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Repurchase Agreement: Dual Perspectives in Indonesian Income Tax Law

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ABSTRACT: There are two fundamental issues of taxing repo based on Indonesian Income Tax Law. First, there is no specific tax law addressing repo transaction and second, Indonesia applies hybrid income tax system, global and schedular income tax. This paper aims to describes and analyses two perspectives, the global dan schedular system, of taxing repo based on Indonesian Income Tax Law. From legal perspective, a repo is taxed under schedular income tax system where it views a repo as two transactions. Meanwhile, from economic perspective, a repo is viewed as a single transaction that is based on comprehensive income tax system. Although, prevailing law principle favors the first perspective, the latter is logically more sensible and far more equitable than the first. Regulatory measures based on a comprehensive income tax system are needed to resolve the dispute.

Keywords: Repurchase Agreement, Legal Perspective, Economic Perspective, Comprehensive Income Tax System, Schedular Income Tax System

INTRODUCTION

When Indonesia experienced shortage in its money market back in 2014, there were high demands for repurchase agreements (repo) (Kurniawan, 2014). Since then, repo becomes important instrument in Indonesia money market, and even, on 19 August 2016, the 7-day repo rate has become a reference rate which is used by the central bank of Indonesia (Bank Indonesia, n.d.). However, the increasing of repo transactions has not been followed by adequate income tax law and regulations. As a result, there is ambiguity and dualism in terms of tax treatment of such transactions.

Repo is basically an agreement in which a seller of securities sell the securities to a buyer and at the same time the seller agrees and commits to repurchase the securities at a certain price at a future date (International Capital Market Association, n.d.). Therefore, a repo consists of two-legged transaction, which are the securities sale and reacquisition. Consequently, the repurchase price includes agreed interest as stated in the agreement (Acharya & Öncü, 2011; Schultz & Bockian, 2017). For that reason, repo can be viewed as secured or collateralised loan in which the seller

acting as short-term debtor while the buyer as short-term creditor. In this paper, I use the terms "seller" or "debtor" and "buyer" or "creditor" interchangeably.

An interesting aspect of repo analysis is that it has two points of view (Al-Rushou & Al Saeed, 2008). First, tax legal perspective that views a repo consists of two transactions which are sale and buy-back or repurchase of securities, where the buyer is only temporary owner of the securities(Reiff, 2022). Second, based on economic or accounting perspective that views a repo as a loan agreement (Reiff, 2022). Furthermore, those views affect tax treatment that should be applied, considering that Indonesian tax law regime implements schedular income tax for certain types of income, including some income derived from securities such as bond interest and dividend.

There are two main categories of income derived from a repo transaction, which are repo interest as stated in the agreement and manufactured income (International Capital Market Association, n.d.), that is income derived from the securities, i.e. dividend. One of the differences between repo interest and manufactured income is that the repo interest can be calculated in advance, while sometimes the manufactured income cannot be calculated in advance, depending on the type of the securities. There is a possibility of other income derived by an agent or third party related to some type of repo that is the agent's fee. However, there is no ambiguity on such income according to Indonesian Income Tax Law (Ordower, 2014).

This paper aims to explain and analyse the dualism of perspectives relating to the nature of repo transaction and the income derived from these transactions according to Indonesian Income Tax Law. However, this paper does not discuss cross-border repo transactions because it focuses on problems and debates in domestic tax law.

METHOD

This paper is designed using qualitative research method in order to describe, explain, and analyse Indonesian Income Tax Law regarding repo transaction (Hurtado-Parrado et al., 2022). The method is chosen because the approach on the discussion on this paper is based on implementation of positive tax law and its gap with the ideal provision relating to repo transaction. Linos and Carlson (2017) stated that qualitative methods are particularly well suited for law reviews. However, to circumscribe the analysis and discussion, I only explain and discuss repo transaction of bonds and stocks. Furthermore, the principle analysis of those two types of security is sufficient to explain other types of repo's collaterals.

RESULT AND DISCUSSION

1. Mechanism and Income From Repo Transaction

Repo consists of two legs of transactions. The first leg is completed when the seller (the debtor) sells securities to the buyer (the creditor) (Gottardi et al., 2019; Ruchin, 2011; Sissoko, 2019). In this leg, the securities will be legally delivered or transferred to the buyer or in a case of tri-party repo, to third-party agent as security custodian. Consequently, the buyer should transfer the money

or cash to buy the securities. The second leg is done when the seller repurchases the securities from the buyer at specified date and at agreed upon price, which is definitely higher than the initial purchase. Commonly, this arrangement is covered in a written agreement, therefore it is called repurchase agreement (Reiff, 2022).
The duration between the first leg and the second leg or the "holding period" according to the agreement can be overnight up to one year (Choudhry, 2010) . Generally, the longer holding period of the buyer the higher risk will be faced by the buyer and as a result, the yield or the repo interest will be higher.

In substance, the buyer is acting as a creditor who gives a loan to the seller and the collateral is the securities being sold. Therefore, the legal owner of the collateral (or the securities) is the creditor, provided that there is actual sale transaction between the debtor and the creditor. Although, from economic or accounting perspective, repo transaction and collateralised loan are substantially very similar transactions, but those two transactions have a substantial difference from legal perspective (Makwae, 2021). The effect of the legal owner of the collateral in repo is that if there is default event by the debtor, the creditor or the buyer has the right to sell the collateral immediately without consent of the seller or the creditor (Choudhry, 2010).

The types of income generated in repo transaction can be categorised into three types, which are repo interest (International Capital Market Association, n.d.), margin (Reiff, 2022), and manufactured income or payment (Fernando, 2022).

Repo interest is the main income, because this type of income is the driver of repo, whether the transaction is agreed and exercised by the parties. It is basically the expected or required return of the buyer which is stated in the agreement. It is calculated by multiplying the repo rate and the initial price or deducting buyback price with initial price (Armakolla et al., 2019; Baklanova et al., 2019).

Margin is another type of income from repo, but it is derived only in specific cases and mainly expected as protection. There are two types of margin which are initial margin and variation margin or haircut (choudhry, 2010). Initial margin is derived when the cash proceed from sale of securities, in the first leg of repo transaction, is lower than the amount of delivered or transferred securities by the seller (choudhry, 2010). Meanwhile, variation margin is basically applied in a case of increasing or decreasing of market value of the securities (choudhry, 2010). If the market value of the securities increases by certain amount (as stated in the agreement), then the seller will usually demand additional cash equivalent. In contrast, when the market value drops, then the buyer will demand additional collaterals or securities.

Manufactured income, the third category of income, is income related to the securities and it is paid by the issuer of the securities that does not involve in repo transaction. The type of income varies depending on the securities being sold, such as bond interest, dividend, or certificate of deposit's interest. The manufactured income in terms of legal is the buyer's right, however repo agreement usually provides that the manufactured income should be transferred back to the seller, the substantial owner of the securities.

To describe all of the incomes might be involved in a repo transaction, there is a simple illustration as follows:

X Corp is the buyer and Y Corp is the seller in a repo transaction. On 1 January 2020, Y Corp agreed to sell its 1,000 bonds to X Corp at US$1,290,000.00 and to repurchase it at US$1,300,000.00 on 28 February 2020. The bonds at the sale date have total market value at US$1,297,000.00 while the face value (actual value) of the bond is US$1,295,000.00. However, since the bonds market value dropped to US$1,290,000.00, on 31 January 2020, X Corp demanded other bonds to be delivered worth at US$5,000 as additional collateral to maintain the agreed value of collateral. On 1 February 2020, Y Corp fulfilled its obligation to deliver US$5,000 extra bonds. At the same time, Z Corp (the bonds issuer) paid US$2,500 as the bonds interest to X Corp. On 2 February 2019, X Corp transferred back US$2,500 bonds interest to Y Corp. Finally, the repo transaction completed when Y Corp bought back the bonds at US$1,300,000.00 on 28 February 2020.

From the illustration, it is clear that the repo interest is US$10,000 which is the difference between sale price and repurchase price. The initial margin is the difference between the face value and the purchase price which is US$7,000, but this type of gain would not be realised until the seller fails to repurchase the bonds (default). The variation margin which was derived by X Corp is US$5,000. The variation margin is also another type of unrealised gain. In addition, US$2,500 transferred by Z Corp to X Corp is the manufactured income (bonds interest).

2. Income Tax System In Indonesia

In general, there are two income tax system in Indonesia, which are global or comprehensive income tax (Cnossen, 2018; Fischer, 2015)and schedular income tax system (Bucheli & Olivieri, 2019; Creedy & Sanz-Sanz, 2011). Broadly speaking, global income tax is based on comprehensive concept of income which was developed by Georg Von Schanz in 1896, Robert M. Haig in 1921, and lastly by Henry Simons in 1938 and it has been termed as Schanz-Haig-Simons model (Holmes, 2001). Meanwhile, some scholars believe that schedular income tax system is rooted from the United Kingdom income taxation in 1803 (Holmes, 2001). The basic idea of schedular income tax system was to separate income based on its type, such as business profit or gain from sale of land, in order to reduce taxpayer's burden of tax. When the schedular income tax system was introduced in the United Kingdom, it was initially imposed on individual taxpayer (Holmes, 2001).

Comprehensive income definition in Indonesian Tax Law is provided in Article 4 Section (1) Law No.7 Year 1983 concerning Income Tax as amended several times and last by Law No. 7 Year 2021 concerning Harmonization of Tax Regulations (Indonesian Income Tax Law). According to the article, Income is any increase in economics capacity received by or accrued by a taxpayer, both originating from Indonesia as well as from outside Indonesia, which may be utilised for consumption or increasing the taxpayer's wealth, by any name and any form (Law of the Republic of Indonesia, 1983) (Law of the Republic of Indonesia, 2021).

The definition is similar with Schanz-Haig-Simons comprehensive income which can be simply defined as net increase or accretion of wealth or economic power during a period of time. Based on Indonesian Income Tax Law, comprehensive income should be taxed by applying progressive tax rate for individual taxpayer or single rate for corporation taxpayer as provided in Article 17 of the law (Law of the Republic of Indonesia, 1983) (Law of the Republic of Indonesia, 2021). Most

of types of income will be imposed with the same rate as stated in article 17 and hence, this provision is so-called "general provision" of income tax law.

Unlike comprehensive income, there is no definition of schedular income in Indonesian Tax Law. However, schedular income tax in Indonesian Income Tax Law is mostly called "final income tax" despite another slightly different type of tax which is known as income tax based on special norm of calculation.

There are some articles in Indonesian Tax Law that contain imposition of final income tax. Notwithstanding, there is one particular article that is commonly known as main source of imposition based on schedular income tax system. The article is Article 4 Section (2) of Indonesian Income Tax Law. The article provides that several types of income, mostly passive income, such as bond interest, saving interest, deposit interest, sale of stocks which are traded in Indonesia Stock Exchange, and income from construction business, may be imposed with final income tax (Law of the Republic of Indonesia, 1983) (Law of the Republic of Indonesia, 2021). Furthermore, the imposition of final income tax on several types of income will be prescribed more detail by government regulations.

Even though, there is no clear definition of what is final income tax and its characteristics, based on Government Regulation No. 94 of 2010, we can conclude some distinctive characteristics of Final income tax compared to comprehensive income tax. Those differences are as follows:

1. Specific incomes that are imposed with final income tax should be separated from comprehensive income and therefore there is no need to accumulate those income with comprehensive income for calculating taxable income in the end of the taxable year. Each type of income liable to a final income tax will be taxed individually and mostly paid off by withholding mechanism if the income provider is a withholding agent. As a result, there are several income tax rates in Indonesia Income Tax Law, especially because of the application of final income tax.

2. Costs or expenses exist due to a specific income liable to a final income tax cannot be deducted from the income (gross income). If there is an expense that is not directly related to the income, or the expense incurred for generating the income and comprehensive income, the expense should be separated and calculated proportionally according to both incomes. Thus, the expense portion of specific income cannot be deducted from the income. Such method is called joint cost allocation.
   Therefore, based on this characteristic, final income tax can be imposed on any circumstance of the taxpayer regardless if there is profit or loss from the specific income. Succinctly, the taxable income of the specific income liable to a final income tax is the gross amount of such income.

3. The isolation of specific income liable to a final income tax is much more emphasized with the prohibition of loss resulted from comprehensive income to be compensated with the specific income. Therefore, not only disallowance of loss on the same specific income or other specific incomes under final income tax regime, but also loss from comprehensive income cannot be compensated with such income.

Most of the final income tax imposed by withholding mechanism, but withholding income tax in Indonesian Income Tax Law is not always referred to final income tax. Furthermore, Article 19 of Government Regulation No. 94 of 2010 provides that final income tax regime is a special law (lex specialis) and comprehensive income tax regime is a general law, thus final income tax law overrides comprehensive income tax law based on "lex specialis derogat legi generali" doctrine (Government Regulation of The Republic of Indonesia, 2010). However, this doctrine adds more complexities on a tax matter of repurchase agreement.

The application of hybrid income tax system in Indonesia is the central issue in this article, resulting on dualism of tax perspectives of a repo transaction, although as lex specialis, the final income tax regime should be prioritised.

3. Repo transaction from tax legal perspective

This perspective is based on the implementation and interpretation of schedular income tax system in which prevailing law applied to some specific incomes. According to this perspective, repo is regarded merely from Indonesian tax legal point-of-view which suggests that the sale and the buyback or repurchase treated as if they are two independent transactions. This perspective suggests that the repurchase event treated as if there is no relation with the sale event of the securities. Thus, the two transactions are considered as an outright sale and buyback of the securities. There is no different of tax treatment between sell-buyback repo and classic repo.

3.1. Bond case

Based on Indonesian Income Tax Law, the initial and variation margin of a repo transaction with collateral in form of bonds is called discount. Discount in a sale of bonds is classified as specific income liable to final income tax, therefore it is taxed under schedular income tax system and should be calculated individually.

Government Regulation No. 91 Year 2021 concerning Income Tax on Income in Form of Bond Interest Which is Received or Accrued by Resident Taxpayer and Permanent Establishment provides that any discount from sale price or face value/ par value of bonds is subject to final income tax. The definition of Bond interest in that regulation is extended including premium and discount of bond. The final income tax rate of such income is 10% from the gross amount. However, if there is loss from sale of coupon bonds, the loss can be deducted from the gross amount of bond interest in the current year (Government Regulation of The Republic of Indonesia, 2021).

There are two types of resident taxpayer and permanent establishment, Pension Fund and Bank, that are excluded from the imposition of final income tax. For those two taxpayers, income in form of bond interest is liable under general law. Meanwhile, foreign/non-resident taxpayer is taxed at 20% of the taxable income or according to the tax treaty between Indonesia and the resident country.

The confounding of tax treatment under schedular income tax system is the existence or realisation of the income being taxed. In general, according to the definition of income as provided in Article 4 Section (1) of Indonesian Income Tax Law, any income is realised when it exists to be utilised

for acquiring assets or consumption. In the case of bonds' repo, the discount is not going to be realised until two events have already occurred, either there will be termination of repo contract (repurchase event) or any default by the seller or debtor. In the repurchase event, substantially, the discount transformed into repo interest, because the discount is included in the repurchase price of the bond. Meanwhile, in the default event, when the seller fails to buyback the bonds, the discount can be realised if the buyer sells the bonds to other party above the initial purchase. However, based on the Government Regulation concerning Bond Interest, both the realised gain which is the repo interest and the unrealised gain which is the margin or the discount are liable to final income tax.

For illustration, if there are zero-coupon bonds with face value of US$500,000.00 bought for US$499,000.00 in a repo contract, the buyer derived discount worth US$1,000.00. Even though this discount is not realised until the termination of repo contract or default event, this unrealised gain is still subject of final income tax. If the seller buyback the bonds for US$500.000, in the termination date of repo contract or buyback date, the buyer derived US$1,000.00 that is called repo interest. Therefore, the unrealised discount will be replaced by repo interest. This interest is also a taxable income of final income tax. On the other hand, when the seller cannot fulfil the contract (in the event of default) and the buyer decides to sell the bonds to other party for US$500,000.00, the buyer derives the same US$1,000.00 gain from the sale of the bonds. The imposition of final income tax based on the illustration are as follows: 1) if the termination of repo contract completed without default, the unrealised discount of the buyer from the purchase price US$1,000.00 as well as the repo interest with that same amount will be taxed equally; 2) if there is default event, the unrealised discount which turn into realised discount will also be taxed.

From the above discussion, we can conclude that there are at least two main problems in the implementation of final income tax on repo transaction of bond. The first problem is economic double taxation exists in the transaction as it is described in the illustration. Second, since repo transaction is regarded as two independent transactions or in other words, that the Indonesian Income Tax Law disregarded the repo contract, the imposition of schedular tax system for specific income in a repo transaction potentially violates the definition of income as provided in Article 4 Section (1) of the Indonesian Income Tax Law. The violation lies on the taxing mechanism of unrealised gain, the discount, under final income tax.

Another possible type of income in repo of bond is manufactured income. Again, the schedular income tax system operates on this type of income. The law and regulations applied to the bond interest is exactly the same as the discount. The issue and complication of taxing the interest is also similar with the discount. It is known that legal owner of the bond after the first leg of repo is the buyer, despite the fact that based on repo's contract, the economic or beneficial owner is the seller, or it can be said that the buyer is a temporary owner of the bond. If there is bond interest during repo's term, from tax legal perspective the interest is derived by the buyer.

However, based on the repo contract, especially classic repo, the interest should be transferred immediately to the seller as economic owner of the bond with the same amount and hence, the manufactured income exists and the seller is actually the ultimate recipient of the interest (choudhry, 2010). According to Government Regulation No. 91 Year 2021, the buyer as a legal owner of the bond should be taxed through withholding agent with the same rate as the discount.

Therefore, economic double taxation exists, because substantially, the interest already transformed into manufactured income and the tax subject should be the seller as a beneficial owner of the bond. As in the case of the discount, the interest income that is normally taxed once will be taxed twice, only because the tax subject is different person. To add another perplexity, the same interest that is received by the seller should be taxed under global income tax and it should be calculated altogether with other income derived by the seller. Thus, the same income is treated differently only because it is received by two different persons.

The taxing mechanism of bond interest under final income tax will be justified only if there would be no manufactured income derived by the seller. However, in the repo contract the condition happens if the seller fails to repurchase the bonds or the bond interest is not paid during repo contract.

Ultimate income that is expected as return for the creditor by entering repo arrangement is repo interest. Repo interest in case of repo of bond will be treated the same as the discount. As shortly, the interest only earned by the buyer if the seller fulfils its obligation in the repo contract to repurchase the bond, otherwise if the seller breaches the contract, the repo interest will not be realised, but it will be transformed into discount. From the substantive perspective, only tax imposition on repo interest is the most valid income tax in repo transaction. However, because of the operation of Indonesian's final income tax with its unique characteristics, repo interest can be problematic. As discussed earlier, the discount already taxed albeit it is unrealised, thus if repo interest should be taxed, the buyer has to pay income tax twice. This condition of course against equity principle of taxation.

Another perplexing fact of the implementation of final income tax on repo of bonds is that the discount, the bond interest, and the repo interest will be taxed with the same rate and treated as bond interest provided that all of them are defined as bond interest according to the Government Regulation concerning Bond Interest.

3.2. Stock case

Indonesian Income Tax Law differentiates tax treatment of sale of stocks into two main categories, which are sale of stocks on Indonesia Stock Exchange (ISE) and sale of stocks off Indonesia Stock Exchange (over the counter or private sale of stocks). Income tax for income from sale of stocks is provided in Government Regulation No. 41 of 1994 concerning Income Tax on Income from Sale of Stock on Stock Exchange amended by Government Regulation No. 14 of 1997. On the other hand, income from sale of stocks other than sale of stocks on ISE provided directly within Indonesian Income Tax Law.

The tax treatments of sale of stocks in Indonesia are quite complex. According to the government regulation, there are three tax treatments according to the type of the stocks and the sale mechanism. First, the sale of non-founder's stocks on ISE which is imposed with final income tax at 0,1% of the sale proceed (the gross amount) regardless there is capital gain or loss. Second, the sale of founder's stocks on ISE and third, the sale of any kind of stocks off or outside ISE.

In a case of sale of founder's stocks on ISE, taxpayer will have two options of paying the additional income tax of founder's stock sale. First option, before sale the founder's stock, the founder's

stocks holders can pay additional final income tax in advance at 0,5% of stocks price at the date of initial public offering in a period of no later than one month after the founder's stocks have been traded on ISE. If the taxpayers choose to exercise the option, they will pay final income tax twice, they should pay the additional final income tax at 0,5% within the time period and 0,1% of final income tax (the normal tax) when they have already sold the founder's stock. Therefore, if the founder's stocks holders opt to pay additional income tax in advance, when there is sale of the founder's stocks, the seller or the founder's stocks holders should only pay 0,1% of final income tax on the sale event (Government Regulation of The Republic of Indonesia, 1994) (Government Regulation of The Republic of Indonesia, 1997)

Second, if the taxpayers (the founder's stocks holders) refuse to pay additional final income tax within the period, the income will be imposed with two income tax regimes, which are the final income tax for the sale event regardless there is gain or loss and when there is capital gain, it will be taxed under comprehensive income tax. If there is no capital gain, the taxpayers should not pay additional income tax. The tax rate of the second option depends on the type of the taxpayer, whether individual or corporate taxpayer, and especially for individual taxpayer, the rate also depends on the income tax bracket because the capital gain will be calculated altogether with other comprehensive income. Furthermore, when the founder's stocks are sold to other party, the stocks are no longer considered as founder's stocks.

The sale of stocks off or outside ISE means that the stocks are sold without trading mechanism on ISE. In this case, the seller pays income tax under comprehensive income tax and only liable to the income tax if there is a capital gain from the transaction.

In a repo transaction of stocks, complexities and double even triple income tax does exist. In the case of stocks which are sold on ISE, for non-founder's stocks and founder's stocks that the holder opts to pay additional income tax in advance, the initial margin is taxed 0,1% from the gross amount of sale and special for the founder's stocks will be taxed with additional final income tax at 0,5%. The holder is only considered opting to pay in advance if 0,5% additional final income tax is paid within one month after the founder's stocks have been traded on ISE. Meanwhile, the founder's stocks which are sold on ISE but the holder of the stocks does not choose the payment of additional income tax in advance, the additional income tax at 0,5% of initial margin will not be imposed with income tax because it has not been realised. Hence, whether the buyer of the stocks derived initial or variation margin or not, as long as the stocks are traded on ISE, the seller of the stocks should pay final income tax. The result of final income tax applied on repo transactions of stocks will be similar with the application of repo transactions of bonds, unless for stocks which are traded outside ISE. The stocks which are traded outside ISE will only be liable to comprehensive income tax. This mean that there is no income tax for initial margin and variation margin since the margin has not been realised.

Meanwhile, the repo interest derived by the buyer at the end of repo contract if the interest paid separately from the stocks' price, it will be taxed under comprehensive income tax. However, if the interest included in the stocks' repurchase price, the income tax which should be imposed is only 0,1% of final income tax based on the gross amount of repurchase price.

Notwithstanding, if dividend distributed to the stockholder during repo period, then there is manufactured income for the seller in repo transaction since the buyer (the stockholder during repo) is a temporary owner and should transfer the dividend to the seller. Again, there is complexity and economic double tax for the manufactured income.

Based on Indonesian Income Tax Law, income tax for dividend which is derived by individual taxpayer and corporate taxpayer are different. Dividend derived by individual is liable to 10% of final income tax from the gross amount of the dividend, whereas dividend derived by corporate is liable to comprehensive income tax. In the case of repo, when the dividend is received by the buyer and the buyer is an individual, the dividend has already been taxed through withholding mechanism by the payor. While, if the buyer is a corporation, there is no liable income tax since the dividend should be transferred immediately to the buyer. Double tax and complexity do exist if the buyer is an individual taxpayer, because despite the fact that the dividend has been taxed, the seller (the ultimate income recipient) should also bear the income tax burden as part of its comprehensive income in the end of the fiscal year. In contrast, when the buyer is a corporation, double tax and such complexity do not exist. However, based on the revised articles of income tax law in Law No 11 of 2020 concerning Job Creation (the Omnibus Law), dividend which is derived by individual taxpayer may not be liable to income tax if it is invested in Indonesia under certain terms and condition.

The result of tax treatment of repo transaction with stocks collateral are varied depending on the circumstances. The result of the application of final income tax is somewhat similar with bonds despite that the tax rates are different. Moreover, the implementation of comprehensive income tax in repo of stocks reveal the perplexity and discrimination on the tax treatment for exactly the same transactions. From the discussion, we can conclude that if a repo transaction using stocks as collateral, the imposition of the income tax can be double or even triple, especially for stocks which are traded on ISE.

4. Repo Transaction Viewed From Accounting Perspective

As aforementioned, Indonesian prevailing tax law does not provide specific law with respect to repo transaction. Therefore, repo transaction is not regarded as one set of transaction but as separated transactions, predominantly provided under schedular income tax system depending on repo's collateral. However, a general principle in relation with accounting has been provided in Article 28 of Law No. 6 of 1983 concerning General Provisions and Tax Procedures as amended several times and lastly by Law No. 7 of 2021 concerning Harmonization of Tax Regulations. Article 28 Section (1) provides that corporate taxpayer and individual taxpayer who is conducting business activities or performing independent personal services shall be obliged to maintain bookkeeping (1983a) (2021). Furthermore, Article 28 Section (5) provides that the bookkeeping shall be maintained consistently in either accrual or cash basis. Notwithstanding, Elucidation of Article 28 Section (5) states that a consistency principle provides the same accounting principles shall be used from year to year, to prevent any shifting of profit or loss. The principle, for example, applies to as among other things income recognition. The consistent application of the accounting principles has also stated in several divisions in the Elucidation of Indonesian Income Tax Law, including the general elucidation of the law.

The general principle in terms of consistency in applying accounting principles can be used as a basis to interpret the imposition of income tax on repo transaction. As of 1 January 2014, Indonesia as a member G-20 countries has substantially adopted International Financial Reporting Standards (IFRS) (IFRS Foundation, 2017). IFRS provides guidance in treating repo based on the risk and return concept or economic substance as opposed to legal form of such transaction. In economic substance viewpoint, the seller in a repo transaction is still the beneficial owner and risk bearer of securities in the transaction, even though the securities have been sold as part of the agreement.

The recognition principle of financial assets, including bond and stock in IFRS 9 Financial Instruments (current standard) remains the same as its predecessor, IAS 39 Financial Instruments: Recognition and Measurement. Based on IFRS 9 Paragraph 3.2.6 (a)-(b), The derecognition of financial assets in a case of transfer, such as in repo transaction, is basically applied if all the risks and rewards of a financial asset substantially have been transferred to other entity. Furthermore, IFRS 9 Paragraph 3.2.6 (c) prescribes that if there is a doubt whether there is substantial transfer of all risks and rewards of a financial asset, then the entity should assess control of the asset. If the entity has control over a financial asset, the entity should remain recognise the asset (IAS Plus, 2012).

From the brief discussion of accounting treatment on repo transaction, we can conclude that the accounting (beneficial) owner of a financial instrument in a repo is remain the seller. There is strong argument that support the conclusion, which is the risks, rewards, and control of the asset are still on the seller given the fact that there is a contract in which the buyer cannot sell or pledge the asset to other party and the manufactured income is still earned by the seller.

If a repo transaction is treated based on the accounting perspective, repo will be liable under comprehensive income tax. Therefore, the tax treatment of repo does not depend on the type of the collateral (securities being sold) because the tax proceed will be the same. All types of income that are derived from repo transaction will be calculated altogether as a comprehensive income and consequently there is no double income tax. Furthermore, there is no flaw on taxing unrealised gain, which is happened in a case of taxing repo transaction under final income tax.

In accounting or economic perspective, the manufactured income is only liable to the seller as an ultimate income recipient, not the buyer, even though the manufactured income is received firstly by the buyer as the legal owner of the securities. On the other hand, the repo interest is liable to the buyer only if the seller has already repurchased the securities (the collateral). If the seller fails to repurchase the securities, there is no income tax for the repo interest.

In this perspective, the tax treatment of repo is not problematic and much simpler, unlike tax treatment based on the legal perspective. Therefore, it provides certainty and fairness to the taxpayer.

CONCLUSION

In Indonesia Income Tax Law, repo transaction is perceived as unique and novel. Taxing repo under Indonesian Income Tax Law is quite complex, problematic, and lack of fairness. The root

cause of the complexity is implementation of hybrid income tax system in Indonesian Income Tax Law, comprehensive and schedular income tax system. Even though, there is no specific income tax regulation on repo transaction, the strongest argument is that repo is taxed under schedular income tax system based on lex specialis derogat legi generali doctrine. There is another argument that is much more logical, which support taxing repo under comprehensive income tax system.

The schedular income tax system views repo from legal aspect of a repo transaction which is the same as outright sale of securities. The problem and complexity of the tax treatment based on this treatment is there are various and segmented tax treatment and tariff (final income tax) depending on the type of the securities that are involved in repo transaction. Under final income tax (the schedular income tax system), repo transaction will be taxed with various scenarios and it will end up on double taxation of income. The double income tax will exist because the schedular income tax system fails to identify and view repo as one-set of transactions. It is only focus on legal aspect of each leg of transaction and hence the system does not treat repo transaction comprehensively. Therefore, the system imposes tax not only to beneficial owner or the ultimate recipient of the income but also the legal owner of the income which actually is only surrogate entity or agent for the beneficial owner, such as in a case of repo of bond. As a result, exactly same transaction (the repo transaction) is taxed with different tax treatment and tariff.
The implementation of final income tax is certainly harsh and very burdensome for the taxpayer. Even, the party, that does not economically earn the income, should also bears income tax burden.

On the other hand, although based on prevailing Indonesian Income Tax Law, the comprehensive income tax system has weaker argument to be implemented on repo transaction, it is much more reasonable and logical. There is no various tax treatment for the same transaction (the repo transaction), because it views repo as one-set of transaction. The system will view repo based on accounting or economic perspective, the loan arrangement. Therefore, it avoids double taxation on repo transaction. The implementation of comprehensive income tax regime on repo transaction also promotes fairness and simplicity.

Treating repo merely based on its legal aspect will cause a failure in examining and overlooking the transaction as a whole scheme and thus creating complexity and inequality in the tax treatment. The justification of taxing repo based on economic perspective will be more solid, if the repo transaction does not use written agreement of repurchasing the securities, such as in a case of sell/buyback repo.

The problem of taxing repo will persist, unless Indonesian Government issues new tax law or regulation that will overrule the implementation of schedular income tax law regime and therefore taxing repo will be based on comprehensive income tax regime. Alternatively, Indonesian Government may issue specific regulation concerning repo based on comprehensive income tax regime. This alternative is not easy since there are some special regulations (lex specialis) that are applied and interconnected with repo transaction.

Another solution is not tax solution but modification of the provision in the repo agreement, so that repo transaction does not require sale of the securities. This solution will ignore repo's nature because repo will be the same as common collateralised loan agreement. However, this solution,

by far, is the easiest and it has been implemented since 2016 by the relevant authority governing (Financial Services Authority/OJK) repo transaction (Dwijayanto, 2016).

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