

REGULATIONS ON ACCESS TO FINANCIAL INFORMATION TO IMPROVE TAXPAYER COMPLIANCE WITH LAW NO. 9/2017 AND ITS IMPLEMENTATION RULES

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Abstract

The purpose of this research is to explore and analyze regulations for access to financial information for tax purposes to increase taxpayer compliance. The research approach in this study is qualitative normative based on literature and field studies in the form of collecting access data and following up on inbound and domestic AEOI based on access to information by tax administration. This study finds that for easy access to financial information for tax purposes both in the context of AEOI and the implementation of the tax laws, Law No. 9/2017 authorizes access to financial information to the Director General of Taxes (DGT) by setting aside the confidentiality of financial information in the Law of Tax Procedures and the Banking Law, access to banking financial information has positively increased tax compliance, but compulsory reporting of accounts with minimum balance of Rp1 billion have the potential to trigger rush of bank funds. On the other hand, it had reduced the effectiveness of Law No. 9/2017 to increase tax compliances for individuals who have accounts' balance less than Rp1 billion at the end of the reporting calendar year. It can be suggested to amend the formulation of the provisions of Article 2 paragraph (3) of Law 9/2017 refers to the Common Reporting Standard (CRS) which must contain financial information, including NPWP with NIK (Resident Identification Number) for certainty and to eliminate doubts.

Keywords: *Access to financial information; Automatic Exchange of Information; Common Reporting Standard; Tax Identification Number*

1. INTRODUCTION

The global financial crisis in 2008 had a huge impact on almost all countries in the world, including the United States and European Union, in the form of a slowdown and uncertainty in the world economy. This situation has affected the amount of tax revenue that can be collected by each country, bearing in mind that most portion of tax revenue comes from economic activities whose income is highly dependent on world economic conditions. To be able to recover from the crisis, each country needs funding sources to finance the restructuring of the financial sector and economic stimulus, among others by mobilizing the domestic resources of each country, especially from taxes.¹

Mobilization of domestic resources away from taxes has been hampered by the widespread practice of tax avoidance and tax evasion by taxpayers who are taking advantage of limited access to financial information for tax purposes. One mode of tax avoidance or tax evasion is by shifting profits and saving money from the results of these activities in tax

¹ "Nota Keuangan Beserta Anggaran Pendapatan Dan Belanja Negara Tahun Anggaran 2018," Direktorat Jenderal Perimbangan Keuangan Kementerian Keuangan Republik Indonesia, last modified September 6, 2017, 78, <https://djpk.kemenkeu.go.id/?p=5125>.

havens or Offshore Financial Centers. These countries are known for their tax-friendly policies and very strict banking secrecy regulations.²

The problem of bank secrecy is considered as one of the factors that exacerbated the global financial crisis because the tax havens that hide global assets. There is a strong allegation that these tax haven countries provide a comfortable haven for officials to hide illegal funds resulting from corruption, or illegal businessmen who the funds away from the pursuit of the law enforcement agencies in their country.³ For the automatic financial information exchange system to work effectively, the tax authorities need access to financial information from banks.

Someone complies with the tax rules for fear of detection and punishment. This theory is used by Allingham and Sandmo in explaining the phenomenon of income tax evasion.⁴ The opportunity to commit tax evasion and/or evasion is one of the important factors affecting taxpayer non-compliance. This opportunity can be related to third party reporting and/or withholding of the activity/revenue of the taxpayer. To counteract the practice of concealing financial assets, the tax authorities have worked together in the field of exchanging information (especially financial information) between tax authorities, which is called Automatic Exchange of Information (AEOI). In the Common Reporting Standard (CRS) compiled by the Organization for Economic Cooperation and Development (OECD) and the countries that are members of the G20, Indonesia is one of 100 other countries that has stated its commitment to implement automatic exchange of information in the field of taxation.⁵

Automatic exchange of financial information for tax purposes is not possible because bank secrecy is guaranteed by Law number 7 of 1992 concerning Banking as last amended by Law Number 10 of 1998, specifically article 40, which states that banks are required to keep information about customers' deposit and savings confidential. For tax purposes, the Governor of Bank Indonesia, at the request of the Minister of Finance, has the authority to issue written orders to banks to provide information and show written evidence and letters regarding the financial condition of certain depositors to tax officials, as stipulated in Article 41 of Law No. 7 of 1992.

Indonesia has bound itself to international tax treaties which is obliged to fulfill commitments to participate in implementing Automatic Exchange of Financial Account Information and must immediately establish statutory regulations at the level of laws regarding access to financial information for tax purposes before June 30, 2017. For this reason, Government Regulation in Lieu of Law No. 1/2017 concerning Access to Financial Information for Tax Purposes was stipulated on May 8, 2017, due to a very urgent need, which is only 53 days before the deadline for the formation of laws and regulations regarding this AEOI ended on June 31, 2017.

² *Ibid.*, 79.

³ Chairil Anwar Pohan, *Pedoman Lengkap Pajak Internasional* (Jakarta: Gramedia Pustaka Utama, 2018), 281.

⁴ Michael G. Allingham and Agnar Sandmo, "Income Tax Evasion: A Theoretical Analysis," *Journal of Public Economics* 1, no. 3-4 (November 1972): 323-338, [https://doi.org/10.1016/0047-2727\(72\)90010-2](https://doi.org/10.1016/0047-2727(72)90010-2).

⁵ Direktorat Jenderal Perimbangan Keuangan Kementerian Keuangan Republik Indonesia, *Loc. cit.*, 79.

2. RESEARCH METHODS

This study uses a normative research approach. This research is carried out by examining library materials and secondary materials without having to go into the field.⁶ On this basis also normative research is said to be legal research of literature. Normative legal research leads to legal principles and legal principles that serve as a benchmark for behaving and behaving legally.⁷

Furthermore, this study uses a statutory approach. The legal approach is taken by examining all laws and regulations related to legal issues related to regulation of access to financial information.⁸

3. ANALYSIS AND DISCUSSION

The three legal foundations: justice, expediency, and certainty, can conflict with each other. Radbruch calls it the antonym of legal ideas. Justice requires equality between members of society. On the other hand, expediency will be specific and cause inequality because they will favor one benefit for one group over other benefits for another group. As a result, justice can come into conflict with expediency. Likewise, legal certainty demands stability which is problematic if it conflicts with benefit or justice. Legal positivism comes out from only the inviolability of the law, the existence of legal order is more important than its justice and expediency.⁹

But if he does have to choose, Radbruch prioritizes justice above all others because it is justice that creates legal stability and aspirations for justice that benefit society. If after justice is prioritized, legal stability and expediency are still at odds, then the priority is legal stability. The reason for this is that legal stability is a characteristic of all applicable laws. The bottom line is expediency because of its potential to be misused as a false law.¹⁰

3.1. Law No. 9/2017 on Access to Financial Information for Tax Purposes

Access to financial information for tax purposes includes access to receive and obtain financial information in the framework of implementing provisions of tax laws and regulations and implementing international tax treaties. Article of Law No. 9/2017 provides a legal basis for DGT to obtain financial information in the context of domestic AEOI for implementing tax regulations and AEOI between countries (inbound and outbound information) in the framework of implementing international tax treaties.

Article 2 of Law No. 9/2017 regulates that the Director General of Taxes has the authority to gain access to financial information for tax purposes from financial service institutions carrying out activities in the banking, capital market, insurance, other financial service institutions, and/or other entities categorized as financial institutions according to standard information exchange of financial statements based on

⁶ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2001), 14.

⁷ Nomensen Sinamo, *Metode Penelitian Hukum* (Jakarta: Bumi Intitama Sejahtera, 2009), 107.

⁸ Sritomo Wignjosoebroto, "Ragam-Ragam Penelitian Hukum," in *Metode Penelitian Hukum, Konstelasi dan Refleksi*, ed. Sulistyowati Irianto and Shidarta (Jakarta: Yayasan Pustaka Obor Indonesia, 2013), 131–132.

⁹ Irma Shioshvili, "General Antecedents of Philosophy by Gustav Radbruch," *Bulletin of the Georgian National Academy of Sciences* 11, no. 2 (2017): 131–132, http://science.org.ge/bnas/t11-n2/21_Shioshvili.pdf.

¹⁰ *Ibid.*

international agreements in taxation, namely: a) a report containing financial information according to the standard of exchange of financial information based on international agreements in taxation for each financial account that is identified as a financial account that must be reported; and b) reports containing financial information for tax purposes, which are managed by financial service institutions, other financial service institutions, and/or other entities referred to during one calendar year. Reports that contain financial information at least include: a. identity of the financial account holder; b. financial account number; c. identity of financial service institutions; d. financial account balance or value; and e. income related to financial accounts.

Article 2 of Law No. 9/2017 has three important elements: 1) who is required to do the reporting? Financial institutions according to the standard exchange of financial information based on international agreements in taxation, namely a comprehensive reporting regime that does not only cover banks but also other financial institutions such as brokers, certain collective investment vehicles and certain insurance companies; 2) Financial information according to the common reporting standard (CRS) for automatic exchange of financial information between countries (outbound AEOI) and automatic financial information for tax purposes (domestic AEOI); and 3) the content of financial information contains at least five types of information, namely: a. identity of the financial account holder; b. financial account number; c. identity of financial service institutions; d. financial account balance or value; and e. income related to financial accounts.

Article 2 paragraph (2) of Law No. 9/2017 explains that there are two types of financial reports, namely financial information according to CRS for outbound AEOI and financial information for domestic AEOI. However, Article 2 paragraph (3) of Law No. 9/2017 only provides one type of financial information that contains at least the five types of information mentioned above. So it can be interpreted that the content of financial information for outbound AEOI and domestic AEOI is the same and should be in accordance with the CRS.

Article 4 of Law No. 9/2017 regulates that apart from receiving reports, the Director General of Taxes has the authority to request information and/or evidence or statements from financial service institutions, other financial service institutions, and/or other entities. Information and/or evidence or statement must be provided and used as a tax database for the Directorate General of Taxes. The tax database is used in order to comply with the implementation of international agreements in taxation and the implementation of the provisions of tax laws and regulations. Article 5 Law No. 9/2017 states that based on international agreements in taxation, the Minister of Finance has the authority to carry out the exchange of financial information; and/or information and/or evidence or testimony with the competent authorities in other countries or jurisdictions. Article 4 and Article 5 of Law No. 9/2017 in principle regulates that: 1) The Directorate General of Taxes uses financial information based on automatic exchange of information (outbound and domestic AEOI) and based on requests from the DGT as a tax database; 2) in addition to the automatic exchange of information (outbound AEOI),

financial information based on the DGT's request, can also be exchanged with the competent authorities in other countries.

Provisions of Article 8 of Law No. 9/2017 among other things stipulates that when this law comes into effect on May 8, 2017, then: 1) Article 35 paragraph (2) and Article 35A of Law Number 6/1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 7/2021 (UU KUP); and 2) Article 40 and Article 41 of Law Number 7/1992 concerning Banking as amended by Law Number 10/1998; declared no longer valid insofar as it relates to the implementation of access to financial information for tax purposes based on this Government Regulation in lieu of Law.

The articles declared invalid are: Article 35 UU KUP paragraph: (1) If in carrying out the provisions of the tax laws and regulations a statement or evidence is required from a bank, public accountant, notary, tax consultant, administrative office, and/or other third parties who related to a taxpayer who is subjected to tax audit, tax collection, or investigation of criminal acts in taxation, upon a written request from the Director General of Taxes, these parties are required to provide the requested information or evidence; and (2) the parties as referred to in paragraph (1) are bound by the obligation to secrecy, for the purposes of auditing, tax collection, or investigation of criminal acts in taxation, the obligation to secrecy is waived, except for banks, the obligation to secrecy is abolished at a written request from the Minister of Finance. Article 35A UU KUP paragraph (1) stipulates that every government agency, institution, association and other party is obliged to provide data and information related to taxation to the Directorate General of Taxes, the provisions of which are regulated by Government Regulation with due observance of the provisions referred to in Article 35 paragraph (2). In the event that the data and information referred to in paragraph (1) are insufficient, the Director General of Taxes has the authority to collect data and information for the benefit of state revenues, the provisions of which are regulated by a Government Regulation with due observance of the provisions referred to in Article 35 paragraph (2).

Article 40 of the Banking Law, which states that banks are required to keep information about depositors and their savings confidential, and Article 41 of the Banking Law, which reads: for tax purposes the head of Bank Indonesia at the request of the Minister of Finance has the authority to issue written orders to banks to provide information and show written evidence as well as letters regarding the financial condition of certain depositors to the tax official.

Article 8 Law No. 9/2017 provides two implications: 1) the obligations to keep confidential third parties (including banks) who are related to the taxpayers are abolished; and 2) providing evidence and/or information based on a written request becomes based on request and/or is automatic (outbound and domestic AEOI). Article 9 of Law No. 9/2017 delegates authority to the Minister of Finance to issue a Regulation of the Minister of Finance concerning Technical Instructions Concerning Access to Financial Information for Tax Purposes.

3.2. Minister of Finance Regulation on Implementation of Access to Financial Information for Tax Purposes

The implementing regulations of Law Number 9/2017 are: 1) Minister of Finance Regulation Number 70/PMK.03/2017 concerning Technical Instructions Concerning Access to Financial Information for Tax Purposes dated June 2, 2017; 2) the first amendment by Minister of Finance Regulation Number 73/PMK.03/2017 dated June 12, 2017; and 3) the last amendment by Minister of Finance Regulation Number 19/PMK.03/2018 dated February 19, 2018.

Minister of Finance Regulation Number 73/PMK.03/2017 amends several provisions of Minister of Finance Regulation Number 70/PMK/03/2017, including:

- 1) Delegation of authority for further regulation to the DGT through the Director General of Taxes Regulation regarding procedures for self-registration for reporting financial institutions and non-reporting financial institutions in article 6 paragraph (9); procedures for electronically requesting information and/or evidence or information for the exchange of information in International Agreement in Article 15 paragraph (5); procedures for self-registration for financial service institutions, other financial service institutions, and/or other entities that are required to submit a report containing financial information to the DGT in Article 18 paragraph (7); and procedures for electronically requesting information and/or evidence or information in the context of implementing tax regulations in Article 29A;
- 2) In Article 15 paragraph (1), the phrase "by request letter" is deleted. This is explained in paragraph (2) so that the request does not have to be by letter (written) but also electronically (paragraph (2)) and can be signed in writing or electronically (paragraph (2a)); and
- 3) Article 19 has a drastic change regarding the value that must be reported within the framework of domestic AEOI. Balances or financial account values that are submitted automatically by financial service institution in the banking sector, insurance and other entities, are personal financial accounts with a minimum balance/value of IDR 200 million or equivalent foreign currency, within one calendar year, is increased to a minimum amount of IDR 1 billion or equivalent foreign currency. This means that there is a significant increase in the minimum automatically reporting limit from IDR 200 million to IDR 1 billion.

According to the Minister of Finance, the increase in the minimum limit for reporting accounts was due to complaints from MSMEs that have businesses whose assets flow in personal accounts with balances ranging from IDR 200 million to IDR 1 billion. Large companies have their own accounts in the form of entity accounts, all of which are required to report.¹¹ This is also emphasized in the consideration of Minister of Finance Regulation Number 73/PMK/03/2017 for the purpose of maintaining macroeconomic stability, encouraging economic growth, providing a greater sense of

¹¹ Fiki Ariyanti, "Alasan Menkeu Ubah Saldo Rekening Wajib Laport Jadi Rp1 Milyar," *Liputan6.com*, June 9, 2017, <https://www.liputan6.com/bisnis/read/2984902/alasan-menkeu-ubah-saldo-rekening-wajib-lapor-jadi-rp-1-miliar>.

justice, showing partiality to micro, small and medium business actors, and to provide ease of administrative to Financial Services Institutions, Other Financial Services Institutions, and Other Entities in submitting financial information reports for tax purposes.¹²

The main regulation for increasing taxpayer compliance are based on Minister of Finance Regulation Number 70/PMK.03/2017 concerning Technical Instructions Concerning Access to Financial Information for Tax Purposes as last amended by Minister of Finance Regulation Number 19/PMK.03/2018, henceforth called PMK AIK, among others:

- 1) Article 2 of PMK AIK provides a reference that financial information for implementing International Agreements (outbound AEOI) and implementing provisions of laws and regulations in taxation (domestic AEOI) is prepared based on CRS. Although there are other regulatory exceptions for domestic AEOI in PMK, the researcher did not find any exceptions to these regulations.
- 2) Article 7 PMK AIK regulates AEOI (outbound and domestic) with the following conditions: a) Reporting financial institutions that are LJK, Other LJK and Other Entities are required to submit a report containing financial information for each Financial Account that must be reported to: DGT through OJK for LJK, and DGT for Other LJK or Other Entities; b) The report is submitted for the first time in 2018, which contains financial information recorded up to December 31, 2017; and for after 2018, which contains financial information recorded up to December 31 of the previous year; c) The report referred to contains at least the following five types of information: identity of the financial account holder; Financial Account number; identity of the reporting financial institution; balance or value of Financial Account; and income associated with the Financial Account. If combined with Article 2 PMK AIK provides an interpretation in accordance with the Common Reporting Standard (CRS) is a report that contains at least these five types of information.
- 3) Article 19 PMK AIK stipulates that financial accounts that must be reported within the framework of domestic AEOI are Financial Accounts held by individuals, the balance or value of one or more Financial Accounts with a minimum amount of IDR 1,000,000,0000 (one billion rupiah) or in a foreign currency of equal value as of December 31 in the reporting calendar year; or a Financial Account held by an entity, there is no limit to the balance or value of the Financial Account.
- 4) The scope of financial information based on requests in the context of implementing Information Exchange and/or implementing provisions of laws and regulations in taxation is in a list format made as needed, which may include the value or aggregate of Financial Account balances as of a certain date or aggregate of debit/ credit of Financial Account in one year.
- 5) Article 25 paragraph (3) PMK AIK provides a definition of provisions for the implementation of laws and regulations in taxation, among others for the implementation of activities: a. supervision of Taxpayers, including for

¹² Bagian Menimbang Peraturan Menteri Keuangan Nomor 73/PMK/03/2017.

extensification, intelligence or appraisal activities; b. inspection; c. tax collection; d. preliminary evidence examination; e. tax investigation; or f. settlement of tax legal remedies, for example objections, reduction or cancellation of tax assessments, or reduction or elimination of administrative sanctions.

3.3. Enquiry Letter for Explanation of Data and/or Information

Reporting Financial Institutions in 2018, for the first time provided financial information recorded up to December 31, 2017, to the DGT. The Indonesian government began implementing automatic exchange of financial information (AEOI) in September 2018. DGT during the socialization of Law Number 7/2021 concerning Harmonization of Tax Regulations in October 2021, specifically regarding the Voluntary Disclosure Program (PPS), conveyed the facts regarding the use of AEOI data as follows:

- 1) AEOI data on the Balance/Value of Accounts received in 2018 of IDR 2,742 trillion (inbound) and IDR 3,574 trillion (domestic), or a total of IDR 6,316 trillion. The results of the comparison between the AEOI data and the Cash Equivalent Assets of the Annual individuals tax return (SPT PPh OP) show that the data that has been clarified in the Annual SPT PPh OP is worth IDR 5,646 trillion (89.4%) with the number of taxpayers (WP) being 795,505 (85.8%). This shows that taxpayers are quite compliance in reporting the balance/value of their accounts, both from abroad (inbound) and domestically (domestic), which is 89.4% in rupiah value, which includes 85.8% WP. The remaining IDR 670 trillion (10.6%) or 131,438 WP (14.2%) is being clarified to taxpayers (WP). Researchers will examine the results of this clarification to taxpayers, by examining several Letters of Request for Explanation of Data and/or Information (SP2DK) from the DGT and how they are compatible with the contents of the Annual Individual Income Tax Return.
- 2) AEOI data related to Inbound Income received in 2018 of IDR 683 trillion. The comparison between the AEOI Inbound Income Data which consists of data on dividend income, interest, sales and other income with foreign income data on the Annual Individual Income Tax Return (SPT PPh OP) shows that the data has been clarified in SPT PPh OP of Rp7 trillion (1.0%) with the number of WP was 6,055 (10.8%). The remaining IDR 676 trillion (99.0%) or 50,095 WP (89.2%) is being clarified to the Taxpayer (WP). This indicates that taxpayers are likely noncompliance in reporting their income from abroad (inbound). The researcher will further examine the results of this clarification to taxpayers, by examining twelve Letters of Request for Explanation of Data and/or Information (SP2DK) from the DGT and their suitability for reporting foreign income on Annual Income Tax Returns for Individuals between July 2020 to June 2022.

A summary of SP2DK data and responses from taxpayers can be presented in the following table.

Table 3.1. *SP2DK data and responses from taxpayers*

WP No.	Date SP2DK	Data Clarified	Taxpayers' Responds
1	24-Mar-22	Encouragement to participate in PPS with data on Differences in Cash and Cash Equivalents, and Investments.	Most of these are Savings/Investment Accounts in Singapore which have been reported in the SPT Tahunan OP and there is a small portion (less than 1%) which have not been reported and will participate in the PPS.
2	22-Jul-20	There is income that has not been reported and assets that have not been/understated in the Tax Amnesty Program.	That the Taxpayer Participated in the Tax Amnesty Program twice, and all the taxpayer's assets have been reported in the two Tax Amnesty. However, the Taxpayer admits that there is income that has not been reported and will pay taxes in the amount of IDR 351 million, which is 12.8% of the Value of Underpaid Income Tax According to SP2DK of IDR 2,744 million.
3	20-Apr-21	WP received a summons from AR on April 21, 2021, to clarify Domestic Account AEOI Data related to Bank Account Balance as of December 31, 2018.	WP said that the Domestic Account AEOI data was inaccurate, because there were double balances and accounts that had changed forms/moved before December 31, 2018, were recorded twice. The WP clarifies that all bank accounts have been reported in their SPT Tahunan OP.
4	15-Jun-22	Encouragement to participate in PPS with data on Differences in Cash and Cash Equivalents, and Investments.	Investment assets in the form of insurance and mutual funds have been reported by the WP in SPT Tahunan OP, it's just that the WP has combined them in savings.
5	13-Sep-21	There is a difference in income from the sale of land that is potentially payable with Article 29 Income Tax.	WP does not sell land and buildings. WP admits that there was negligence in filling out SPT Tahunan 2018 and there are several WP's assets that are not recorded in the SPT Tahunan. The WP will correct the 2018 Annual SPT.

WP No.	Date SP2DK	Data Clarified	Taxpayers' Responds
6	28-Oct-21	There is data on purchases of Taxable Goods and/or Acquisition of Taxable Services using NPWP 00,000,000.0-000,000, and there is a difference in the increase in net assets compared to income that is potentially payable with Income Tax Article 29 for the 2019 tax year.	The FP is for service and car spare parts. WP said that the difference in the increase in assets came from the company's paid-up capital debt that WP had not yet deposited with the company because the company was not yet operational.
7	28-Oct-21	There is a difference in income from the employer that has not been reported which is potentially payable with Income Tax Article 29 and There is a difference in net assets that are potentially payable with Income Tax Article 29 for the 2020 tax year.	WP said that the difference in the increase in assets came from the company's paid-up capital debt that WP had not yet deposited with the company because the company was not yet operational and there were Third Party Loans that had not been reported in the Annual Tax Return. Taxpayers make corrections to their annual SPT.
8	23-Apr-21	There is Inbound Income that has not been reported in the SPT Tahunan OP 2018.	WP acknowledges that the Inbound income (interest) has indeed not been reported and will correct the Annual SPT and pay taxes on the Inbound Income.
9	26-Apr-21	Clarification of the existence of several purchases with FP 00,000,000.0-000,000 for the 2019 Tax Year.	The WP clarifies that there are FPs for service and car spare parts that have been reported in their annual tax returns, and there are motorcycle purchases that have not been reported. For this reason, the WP will correct the Annual SPT and pay taxes on income from Land and/or Building Rentals that have not been reported.

WP No.	Date SP2DK	Data Clarified	Taxpayers' Responds
10	15-Apr-21	There is a difference between the decrease in shares owned by the Taxpayer confirming Data AHU and the profit from the sale/transfer of assets + sale of shares on the stock exchange + Other Income according to the SPT Tahunan OP 2017.	WP acknowledges that there is an increase in Company Shares that has not been reported and will make corrections to the Annual SPT and make tax payments on income from Land and/or Building Rentals that have not been reported.
11	21-Mar-22	Encourage to participate in PPS with data on Differences in Cash and Cash Equivalents and Investments.	The DGT's data is correct, the WP participates in the PPS on the DGT's data.
12	08-Mar-21	There is proof of withholding against transactions that have not been invoiced and reported on the monthly VAT return and there were additional assets in 2018 which indicated net income during 2018 that had not been reported by the taxpayer amount to IDR 632,533,871.	WP admits that FP has indeed not been issued and the difference comes from 3 rental incomes that have not been reported. The WP will pay VAT and income tax on the rental and correct the related SPT.

The results of clarification on SP2DK show that taxpayers are quite compliant in reporting data on their assets, especially regarding the balance/value of bank accounts. Some of the clarification results show that there are inaccurate AEOI data (WP No. 1, 2 and 3) and/or differences in classification between AEOI data and individual annual income tax returns (WP No. 1 and 4). Only AEOI Data on WP No. 11, which is accurate, so that WP participates in PPS according to AEOI data from DGT. This can be explained that the individual WP is a participant in the Tax Amnesty Program which took place from July 1, 2016 to March 31, 2017 and realizes that there is no place to hide their assets anymore because of the disclosure of financial information for tax purposes and the existence of AEOI between countries. This result is consistent with the theory which states that a person complies with the tax rules for fear of detection and punishment.

Indications that taxpayers are still not compliant in reporting their income from abroad (inbound) can be seen from interest income on deposits/savings in Australia (WP No. 8), which has not been reported in their annual tax return. This finding is consistent with the large amount of AEOI data on Inbound Income that needs to be clarified to Taxpayers, namely IDR 676 trillion (99.0%).

3.4. Normative Juridical Analysis in Regulating Access to Financial Information to Increase Taxpayers' Compliance

The legal benefits of exchanging financial information, which is an activity to convey, receive, and/or obtain financial information related to taxation based on international agreements, are to: a. prevent tax avoidance; b. preventing tax evasion; c. prevent misuse of the tax treaties by unauthorized parties; and/or d. obtain information related to the fulfillment of taxpayers' obligations.¹³

There are four elements related to the meaning of legal certainty. First, that law is positive, meaning that it is legislation (*gesetzliches Recht*). Second, that law is based on facts (*Tatsachen*), not a formula regarding an assessment that will later be made by a judge, such as "good will" and "decency". Third, that the fact must be formulated in a clear way to avoid misunderstandings in meaning, as well as being easy to implement. Fourth, the positive law should not be changed frequently.¹⁴ Legal certainty guarantees that protection is given to individuals against unclear behavior from other individuals, judges, and administration (government).¹⁵ Legal certainty relates to what individuals can expect governments to do, including confidence in the consistency of judges' and government's decisions.¹⁶

Law No. 9/2017 and its implementing regulations make no distinction between reports containing financial information in accordance with financial information exchange standards based on international agreements in taxation (outbound AEOI) and reports containing financial information for tax purposes (domestic AEOI). Reports containing financial information referred to contain at least five types of information, namely: identity of the financial account holder; Financial Account number; identity of the reporting financial institution; balance or value of Financial Account; and income associated with the Financial Account. The word "at least contains" can create legal uncertainty for financial institutions and can be detrimental to depositors of financial institutions. Can financial service institutions, other financial service institutions, and/or other entities provide information beyond and/or more than this minimum information?

The Common Reporting Standard (CRS) published by the OECD does not contain "at least contains" provisions, but states that each reporting financial institution "must

¹³ Article 1 number 2 Peraturan Menteri Keuangan Nomor 19/PMK/03/2018.

¹⁴ Achmad Ali, *Menguk Teori Hukum, (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)* (Jakarta: Kencana, 2010), 292.

¹⁵ Ibnu Multazam, Ismansyah, and Wetria Fauzi, "Legal Certainty of Doctor Profession Insurance Claim in Bumiputera Muda 1967 General Insurance, Pekanbaru City," *International Journal of Multicultural and Multireligious Understanding* 7, no. 10 (October 2020): 336, <https://ijmmu.com/index.php/ijmmu/article/view/2099>.

¹⁶ *Ibid.*

report” the following information: name, address, country of residence and NPWP of the financial account holder; Financial Account number; identity of the reporting financial institution; balance or value of Financial Account; and income associated with the Financial Account. For legal certainty, financial information reports that must be reported to the Director General of Taxes periodically, in the context of implementing international agreements in taxation and/or implementing the provisions of laws and regulations in taxation, should use the word "must report...", not “at least contains...”.

Furthermore, there is no clarity on the limits and/or details on information and/or evidence or statements from financial service institutions, other financial service institutions, and/or other entities, can be requested by the Directorate General of Taxes in relation to the implementation of international agreements in taxation and/or implementation of the provisions of laws and regulations in taxation. Appendix I Letter E PMK No. 19/PMK.03/2018 explains that the information and/or evidence or information requested is made in a list format as needed, among others contains the value or aggregate of Financial Account balances as of a certain date, or the aggregate of debit/credit Financial Account mutations in one year. The word "among others contains" creates uncertainty and can be interpreted as an option, not an obligation, so it should be formulated in accordance with the CRS by using the word "must contain".

Provisions on procedures for electronically requesting information and/or evidence or information (IBK) as intended and procedures for electronically providing information and/or evidence or information are further stipulated in Regulations of the Director General of Taxes, as mandated in Article 15 paragraph (5) and Article 29A PMK AIK. However, the researcher did not find the Director General of Taxes Regulation as referred to, but only found Director General of Taxes Circular Letter No. SE-16/PJ/2017 dated July 14, 2017 concerning requests for information and/or evidence or information regarding access to financial information for tax purposes. The attachment to this Circular Letter contains examples of financial information formats as part of the attachment to the IBK request letter for tax audit activities including information on the initial balance and ending balance along with transactions or savings account mutations. Circular of the Director General of Taxes No. SE-16/PJ/2017 is not a statutory regulation and is an internal administrative instrument for DGT.

A review of Indonesia's legal framework in implementing the AEOI Standard concludes that Indonesia's domestic and international legal framework already exists. A total of 869 financial institutions submitted 389,448 financial information reports in 2021. The successful exchange of information with partner countries continues to increase, from 59 countries in 2018 to 72 countries in 2021. In terms of Financial Account information collected and sent by Indonesia, while where the date of birth appears to be in line with most other jurisdictions, as well as for the level of undocumented accounts, the proportion of taxpayer identification numbers in relation to the link between an individual and their financial accounts is significantly lower when compared to most other jurisdictions. This is key data for exchange partners to utilize information effectively. Feedback was also received from Indonesian exchange partners indicating that, compared to what they generally experience with respect to information

received from all their exchange partners, they had a relatively low success rate when attempting to match information received from Indonesia with taxpayer databases. In addition, some exchange partners experienced problems such as invalid or missing NPWP, invalid or missing date of birth, and invalid or incomplete address.¹⁷

Furthermore Article 19 PMK AIK stipulates that financial accounts that must be reported within the framework of domestic AEOI are Financial Accounts held by individuals, the balance or value of one or more Financial Accounts with a minimum amount of IDR 1,000,000,0000 (one billion rupiah) or in a foreign currency equivalent as of December 31 in the reporting calendar year. The considerations are to maintain macroeconomic stability, encourage economic growth, provide a greater sense of justice, show partiality to micro, small and medium business actors, and to provide more administrative convenience to Financial Services Institutions, Other Financial Services Institutions, and Other Entities in submit financial information reports for tax purposes. However, Allingham and Sandmo's theory states that a person complies with the tax rules for fear of detection and punishment. Compliance is based on a cost-benefit basis where a person weighs the benefits of non-compliance against the costs of detection and punishment. In line with this theory, the compliance of individuals who have financial accounts worth at least IDR 1 billion or the foreign currency equivalent will increase, because the probability of detection is high. At the same time, it has implications for non-compliance with individuals who have an account of less than Rp1 billion, either because of the fact that the individual has an account balance of less than Rp1 billion or makes a cash withdrawal before December 31 so that the account balance becomes less than Rp1 billion. Determination of the amount of the mandatory reporting account balance of IDR 1 billion can cause injustice to individual taxpayers. On the other hand, determining the amount of the financial account balance of an individual who is required to report too low, for example IDR 200 million, can cause public anxiety, especially MSME players and has the potential to cause a banking rush (large cash withdrawal). Given the importance of determining the value of the financial account balance of an individual who is required to report and the consequences that can arise, it is best if the determination of the amount of the balance and/or the value of this financial account is regulated in a law so that the public interest can be represented by the member of parliament (DPR).

Setting up a mandatory reporting financial account at PMK AIK with a balance or value from one or more Financial Accounts with a minimum amount of IDR 1,000,000,0000 (one billion rupiah) or in a foreign currency equivalent in value as of December 31 in the reporting calendar year, can cause efforts to increase individual compliance have limitations. Individuals can withdraw their savings at financial institutions before December 31 each year, so that the balance or value of their financial accounts becomes less than IDR 1 billion and does not include financial accounts that must be reported to the DGT.

¹⁷ OECD, *Peer Review of the Automatic Exchange of Financial Account Information 2022* (Paris: OECD Publishing, 2022), 530–535.

4. CONCLUSION

The research results on the regulation of Access to Financial Information to Increase Taxpayer Compliance yield several conclusions. Firstly, Law Number 9/ 2017 concerning the Stipulation of Government Regulation in lieu of Law Number 1 of 2017 concerning Access to Financial Information for Tax Purposes Becomes a Law, authorizing the DGT to disclose information regarding depositors and their savings, excluding the confidentiality of information finance as stipulated in Article 35 paragraph (2) and 35A of UU KUP and Articles 40 and Article 41 of the Banking Law.

Secondly, reports containing financial information as referred to "at least contains" in Article 2 paragraph (3) of Law No. 9/2017, creates legal uncertainty and can be interpreted differently. Thus, Article 2 paragraph (3) of Law No. 9/2017 needs to be amended, so that the principles of justice and legal certainty can be realized. The Common Reporting Standard (CRS) published by the OECD does not contain "at least contains" provisions, but states that each reporting financial institution must report the following information: name, address, country of residence and NPWP of the financial account holder; Financial Account number; identity of the reporting financial institution; balance or value of Financial Account; and income associated with the Financial Account. So that the provisions of Article 2 paragraph (3) of Law No. 9/2017 it is necessary to add information on the NPWP and/or NIK of the financial account holder in accordance with the CRS so that it becomes: a report containing financial information referred to must report: namely: the identity of the financial account holder; Financial Account number; NPWP/NIK of the financial account holder; identity of the reporting financial institution; balance or value of Financial Account; and income associated with the Financial Account.

Thirdly, the provisions of Article 19 PMK AIK can increase the compliance of individuals who have a financial account worth at least IDR 1 billion or equivalent foreign currency, because the probability of detection is high. However, it has weaknesses, namely individuals can withdraw their savings at financial institutions before December 31 each year, so that the balance or value of their financial accounts becomes less than IDR 1 billion and does not include financial accounts that must be reported to the DGT. In addition, the negative excesses of Article 19 PMK AIK can encourage increased economic activity using cash (underground economy). Taxpayers can switch to cash transactions and/or save in cash and/or make cash withdrawals before December 31 each year so that their deposit balance is below Rp1 billion, so that it is not detected by the DGT.

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