power electric rising plant (GBERP) and making available people to gain clean energy via green garbages energy instead of fossil energy.