



***CONTROLLED FOREIGN COMPANIES (CFC) RULES IN INDONESIA : TO
ANALYZE THE LAW HARMONY AND AN IMPACT FOR START UP
COMPANIES OR FOREIGN NON EXCHANGE BUSINESS ENTITIES***

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ABSTRACT

The purpose of this research is to deeply analyze the role of CFC regulations in Indonesia. This regulation is important to be enforced in every country (especially developing countries) because of the tendency for start-up companies that choose to become private companies, it is used by taxpayers who want to invest without being monitored further by the government. The scheme which ultimately leads to cons from the government so the BEPS Action Plan appears jointly studied by the OECD member countries. This study analyzes the suitability of CFC rules with the nature of rules through the analysis of tax policies written on Rosdiana & Irianto (2014) to see the impact on start-up companies and foreign non-exchange business entities. The results of this study are 1) CFC regulations in Indonesia are in accordance with the nature of rules, but there's different interpretation between the government and the taxpayer, 2) The latest CFC regulations have been able to accommodate and become alternative policies from the previous regulation, 3) The latest regulation of CFCs makes the taxpayer to postpone or delay their investment activity, this matter can also be disadvantageous the private companies.

INTRODUCTION

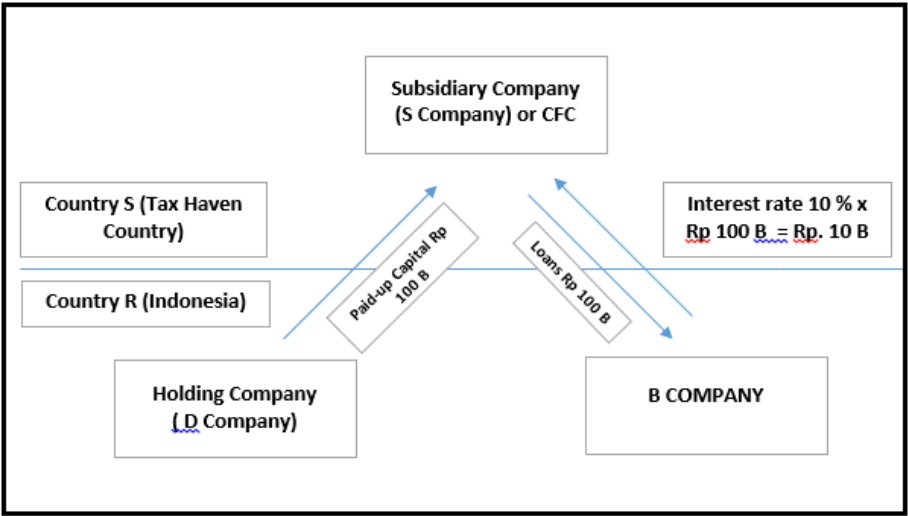
The Global Financial Crisis (hereinafter abbreviated as GFC) in 2008-2009 is a protracted period in world economic growth. According to data released by the World Trade Organization (WTO) in 2015, before the GFC growth in the trade sector from 1990 to 2008 averaged of 5.9%, while its Growth Domestic Product touched an increase of 3.7%. GFC itself has a very important role in changing the pattern of international trade structure. It is said to change the pattern of international trade because according to Ianuzzi and Berardi (2010: 9). The root of the problem occurs because of too much liquidity in the global market with a very strong expansion of monetary policy conducted by Alan Greenspan and Ben Bernanke so that the growth of lending or loans from the property sector. Such an event if left untreated will have significant influence and create chaos and can expand the negative crisis into the global financial system (Ianuzzi and Berardi, 2010).

The rapid growth of technology and information makes people start thinking and find a way out to fight and leave the GFC era. When the GFC era ends, the world is startled by a form of physical transactions that can be replaced with virtual transactions either in terms of payment, investment or selection of goods / services. Cross border transactions are becoming more and more complex. Whether business entities are getting more involved, time of elections, or improper filing can dramatically affect tax revenues across countries (Leibowicz, 2013). Seeing the opportunity in the international trade sector that started from Indonesia to joined integration of Asean Economic Community (hereinafter abbreviated as AEC) in 2015 to make the multinational companies interested in making its subsidiary in Indonesia (Central Jakarta Regional Training Center, 2016). The performance of Multinational Companies (hereinafter abbreviated as MNC) in Indonesia is also growing rapidly as time passes to see the fact that HM Sampoerna Tbk, a cigarette company controlled by Philip Morris Inc earned a net income of Rp 22.6 trillion, increase 3% from Rp 21 , 9 trillion in the last period (Republika, 2017). The same thing came from Malaysian company as called Grab International, which since its

arrival in 2015 to Indonesia made at least 6,000 drivers finally joined the grab (Tempo, 2016).

In an article written by Metro Tv News in January 2017, Indonesia Stock Exchange confirmed there are 52 foreign companies enriching themselves in Indonesia without providing significant profit for market participants or stock investors. Of course this is unfortunate for Indonesia and foreign companies are asked to contribute more to the domestic economy. This becomes a problem in international taxation that can not be separated from cross border transactions in the form of World Wide Income (hereinafter abbreviated as WWI). All efforts are also made by the company to avoid tax (tax avoidance) that is doing profit shifting in tax haven country or investing their shares to the country with low tax rate. The usual scheme is by way of earned profits being turned back into the shell company then a small part will be returned to the country of origin. Shell companies are a company that is only written on paper but has no business activities and employees (OECD Transfer Pricing Guidelines, 2010). The practice is still rampant to reduce the corporate tax burden and see the fact that shell companies are supporting factor of the form of tax avoidance or Money Laundry (Cbs News, 2016).

Meanwhile, the OECD identifies this schemes as a Base Erosion and Profit Shifting practice (hereinafter abbreviated as BEPS). The deep-rooted problems in the international tax scope are not only limited to BEPS. One form of profit shifting is a very detrimental that is controlled foreign companies is also increasingly rife conducted by domestic investors by dividing the stock or dividend to a controlled subsidiary that deliberately established in the country with low tax rates (Yonah and Halabi, 2012: 3). This CFC practice is difficult to reach and investigate because the main perpetrator is the MNC who does not trade its shares in the stock and also divert his property to the State with high protection (the State that apply the territory system).



Picture 1 : Controlled Foreign Companies (CFC) Scheme
Source : Darussalam, 2017

The scheme above (picture 1) illustrated the subsidiary companies established in other countries (foreign subsidiaries) that can be controlled by its shareholders, in the tax literature referred to as "controlled foreign companies" or often abbreviated as CFC. Controlled foreign companies or corporations (CFC) themselves are defined as entities established abroad and domestic taxpayers have control over such entities (Asqolani, 2008). CFC are recognized as a separate taxable entity within foreign jurisdiction and indirectly subject to the tax of the State domicile of shareholders (Fontana, 2008). Company S acts as a foreign subsidiary while Company D is the controlling company. The practice of CFC in the scheme above can save Company tax payment D up to Rp 2.5 Billion as tax payments are already through Company S established in tax haven country (Darussalam, 2017).

An example of a real phenomenon of CFC practice in the State of Indonesia is the Asian Agri Group (Berita Satu, 2014) by transferring the tax subject or tax object to tax haven country with low tax jurisdiction, transferring head office to a country which embraces the territory system, and through intragroup transactions utilizing a 50% ownership threshold that is considered too low. While the practice of CFC on international scale began to emerge with the scheme "Double Irish and Dutch Sandwich" which 2016 ago done by Google company. The scheme is called Double Irish and Dutch Sandwich because it involves two subsidiaries in Irish Country (Irish) and involves treaty haven in Dutch Country (Dutch) (Thorne, 2013). From a CFC perspective the practice exploits the CFC rules in America by creating

an active company in Ireland named Google Ireland Limited (GIL) and establishing a Controlled Company in the Netherlands to transfer income earned from GIL.

In 2017 the realm of international taxation once again has problems with the leaking of documents and that scandal called "Paradise Papers". The document was leaked by a law firm named Appleby based in the State of Bermuda with more than 13.4 million financial statements (International Consortium of Investigative Journalists, 2017) and at least 120 politicians from different countries were involved and designated as the owners of shell companies in that State (News Vise, 2017). The results of the report received from the International Consortium of Investigative Journalist (hereinafter abbreviated as ICIJ) reveal the fact that Apple's company is doing aggressive tax planning using a more simple strategy than Double Irish and Dutch Sandwich by Google. The scheme that made by Apple makes the company is not taxed twice (double non taxation). Such schemes can occur, among others, because Apple companies take advantage of CFC rules in America. Apple utilizes the "manufacturing exception" embodied in the CFC rules in the United States, the rule was originally intended to prevent CFC rules from limiting or preventing US multinationals from expanding their manufacturing operations in other countries (Rosid, 2016).

Not only that way, the tax strategy undertaken by Apple, Nike, Starbucks, Amazon, and others is causing potential loss of USD 240 billion or equivalent to Rp. 3.246 T in various governments in one year (estimate by OECD, 2016). Looking at the phenomenon above makes developing countries and countries with high tax rates feel the potential loss in the practice then reinforced regulations related to CFC. In 2013, the G-20 members (Indonesia included) make recommendation on 15 Action to combat BEPS named "BEPS Action Plan" where the 3rd action of BEPS Action Plan is aimed at "strengthen CFC rules". On this occasion, Indonesia finally changed the regulation concerning CFC which has been 10 years running as stated in Regulation of the Minister of Finance number 256 / PMK.03/2008 to Regulation

of Minister of Finance number 107 / PMK.03 /2017. This research will focus on two Problem Formulation which is:

1. Researcher want to analyze a tax harmony of the CFC regulations in Indonesia whether it is accordance with the nature of rules and would like to see the impact of CFC regulations in Indonesia on start up companies or foreign non exchange business entitties.

The researcher chose both urgency because CFC regulations in Indonesia will adapting tax policy in facing international taxation regime which is the context of assets participation. We saw that Regulation of the Minister of Finance number 107 / PMK.03 / 2017 strongly made on the direct recommendation of BEPS Action Plan (Danang,2018) hence researcher will study whether this regulation has been able to accommodate and be consistent in its application. Then the second urgency arose because the researcher saw that the latest CFC regulations impose a deemed dividend system which in its application is currently unfair for the Indonesia Taxpayer. This problem can triggers domestic taxpayers to ultimately not invest their money into non-exchange business entities (which can inflict a financial loss of their companies) or more extreme action is to move their holding company outside Indonesia (Permana, 2018).

The greatest challenge for any developing country (Indonesia included), which has a low law tax enforcement that should build a strong public policy and represent the national interest rather than the foreign interests or their comprador (Nugroho, 2014: 11). Regardless of the existing problems, CFC regulations in Indonesia are felt to be a fresh air for the government to maximize tax revenues from domestic investors who invest their shares in foreign non-exchange business entities. Researcher will see the intersection of both urgency that exist until find the solutions that can build an effective and efficient tax system. Due to the effective and efficient taxation system, as well as the increased awareness of taxpayers it will affect the tax ratio and economic growth in Indonesia. This is what makes this research felt important to be investigated more deeply.

METHOD

A. Types of Research

Based on the background and problem formulation that have been developed, this research uses descriptive type with qualitative approach in reviewing and analyzing controlled foreign companies (CFC) rules in Indonesia. This study also examines deeper application of CFC rules in terms of combating base erosion and profit shifting (BEPS). Qualitative approach itself according to Denzin and Lincoln (1994: 2) in Emzir defines as a study / research that has a method with a lot of focus, involving interpretive and naturalistic approach to the subject. One of the main strengths in qualitative research is how later this research can provide a broad perspective from researcher.

B. Research Focus

The focus of research in qualitative methods is to focus on the subject matter to be studied, to explain what dimensions are the center of research, and what will be discussed in depth and thoroughly (Bungin, 2012: 41). With the focusing of the research will not widen and the emergence of abundant datas.

Elements that are the main focus of this research are:

1. Analyzing the CFC rules in Indonesia is in accordance with the nature of rules;
 - a. Using the public policy theory from Michael P. Devereux which was re-written into Rosdiana & Irianto book (2014)
 - b. Compiling the answers from Informan 1 (Directorate of International Taxation) and Informan 2 (Vise Managing Partner Taxand Indonesia) and find the consistency of the answer;

C. Type of Data

1. Primary Data

Primary data can be obtained directly (Sugiyono, 2012: 225). Source from primary data is the result of interview conducted by the researcher to the resource related

to the analysis of the implementation of CFC rules in Indonesia. Interviews conducted to several informants must have at least three criterias in accordance with the standardization of qualitative research methods established by Neuman which was :

- a) the informan is totally familiar with the culture and is in position witness significant events make a good informant;
- b) the individual is currently involved in the field;
- c) the person can spend time with the researcher.

Considering from the criteria already outlined above, following parties related to the research problem, among them are :

- a) Directorate of International Taxation

Which aimed to know and expertise in field of tax policy, CFC rules and BEPS practice.

- b) Vice Managing Partner at Taxand Indonesia

Which aimed to know the explanation of CFC rules and their implications to the taxpayers.

C. Data Collection Technique

According from Sugiyono (2005: 62), Data collection techniques is the most strategic step in the study, because the main goal in research is to get the data. Meanwhile, according to Zuhriah (2006: 171) the use of appropriate techniques and data collection tools to obtain objective data. The formulation of the problem that has been compiled can not be answered and resolved if the research uses data collection techniques that are less precise. Written in below is a data technique will used to answers the problem formulation :

- a) In-Depth Interview

This technique is very significant to understanding more deeply about the perception of each individual to the phenomenon being studied. This study uses in-depth interviews that are semi-structured interviews in which the

researcher prepares guide questions to be used as a guide when conducting interviews (Bandur, 2016: 108).

b) Record Review

Each qualitative researcher is expected to have documents to record and / or trace the research problem under investigation. The common documents in qualitative research that can be used as research instruments are diaries, research journals, letters, formal documents, invitations, decision results, announcements, and government documents (laws and government regulations).

c) Literature Study

Objectives or achievements of this literature study that will be able to obtain a description of the object under study. Literature study is needed to support the analysis of existing documents so the data required more diverse and valid. Literature study is needed by the researcher to later be able to objectively compile or compare the applicable CFC rules in Indonesia.

D. Data Analysis

After passing through the process of data collection, then the next stage that must be done by the researcher is analyzing the existing data. Researcher use interactive model analysis According to Miles and Huberman (1992), analysis of classification and comparative triangulation study.

RESULT

A. Data Presentation Technique

The results obtained by further researcher will be described by using data presentation techniques. Where the researcher present a summary of the answers of the informants. In this sub-section will be presented each focus of the problem of which has been described in research methods above. This research has two research focus which is to analyze CFC rules in Indonesia according their nature of rules through policy analysis from Devereux and reviewing the impact of CFC regulation in Indonesia on start up companies or foreign non exchange business entitites.

The first research focus data can be described as follows:

1. **Using the public policy theory from Michael P. Devereux which was re-written into Rosdiana & Irianto book (2014).**

Taxation laws in Indonesia are constantly changing over times. Many regulations are deemed worthy of review because they are incompatible with current circumstances. The proliferation of companies that using some high technology resulted in Taxpayers to be one step ahead of the regulation itself. This research wishes to study further by focusing on Controlled Foreign Companies regulation where the implementing Regulation is made by the government as a derivative from the Income Tax Law Article 18 paragraph 2 which reads:

“(Article 18, paragraph 2) The Minister of Finance is authorized to determine when a dividend is obtained by a resident Taxpayer for capital participation in a foreign business entity other than a business entity selling its shares on the stock exchange, subject to the following conditions: a) the amount of taxpayer's investment in the country at least 50% (fifty percent) of the total paid-up shares, or b) Together with other domestic taxpayers owning equity participation of at least 50% (fifty percent) of the total paid shares”

From the above provisions the government finally made the implementing regulations by issuing KMK 650 / KMK.04 / 1994 as the first implementing regulation governing the practice of CFCs. KMK 650/ KMK.04 / 1994 and PMK 256 / PMK.03 / 2008 is confirmed by the government having the same regulatory

feature, only on PMK 256 / PMK.03 / 2008 and later erased the list of blacklist country. Still, in the newest of CFC regulation (PMK 107/PMK.03/2017) did not add any rules regarding a list of blacklist country. The purpose of deleting the list of blacklist country is because the government does not want any inconsistency between the CFC regulations and the Tax Treaty or the Indonesian Tax Avoidance Agreement (P3B) with other countries. This is further explained by Mr. Danang as an Informant from Directorate of International Taxation.

Researcher asked for clearer reasons for the removal of blacklist country on PMK 256 / PMK.03 / 2008 / and PMK 107 / PMK.03 / 2017. Here is the confirmation and explanation from Informant 1 as the party from the Directorate of International Taxation.

Based on the information provided by the informant 1, the researcher can see the efforts made by the government to keep updating its regulations by looking at the suitability of the stronger legal base or an existing regulations so that no one will weaken or broken the rules by each others. The focus of the first study will elaborate further on the conformity of CFC regulations by looking at the nature of rules through public policies devised by Devereux. If later it is not appropriate then it can be used as a suggestion to build performance from policy makers. The policy analysis method using four general procedures in policy making which will be used as a reference to see the suitability of the nature of rules. In this below line is a brief presentation of data accordance with four general procedures by Devereux :

1) What should the tax base be: income, expenditure, or a hybrid?

In the context of the tax base, the researcher finds the main concern as the reference in the imposition of CFC regulations for the domestic taxpayer that is related to the dividend income. In the former

rules of dividends are imposed in accordance with the report of the domestic taxpayers so that it makes the taxpayer creative to commit fraud or fill in the information that is not true in the annual tax return. This ultimately led the government to apply the scheme of deemed dividend, which is the taxpayer must include their dividend first, when there will be non-conformities from their real dividend then there is the process of restitution. This is accordance with the confirmation provided by informant 1 and 2, which was :

This makes the imposition of deemed dividend become controversial, since there are two opposite of the interpretation both in terms of government or their taxpayers. Researcher will be discussed further to found a problem solving in the field of tax base in the conclusion segment.

2) What Should the tax rate schedule be?

The next thing that can be studied in the making of tax policy is about tax rate. Tax rate is very important in determining tax imposition basis. In the latest CFC regulation not yet regulated on tariffs, PMK 107 / PMK.03 / 2017 only provides information relating layer-to-layer determination as long as existing ownership, either direct or indirect ownership. Significant differences occurred in the update from PMK 107 /PMK.03 /2017 which included "indirect ownership" that had not been enacted in the previous regulation. The absence of tax rate limits in layer-to-layer imposition is considered burden some taxpayers who invest a little (not dominant) but it still needs to be subject to CFC regulations This was confirmed by the two informants as follows:

There are two different perceptions from the point of view of the government as well as the tax consultant, this differences of interpretation which will be examined more deeply in the data analysis.

3) How should international income flows be taxed?

Describe from the next point presented by Devereux in Rosdiana & Irianto, in the third point is how the international income flows be taxed. This is also a constraint of previous regulation (PMK 256 / PMK.03 / 2008) because it can not accommodate complex business schemes, when 10 years running the government also claimed to find a new business scheme that is using an intermediary company or build an intermediary company in a tax haven country. The scheme may violate the imposition that should be taxed in the income of the internasiol scale,

Researcher can see different point of view about taxation related to international income flows. The government found that the “missed” consideration from their oversight in the realm of CFC regulations for one of them is the business scheme whereas the tax consultant believes that not all profit shifting leads to 'abusive' actions, which can be examined more deeply in data analysis.

4) How should environmental taxes be designed?

Environmental taxes are key instruments for achieving sustainability in the economy, environmental taxes may also increase the prices of production inputs and thus induce the producers to adopt more environmentally friendly technologies (Kosonen, 2012). The last point described by Devereux in Rosdiana & Irianto is what tax rules should be designed and suitable in their environment. This can define CFC regulations that initially raise concerns that researchers will have an impact on the decline of domestic investors who want to invest their shares abroad.

The government looks has its own reasons with the issue of the latest regulation on CFCs, the government insists that this regulation does not limit the taxpayer's space in investing abroad. This is confirmed by the statement of informant 1 as follows.

From the description above a bit much to answer the last point of the translation given by Devereux. The government wants a regulation to be environmentally friendly and well received by its taxpayers. In terms of CFC regulation implementation, the researcher sees differences interpretation by both government and tax consultants (who represent taxpayers). The government also feels that there should be socialization related to the CFC's periphery and must issue supporting policies.

2. Analyze the impact of CFC regulations in Indonesia on start up companies or non exchange business entitites.

Base on the article written by Shmidt “Why start up companies stay private” was one of the major reasons a company stays private is that there are few requirements for reporting. For example, a private company is not subject to Securities and Exchange Commission (SEC) rules, which require annual reporting and third-party auditing (Shmidt, 2012). This reason was in line with the government's fear of taxpayers who create controlled foreign companies outside Indonesia and it’s difficult to monitor by the government itself. This is the main factor why the previous rule of CFCs regulation (PMK 256/PMK.03/2008) is not working well. Here is the confirmation given by the informant 1:

The other consideration when looking from the perspective of tax consultants that taxpayers who invest in foreign non-exchange business entity should fill some new form that is still difficult to be filled correctly by the taxpayer. This is confirmed directly by informant 2:

From that reason makes the researcher will reconstruct more deeply to analyze the impacts that arise for start-up and foreign non-exchange business entities will later be elaborated more deeply on data analysis.

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DISCUSSION

A. GAP between Theory and Reality

In line with the theory presented in Rosdiana & Irianto (2014: 85), the key issues in tax policy are :

1. What should the tax base be : income, expenditure, or a hybrid?
2. What should the tax rate schedule be?
3. How should international income flows be taxed?
4. How should environmental taxes be designed?

Describes the four points presented above by Devereux, researcher make a brief analysis of the conformity of CFC regulations in Indonesia with their nature of rules. The first point discuss about tax base. Tax base is defined as the total value of assets, properties or income in a certain area or jurisdiction. Tax Base as a reference in making CFC rules in Indonesia is "when taxes are imposed on the dividends" so the main focus in taxation on CFC rules is "dividends" from asset participation. After 10 years enacted, the previous regulation (PMK 256 / PMK.03 / 2008) is not seattled because it does not regulate in detail for the dividends field (it makes the Taxpayer take advantage of long time deferral).

Therefore the government takes a firm nature by making new policies of the deemed dividend rule as an update in PMK 107 / PMK.03 / 2017. Informant 3 as the policy maker admitted that the government has difficulty in determining the tariff of deemed dividend because some of the countries which become the reference regarding CFC regulations made by Indonesia also do not specify of the benchmark. So the government adopted a common benchmark in the imposition of deemed dividend is "profit multiplied net income after tax" which was felt unfair and too big, it is described directly by the informant 2 as a tax consultant who handles the clientnya directly.

The second thing that concerns is about the tax rate, where the latest regulations (PMK 107 / PMK.03 / 2017) also not fully regulate. The regulations in PMK 107 /

PMK.03 / 2017 only provide information regarding layer-to-layer imposition of either direct or indirect ownership. Significant differences occurred in the update in the latest regulation (PMK 107 / PMK.03 / 2017) which included "indirect ownership" that had not been enacted in the previous regulation (PMK 256 / PMK.03 / 2008). The absence of tax rate limits in the layer-to-layer imposition is considered burdensome taxpayers who invest a little (not dominant) but it still needs to be subject to CFC regulations. The researcher is concerned the layer-per-layer imposition makes the taxpayer dishonest in their annual tax report and it is confirmed by Informant 2 that the taxpayer may or may have done with countries that do not contributed with exchange of information.

Informant 1 as policymaker can clarify related to the imposition of the layer which is the main target of government is not the small shareholder in a company but the dominant shareholder who can make decision in General Meeting of Shareholders (AGM), the Government giving the opinion that if the domestic taxpayer investing their shares in foreign non-exclusive entities, they must have specific objectives and considerations that the government should review. Actually in this point only the difference of interpretation is the main obstacle seen by researcher.

Describe from the next point presented by Devereux in Rosdiana & Irianto is how the international income flows be taxed. This is also a constraint of the previous regulation (PMK 256 / PMK.03 / 2008) because it cannot accommodate complex business schemes, when ten years running the government also claimed to find a new business scheme that is using an intermediary company and so on. The reason was in line with the book written by Mury (2011: 6) on International Taxes, Mury describes that basically the international tax based on the domestic tax provisions applicable to taxpayers in the country that earn income from abroad and the taxpayer who earns an overseas income in Indonesia. In addition to domestic provisions, international taxes are also based on tax treaties and global tax practices (Gunadi, 1997).

Analyzing from the description above, in other words, international tax is the imposition of a taxation field with a globalized, wider, and more complex, and not only taxes a domestic taxpayer. In an International Tax there is also a State relationship with one other State in the case of tax treaty (tax treaty). The main reason for the removal of the blacklist country on the previous regulation (PMK 256 / PMK.03 / 2008) and the latest regulation (PMK 107 / PMK.03 / 2017) is that the regulation (regarding CFC) is in line with the Double Taxation Avoidance Regulations (P3B) conducted by Indonesia with other countries , this also makes CFC regulations do not violate the other rules. The latest regulation (107 / PMK.03 / 2017) is more solid and consistent because the companies with direct and indirect assets participation are ultimately subject to CFC regulations when it exceeds ownership above 50% or certain other qualifications. So there's no company that escaped the regulation as long as it is suspect and qualify for suspicion.

The last point described by Devereux in Rosdiana & Irianto is what tax rules should be designed and suitable in their environment. This can define CFC regulations that initially raise concerns that researcher will have an impact on the decline of domestic investors who want to invest their shares abroad. The concern of the researcher was justified by Informant 2 as a Tax Consultant, he argued that the taxpayer will take an action to change permanent resident or move his holding company outside Indonesia. But Informant 2 says that is not a simple thing and it takes very careful consideration from the business strategy side and the cost. Informant 1, as the representative of Directorate of International Taxation, hopes that the latest regulation on CFC will not become a bulwark for stakeholders who want to invest their capital abroad because the government's aim is to arrange those parties who want to avoid tax without intending to hampering domestic taxpayer investment activity.

The ambiguous of interpretation and understanding again becomes an obstacle in the reality that exist in the field. The explanation described by the government is in line with the tax planning theory in a book written by Pohan (2016: 8) where tax

planning is a set of strategies for managing accounting and corporate finance to minimize tax obligations in ways that do not violate the tax regulations (in legal way), because Indonesia itself still considers legal tax planning in accordance with the corridor of tax laws. From various informants, the researcher can give an analysis that the latest regulation (PMK 107 / PMK.03 / 2017) is a policy alternative from the previous regulation (PMK 256 / PMK.03 / 2008) and has been able to accommodate from the previous regulation. Evaluation which can be given since the first regulation time applied (already one year running) that should be increasing their socialization of the regulation so there is no difference in interpretation between taxpayers and the government. The application of deemed dividend that makes the taxpayer must report all dividends. It makes taxpayers hope that the crediting process will be as simple as possible. the response from the Tax Consultant regarding the legal hook of PMK 107 / PMK.03 / 2017 which can inhibit the implementation of the PMK in the community, the government is expected to improve the Act so on a later its policy derivation is not used as material test by the parties that do objection.

CONCLUSION

The latest data analysis is that researcher want to see the impact of the application of CFC regulations with start-up companies and non-exchange entities. Based on the statement given by the two informants, the researcher found a pattern of the consistency from the both informants. It described CFC regulations are deliberately designed to prevent profit shifting from equity participation schemes where the main focus is assets participation on non-exchange business entity (or those that do not floor on the state of Securities Exchange) this fact in line with the existing reality that start-up companies are dominant as a private companies. In the article written by Tax Mantra (2017) recently, incorporation of Private Companies in India has seen significant growth with introduction of Companies Act 2013 which has made incorporation comparatively easier.

Moreover, the concept of One Person Company (OPC) has also come for individuals who want to keep ownership of the entity with them. Generally Private Limited Company is managed by the shareholders themselves or they hire directors to run the company on their behalf. One of the advantages of private company in start-up business (ie the case in India) that its shareholder is the owner of the company so it has many dominant right in making decision in company. Another advantage is that under OPC even with one shareholder, the company can be combined. From this phenomenon researcher can understand why CFC regulations should be enforced in a country, because start-up company was established in a small business which is managed directly by owner and using crowdfunding.

CFC regulations may "burdensome" their domestic taxpayers who have other goals to invest there. from the statement given by informant 2 that the indication of the taxpayer to "postpone" the investment of capital due to the latest regulations from the CFC.

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