

Legal Certainty and Effectiveness of Tax Supervision for Foreign Citizens and Foreign Legal Entities Earning Income in Indonesia in the Perspective of International Tax Law

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Abstract

This study examines the extent of legal certainty and the effectiveness of tax supervision for foreign taxpayers (foreign individuals and foreign entities) in Indonesia. It focuses on fiscal policy reforms and tax regulations, including the Harmonization of Tax Regulations Law (Law No. 7 of 2021), which aim to provide greater legal certainty for foreign investors while strengthening domestic and cross-border tax oversight to prevent tax avoidance. A review of relevant literature and regulations indicates that the Indonesian government has sought to enhance legal certainty through various incentives, such as limiting the tax liability of certain foreign experts to income earned within Indonesia. Nevertheless, the effectiveness of tax supervision continues to face challenges, including data integration issues, limited human resources, and the complexity of cross-border transactions. International tax agreements, including Double Taxation Agreements (DTAs), the Multilateral Instrument (MLI), and Exchange of Information (EOI) conventions, play a crucial role in cross-border tax monitoring, with Indonesia having signed and ratified various OECD/BEPS-related instruments. The findings suggest the need to strengthen tax administration mechanisms, improve inter-agency cooperation (e.g., immigration and customs authorities), and expand access to international information. Policy recommendations include simplifying DTA implementation procedures, developing an integrated Core Tax system, and enhancing the capacity of the Directorate General of Taxes to address cross-border tax evasion.

INTRODUCTION

Indonesia has experienced an increase in the number of investments and mobility of foreign workers who demand certainty in tax law. The government realizes that tax law certainty is important to attract foreign experts and investors. For example, the Job Creation Law provides tax facilities for skilled foreigners (Foreign Citizens as Taxpayers DN) by only paying taxes on income earned in Indonesia. This kind of policy is designed to "provide legal certainty, protection and benefits for foreigners" so that "skilled foreign workers will feel safe and want to settle in Indonesia". The long-term goal is to increase economic growth, technology transfer, and the quality of local human resources.

On the other hand, tax avoidance practices by foreign parties (e.g. property rental transactions to foreign banks) reduce state revenue. Indonesia implements tax subject provisions based on the Income Tax Law which distinguishes between Domestic Taxpayers (WPOP) and Foreign Taxpayers (WPON) for foreigners. Foreigners who stay longer than 183 days in 12 months are categorized as Domestic Taxpayers, while those who stay shorter become Foreign Taxpayers. Tax rates for domestic individual foreigners follow general provisions (Personal Income Tax); if you do not have an NPWP, the rate is double. Overseas taxpayers are subject to a final tax of 20%

(Income Tax Article 26) on Indonesian income. Similarly, foreign entities that do not have a BUT are subject to a 24% withholding tax (equivalent to the final 20% after special calculation) on income from Indonesian sources.

Meanwhile, from the perspective of tax supervision, the Directorate General of Taxes (DGT) continues to improve data integration and inter-agency coordination. For example, the DGT works with Immigration and Customs to trace foreign taxpayers (such as foreign vessels) operating in Indonesia. The government also encourages the principle of equal treatment, namely that foreign ships are obliged to carry out obligations equivalent to domestic ships. International legal frameworks also play a role, such as the OECD's Convention on Administrative Assistance and Exchange of Information (EOI). Indonesia has signed multilateral agreements (MLI 2017, MCAA Convention 2011) and bilateral agreements with many countries. The purpose of this regulation is to increase tax certainty and fairness as well as the effectiveness of supervision for foreign taxpayers.

The main problem that arises is the gap between the existence of regulations and their implementation: although the rules have been strengthened (HPP Law, digital tax system), regulatory overlap constraints, lack of data integration, and limited human resources hinder their implementation. In addition, cross-border avoidance practices (such as transfer pricing and the use of foreign schemes) require an ever-developing synergy of international supervision. This condition raises quite interesting questions to examine. *First*, what is the certainty of tax law for foreign citizens and foreign legal entities who earn income in Indonesia? *Second*, how effective is the tax supervision of foreign nationals and foreign legal entities in Indonesia, including the role of international tax treaties?

METHODS

This research is qualitative in law with a normative and comparative approach. The normative juridical method is used to analyze the provisions of laws and regulations (Income Tax Law, KUP Law, PP/PMK, Perdirjen Tax) and international tax treaties (P3B, OECD convention) related to foreign tax subjects. In addition, the empirical review uses secondary literature from national/international journals, OECD reports, and official sources such as the DGT website and tax media to understand implementation and case studies. Data was obtained through library research and analysis of relevant legal documents. The analysis was carried out descriptively and analytically to assess the legal certainty and effectiveness of supervision based on literature findings and real examples

RESULTS AND DISCUSSION

Legal Certainty of Tax Supervision

Legal certainty in taxation is realized through clear and consistent rules for foreign business actors. The Indonesian government has regulated the status of tax subjects for foreigners and foreign entities in the Income Tax Law and the KUP Law. For example, Article 2 of the Income Tax Law stipulates foreigners who stay in Indonesia for longer than 183 days as domestic tax subjects. This provision provides clarity when a foreigner is required to be registered as a taxpayer DN. The provisions for tariffs and tax objects are also strictly regulated: foreigners who are foreign tax subjects are subject to a final tax of 20% on Indonesian income (Income Tax Article 26), while if they become a domestic tax subject, the progressive rate of Personal Income Tax (or entity, if they meet the BUT) applies. The provisions for NPWP and reporting are

regulated in the KUP Law, where foreigners are required to have an NPWP if their income exceeds the PTKP. All of these provisions provide a legal basis for foreign taxpayers to understand their obligations.

Furthermore, Law Number 7 of 2021 (HPP Law) and related PP/PMK also contribute to legal certainty. For example, the Job Creation Law provides income tax exemption facilities for certain foreign workers (expert foreigners as WPOP DN) so that they are only taxed on income from Indonesia. This policy "provides legal certainty, protection and benefits for foreigners" so that they are interested in settling down and sharing expertise. Thus, legal certainty emerges in the form of tariff and taxation certainty, legal protection (right of objection for foreigners), and consistency of fiscal policy to attract foreign investment (encouraging economic growth and technology transfer). On the other hand, uncertainty or frequent changes in rules (e.g. anti-avoidance in the new P3B) can pose risks and burdens for foreigners and foreign companies. Therefore, it is important to have clear socialization and guidance so that foreign tax subjects understand their rights and obligations within a stable legal framework.

Effectiveness of Tax Supervision

The effectiveness of tax supervision of foreign subjects depends on the ability of the tax authority (DGT) to identify, audit, and take action against violations by foreign taxpayers. From the domestic side, the DGT has strengthened the legal basis for tax enforcement through the HPP Law and implementing regulations. Triadi & Apriyanti (2025) stated that "the HPP Law... provides a strong legal basis for tax law enforcement in Indonesia". On this basis, the DGT has the authority to conduct investigations and cooperate with other law enforcement officials. Enforcement tools such as administrative, civil, and criminal sanctions are implemented to suppress low compliance and prevent embezzlement. In addition, technical innovations such as electronic tax systems (CoreTax, e-Invoice, e-Billing, e-Filing) improve administrative capabilities and real-time compliance monitoring.

However, Triadi & Apriyanti (2025) also found several weaknesses: overlapping regulations, lack of inter-institutional data integration, and lack of human resources in audit and enforcement. This condition hinders the effectiveness of supervision despite the existence of a strong legal apparatus. For example, foreigner data distributed in various agencies (immigration, finance, embassy services) has not been fully integrated into the DGT system. Therefore, the DGT needs to increase internal collaboration (with the Ministry of Finance, Ministry of Transportation) and external collaboration for access to financial and immigration data.

The special case shows the importance of inter-agency coordination. For example, the Head of KPP Kotabumi explained that the visit program to the Kotabumi Immigration Office aims to "optimize the potential for taxation from foreigners" through data exchange. The DGT-Immigration Directorate synergy emphasized that the tax supervision of foreigners requires access to data on their whereabouts and economic activities. Another example, the Government emphasizes the principle of equal treatment for foreign ships: foreign ships are required to attach proof of income tax deposit and tax treaty documents if they claim facilities, so that foreign ships operating in Indonesia are treated on an equal footing with domestic ships. This effort is expected to close the tax avoidance gap (the potential revenue from foreign ships is still very small compared to domestic ships).

From an international perspective, the effectiveness of supervision is also related to the mechanism for exchanging tax information. The OECD report (2025) shows that "Indonesia has

met all aspects of the terms of reference... and no recommendations are made" related to the exchange of information about tax rulings. This means that Indonesia has established an adequate domestic legal base and bilateral/multilateral agreements (e.g. the Mutual Administrative Assistance Convention and MCAA) for the spontaneous exchange of tax data. Thus, the DGT can request or receive tax information from other authorities, which is crucial for supervising foreign taxpayers (e.g. foreign income data, bank accounts). Overall, although the technical prerequisites for international supervision have been met, the challenges of their implementation (reporting procedures, information verification) remain and require increased DGT capacity.

Domestically, the main provisions of taxes on foreigners and foreign entities are listed in the Income Tax Law and the KUP Law. Law No. 7/1983 (the old UUPPh) and its amendments stipulate the classification of tax subjects and rates for foreigners/foreigners of entities. Article 26 of the Income Tax Law (as amended by the HPP Law) regulates the final rate of 20% on income received by foreigners who are not domiciled, as well as special rates for foreign BUTs. Meanwhile, the KUP Law defines administrative obligations (NPWP, SPT) for foreign tax subjects. In addition to the law, implementing regulations (PP, PMK, Perdirjen) complete technical details, for example the Directorate General of Taxes No.43/PJ/2011 regulates the status of foreigners in Indonesia (183 days) and tax obligations on property leasing, as explained by Ricky (2023).

In the context of international taxation, Indonesia has signed various double tax avoidance (P3B) agreements that regulate the sharing of taxation rights with partner countries. These agreements generally refer to the OECD P3B Model, regulating the definition of "BUT" (PE), WHT rates for dividends, interest, royalties, as well as dispute resolution procedures (APA, MAP). For example, the Indonesia–United States P3B (1988) and the Indonesia–Singapore P3B (1990, revised 2020) contain OECD standard provisions regarding the definition of resident and final tax restrictions. To facilitate the implementation of P3B benefits, the Director General of Taxes has issued PMK 112/2025 which updates the procedure for using P3B incentives (e.g. validity of Certificate of Domicile, BO reporting). This regulation adopts several OECD anti-abuse rules (MLI), so that beneficiaries must still meet the substance and beneficial owner criteria to claim the P3B tariff.

Indonesia also adopted OECD multilateral instruments to strengthen cross-border surveillance. For example, Indonesia signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on November 3, 2011 and ratified it on October 17, 2014, and the Multilateral Instrument (MLI) on June 7, 2017 (ratified November 13, 2019, effective August 2020). Through this mechanism, the DGT can conduct an automatic exchange of information (EOI) (CRS) and resolve disputes through APAs/MAPs. The results of the OECD evaluation (2025) confirm that Indonesia has met the minimum standards for tax information exchange. With the support of these international agreements, the government seeks to improve compliance with foreign tax subjects by utilizing global data (e.g. cross-border financial reporting).

Challenges of Cross-Border Tax Supervision

Tax supervision of foreign subjects faces administrative and legal challenges. Administratively, tax officers must identify dynamic foreign taxpayers. Data and access limitations (e.g., hidden banks, complex entity structures) make it difficult to verify compliance. The overlap of regulations between the Law and PMK can create legal loopholes that have not

been optimally monitored. Legally, differences in definition and scope in various tax treaties between countries can give rise to potential tax arbitrations (e.g. the use of a third jurisdictional scheme). Not all P3Bs are equipped with anti-abuse provisions (even though MLI tries to close them), so the practice of cross-border avoidance remains.

The information exchange aspect is also an obstacle: even though Indonesia is a member of the MCAA, there is still a need to improve the administrative mechanism to meet the request for timely and complete information. Triadi & Apriyanti (2025) highlight the need to "strengthen the surveillance system and cross-border cooperation". This includes increasing the capacity of the DGT (auditor transfer pricing, big data analysis) and increasing cooperation with the OJK/PPATK for the detection of covert foreign financial transactions. In addition, consistency in the imposition of sanctions is also important. For example, the role of tax law enforcement involves coordination with the apparatus (Prosecutor's Office, Police) to crack down on serious violations, as well as fiscal enforcement (budget cuts) against negligent agencies, as taken against the Ministry of Transportation in the supervision of foreign ships. In general, the biggest challenge is to bridge the gap between the global legal framework and implementation on the ground, so that foreign taxpayer compliance can be enforced fairly and effectively.

Case Studies and Examples

Several concrete cases illustrate the issue of certainty and supervision of foreign taxes: Tax treaty compliance. The case of foreign ships shows that without proof of compliance with income tax requirements (such as CoD/P3B), the DGT has the right to impose domestic taxes according to regulations. The new rules require foreign ships to attach proof of income tax deposit and tax treaty documents to claim facilities. This shows that certainty of compliance requires the implementation of new standard procedures (SOPs) so that foreign service users understand their obligations.

Research by Rafsanjani & Ardiansyah (2021) reveals the confusion in the application of Income Tax Article 15 to foreign trade representative offices (KPDA). If there is a P3B, KPDA needs to meet the BUT criteria according to the agreement; if there is no P3B, KPDA is treated as an overseas taxpayer. Differences in interpretation in the field (BUT vs non-BUT) indicate the need for certainty of definitions. This is relevant to the subject of foreign entities that earn income through branches/representatives: the government must provide clear guidelines so that the tax status of foreign entities is not multi-interpreted.

Cross-agency data utilization. At the regional level, the synergy between KPP and Kotabumi Immigration resulted in a concrete step: the exchange of visa/residence permit data to identify foreigners who have the potential to (pay) taxes. Similarly, the North Jakarta DGT Regional Office together with Customs conducted joint supervision of foreign tourist vessels (TPS) to ensure VAT/PPH compliance.

Changes in fiscal policy. Incentive policies for expatriates (e.g. WP DN FOREIGNERS are only taxed on domestic income) are a form of pro-investor legal certainty. However, this policy also triggers a debate on justice (Heriani, 2020 in Ricky). The government needs to balance incentives and fairness principles: Although the final tariff attracts expats, Indonesian citizens in similar positions may demand balanced treatment. An example of an amendment to PP 55/2022 (Ricky, 2023) shows the government's seriousness in regulating foreign taxpayer provisions as part of tax harmonization.

Policy Recommendations

Based on the above analysis, several policy recommendations are suggested that the simplification and socialization of P3B rules. The government should continue to improve the PMK P3B procedure (e.g. PMK 112/2025) and clarify the definition of the substance/BO criteria to avoid the abuse of low tariffs. Intensive socialization needs to be held so that foreign taxpayers understand the documents that must be submitted (CoD, DGT Form) before claiming P3B benefits.

Strengthening the tax administration system (CoreTax). Investment in an integrated administrative system (CoreTax) must be accelerated so that the data of foreigners/corporate foreigners can be directly connected to immigration, customs, and banking databases. For example, the system can automatically detect foreigners who have >183 days left to be linked to their tax reporting. The application of analytics technology also assists the DGT in auditing transfer pricing and other cross-border schemes.

Improvement of human resources and inter-agency coordination. The DGT needs to add auditors who are competent in international taxes and transfer pricing. The establishment of inter-agency task forces (tax, immigration, PPATK, Police) periodically can overcome cross-agency evasion. In addition, providing incentives (e.g. awards) to officers who successfully uncover foreigners' cases/to increase compliance can be considered.

Active role in international forums. Indonesia must continue to be active in the OECD/BEPS forum to adopt best practices in international tax supervision. For example, using the APA/MAP forum to resolve P3B tariff disputes. In addition, expanding bilateral EOI agreements with new countries (including TIEA with tax havens) will add cross-border surveillance tools.

Fair incentive policy. The government needs to review the incentive policy for expert foreigners so as not to create a gap with local taxpayers. One way is to ensure that there are anti-abuse provisions (for example, exit tax clauses for foreigners who leave Indonesia) so that legal certainty also applies within the framework of justice.

CONCLUSION

Certainty of tax law for foreign citizens and foreign entities in Indonesia has been built through domestic regulations and international agreements. The Income Tax Law and implementing regulations provide a clear basis for foreign taxpayer status, tax rates, and administrative mechanisms (NPWP, SPT). Fiscal policies such as incentives for expert foreigners are also directed to attract foreign investment while still considering legal certainty. However, the effectiveness of tax supervision on foreign subjects still needs to be improved. Cross-institutional collaboration (tax-immigration-tax) and the use of international agreements (EOI, APA/MAP) are the keys to closing the tax avoidance gap. Although Indonesia has met OECD information exchange standards, challenges such as data integration and human resource capacity must be overcome. The main recommendation is the simplification of P3B procedures (e.g. PMK 112/2025), the development of integrated CoreTax, as well as the improvement of human resources and international cooperation. Thus, it is hoped that tax law certainty and the effectiveness of supervision can be achieved simultaneously, creating a fair business climate and supporting state revenue optimally

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