

# Optimization of Tax Audit in Connection with Constructive Dividends (Case Study: KPP Madya Bekasi)

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## ABSTRACT

This study aims to evaluate the tax imposition on constructive dividends in tax audits at Bekasi Medium Tax Office. DGT often make adjustments to transfer pricing transactions by imposing taxes on constructive dividends. However, some studies show that the imposition of tax on constructive dividends has the potential to cause double taxation and other problems. This study uses OECD evaluation criteria, namely relevance, coherence, effectiveness, efficiency, impact, and sustainability. This research is expected to be an additional reference for policy makers in making policies related to constructive dividends. This research was conducted using a qualitative case study method by triangulating the results of interviews with the documents and literature studies. The result showed that in general the taxation of constructive dividend have met the OECD evaluation criteria. This study suggests that clearer technical guidelines and more socialization are still needed so that the taxation of constructive dividends runs more optimally.

Keywords: Constructive Dividend; Secondary adjustment; Tax Audit; Tax Avoidance; OECD Framework

## *Optimalisasi Pemeriksaan Pajak Sehubungan dengan Dividen Konstruktif Studi Kasus: KPP Madya Bekasi*

### ABSTRAK

Penelitian ini bertujuan untuk mengevaluasi pengenaan pajak atas dividen konstruktif dalam pemeriksaan pajak di KPP Madya Bekasi. DJP sering melakukan penyesuaian atas transaksi transfer pricing dengan mengenakan pajak atas dividen konstruktif. Namun, beberapa penelitian menunjukkan bahwa pengenaan pajak atas dividen konstruktif berpotensi menimbulkan pajak berganda dan masalah lainnya. Penelitian ini menggunakan kriteria evaluasi OECD, yaitu relevansi, koherensi, efektivitas, efisiensi, dampak, dan keberlanjutan. Penelitian ini diharapkan dapat menjadi referensi tambahan bagi para pembuat kebijakan dalam membuat kebijakan terkait dividen konstruktif. Penelitian ini dilakukan dengan menggunakan metode studi kasus kualitatif dengan melakukan triangulasi antara hasil wawancara dengan dokumen dan studi literatur. Hasil penelitian menunjukkan bahwa secara umum pengenaan pajak atas dividen konstruktif telah memenuhi kriteria evaluasi OECD. Penelitian ini menyarankan bahwa masih diperlukan petunjuk teknis yang lebih jelas dan sosialisasi yang lebih banyak agar pemajakan atas dividen konstruktif berjalan lebih optimal.

Kata Kunci: Dividen Konstruktif; Penyesuaian Sekunder; Pemeriksaan Pajak; Penghindaran Pajak; OECD Framework

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## INTRODUCTION

In accordance with the provisions of Article 18 paragraph 3 of the Law Number 7 Year 1983 on Income Tax, the Directorate General of Taxes is authorized to conduct a transfer pricing audit. Transfer pricing itself is a tool used to manage internal operations and evaluate managerial performance (Atkinson et al., 2012; Eden & Smith, 2022). United Nations (2021) also defines transfer pricing as a general term for the pricing of transactions between related parties. One of the reasons for the success of multinational corporations is their ability to create “internal markets” through transfer pricing within their organizations and eliminate market imperfections (Cecchini et al., 2013; Rugman & Eden, 2017). However, transfer pricing is also a strategy often used by multinational companies to minimize the tax burden borne globally (Kumar et al., 2021). This strategy is often considered to have the potential to harm a country, even according to Sebele-Mpofu et al. (2021) transfer pricing strategies are often used to pay lower taxes in developing countries. Therefore, every tax authority needs to monitor transfer pricing transactions (Tse et al., 2016).

In accordance with the Appendix of PER-22/PJ/2013 Audit Guidelines for Taxpayers with Special Relationship, in tax audits, the terms primary adjustment and secondary adjustment are known. According to this regulation, primary adjustment is the difference between the price or profit of affiliated transactions and the fair price or profit, such transactions can be in the form of sales, purchases, interest payments, royalties, intragroup services, and others. Furthermore, there is the term secondary adjustment which is a further correction of the primary adjustment. According to OECD (2022) *secondary adjustment* is an adjustment arising from the imposition of tax on secondary transactions. Secondary transactions are constructive transactions that can be in the form of constructive dividends, constructive equity contributions, or constructive loans. In Indonesia, it is imposed in the form of constructive dividends in accordance with the Explanation of Article 18 Paragraph 3 of the Income Tax Law. In accordance with these provisions, the difference or correction due to differences in the value of transactions affected by special relationships that are not in accordance with the Fairness and Usual Business Principles (PKKU) with transactions that are in accordance with PKKU is considered a dividend and is subject to income tax in accordance with the provisions of legislation in the field of taxation. Meanwhile, in the latest derivative regulation related to this matter regulated in PMK 172 Tahun 2023 concerning the Application of PKKU in Transactions Affected by Special Relationships, Article 37 regulates that if there is a difference or correction as mentioned earlier, the difference is an indirect profit distribution to affiliated parties which is treated as a dividend.

Constructive dividend can be defined as a variety of payments whether in cash or in kind made by companies to shareholders or associated persons, which are not expressed as dividends, may nevertheless be regarded by the tax law as distributions of profits and treated for tax purposes as if they were dividends (OECD, 2021). The reason for the imposition of constructive dividends is as a form of adjustment in connection with the primary adjustment. In order to make the actual allocation of profits consistent with the primary adjustment, a constructive transaction can be imposed under domestic rules, in which the difference in profits

in respect of the primary adjustment is treated as if it had been transferred in another form and also taxed according to existing regulations (OECD, 2022).

For example, when the auditor makes corrections to purchase costs or unreasonable interest costs paid to affiliated parties abroad, the cost correction is called a primary adjustment. And on the value of the correction made on the transaction, a secondary adjustment is made in the form of a constructive dividend that is taxed according to tax law. The tax imposition can be in the form of Income Tax Article 23 or Income Tax Article 26 on dividends, depending on the transaction conditions. This has also recently been emphasized through instructions from the relevant fields in the DGT.

But in reality there are still differences in the understanding of both tax auditors and taxpayers regarding the application of constructive dividends. According to Kristanto (2023) the application of secondary adjustment still faces various obstacles that have the potential to cause tax disputes. Not all tax auditors have applied this correction to the primary adjustment which basically has similar implications. There are still differences in understanding what conditions can be considered as constructive dividends and how they are imposed. This is also known from interviews with tax auditors.

In addition, secondary adjustment corrections are often considered inconsistent in their application in the field (Oetomo et al., 2023). Putra (2022) also stated that the secondary adjustment correction is considered to create new conditions of uncertainty for business actors. Court decisions are also quite varied regarding secondary adjustment corrections. For example, an appeal by PT Duta Kuda Indonesia on the imposition of constructive dividend tax which originated from the correction of sales to related parties. Based on PUT-007136.35/20191PP/M.VA dated March 1, 2021, the Tax Court partially granted the taxpayer's appeal, namely the imposition of income tax rates on The dividend should be in accordance with the provisions of Tax Treaty. Another case example is PUT-007982.13/2021/PP/M.VB dated April 17, 2023, an appeal filed by PT Coats Rejo Indonesia. The appeal was in relation to the imposition of constructive dividend tax from the payment of royalty fees deemed unreasonable. The Tax Court rejected the appeal filed by the taxpayer.

From the explanation above, it can be seen that there are differences in the understanding of various parties regarding constructive dividends. Previous research conducted by Daholi dan Dewantara (2020) discusses PMK-22/PMK.03/2020 and some of its implications and problems and one of them is related to secondary adjustment. This study also discusses the issue of imposing constructive dividends in transactions between sister companies and also the potential for double taxation. This study concludes the position of PMK- 22 as an effort by the Indonesian government to strengthen and clarify the rules around transfer pricing.

Manca (2019) discusses the issue of the imposition of secondary adjustment in connection with the case of royalty transactions in Italy. Based on this research, it is known that Italy does not yet have a legal device that regulates secondary adjustment and the imposition of taxes on it in its domestic tax law. This becomes a problem in taxation in Italy. This research also discusses various possible alternatives related to secondary adjustment, including suggestions from the

OECD with respect to repatriation methods and efforts to minimize double taxation effects.

Dugar & Bhandari (2017) discuss the imposition of secondary adjustment in India which began in 2017. This study explains why secondary adjustment is needed in India and under what conditions this correction can be applied. In addition, it also explains the exceptions to the imposition of secondary adjustment as well as the repatriation provisions and requirements. This research also highlights the potential increase in the number of tax disputes even though this policy is carried out following existing best practices.

Weiss (2016) highlights the problem of applying secondary adjustment in Germany and its relationship with Article 9 of the OECD Model. This study discusses the various criteria for special relationships in Germany and their effect on the hidden distribution assumption. This study also discusses the potential imposition of double taxation in connection with the application of hidden distribution which may be different from the existing tax treaty.

Polito (2012) states that constructive dividends have the potential to cause double taxation. In his research from the Norm Integrationist point of view, there are circumstances where the constructive dividend doctrine in the context of United States rules cannot be applied because it is double taxation, wasteful, and counterproductive. The constructive dividend doctrine should be applied if there is a greater distortion from double taxation to be prevented.

Research in the United States by Liu et al. (2011) states that constructive dividends are essentially dividends. This study concluded that in the United States tax regulations constructive dividends are qualified dividends and should be subject to a 15% tax rate based on the opinions of tax authorities, expert opinions, and tax courts. However, the distribution must be sourced from the company's current income or profit.

From the discussion of several previous studies above, it can be seen that the imposition of tax on constructive dividends has the potential to cause double taxation and other problems. Therefore, this research aims to evaluate the tax imposition on constructive dividends at KPP Madya Bekasi. Research related to constructive dividends, especially in connection with the issuance of PMK 172, is still quite limited in Indonesia. KPP Madya Bekasi itself was chosen because it quite often conducts tax audits in the field of transfer pricing and based on the results of interviews quite often encounters problems related to the imposition of tax on constructive dividends. In addition, many taxpayers in KPP Madya Bekasi are subsidiaries or part of a multinational company group.

This research is expected to be an additional reference related to the discussion of transfer pricing, especially related to constructive dividend. In addition, the result of this research is expected to be an input for DGT in making transfer pricing audit policy or imposition of secondary adjustment correction. Thus, it is expected that an understanding and uniformity of application related to secondary adjustment in the form of constructive dividend can be achieved for the optimization of tax audit related to transfer pricing.

## RESEARCH METHODS

This research is a descriptive qualitative research with a case study method. Primary data collection is done by interviews conducted online. While the secondary data collected are documents related to the imposition of tax on constructive dividends. There are 11 resource persons for interviews in this study, namely four tax auditors at KPP Madya Bekasi (F1, F2, F3, F4), one employee at the Directorate of Taxation Regulation II (D1), one employee at the Directorate of International Taxation (D2), one employee of the Directorate of Audit and Collection (D3), two tax consultants (K1, K2), and two taxpayers (W1, W2). The determination of resource persons was carried out using purposive sampling method, namely resource persons who have been in contact or directly related to the imposition of tax on constructive dividends in tax audits. The use of this method is intended to make the research more efficient and effective.

The first stage of this research is carried out by determining the formulation of problems in the research as a reference for making questions and determining the data needed. Furthermore, information search was conducted both from sources and supporting documents (OECD Transfer Pricing Guideline, OECD Model Tax Convention, Income Tax Law, PP 55 of 2022, PMK 22 of 2020, PMK 172 of 2023). To validate the results of data collection, triangulation is carried out between interview data and the results of secondary data processing and existing theories. And finally, conclusions are drawn based on data and analysis.

In evaluating the tax imposition on constructive dividends, the OECD (2021) evaluation criteria are used, which consist of: relevance, coherence, effectiveness, efficiency, impact, and sustainability. The first evaluation criterion is relevance. Relevance relates to testing the extent to which a policy relates or is related to the main objectives of the policy makers. There are three dimensions of relevance analysis that are appropriate for this study: fit with needs, sensitive and responsive to context, and quality of design.

The second evaluation criterion of coherence relates to the extent to which a policy is in line or in line with other instruments. The evaluation includes both internal and external coherence. Internal coherence is the synergy and linkage between a policy and other instruments made by an institution, which in this research is DGT. Meanwhile, external coherence is the synergy of a policy from an institution with other institutions in the same context.

The third evaluation criterion of effectiveness is related to the achievement of the objectives of making a policy. The effectiveness criterion evaluation looks at the extent to which the objectives were achieved or expected to be achieved, including the results obtained in different groups. Effectiveness is more related to the direct results obtained and is different from impact which is more related to higher-level or broader effects. The dimensions examined in this study include: achievement of objectives, different outcomes across groups or sectors, and understanding of influencing factors.

The fourth evaluation criterion, namely efficiency, is related to testing the resources used in a policy. With this criterion, it can be seen whether the resources used are appropriate or comparable to the results obtained. The dimensions tested in this study include: economic efficiency and operational efficiency.

The fifth evaluation criterion, impact, relates to what changes or differences

result from a policy. This criterion examines the extent to which a policy has produced or is expected to produce significant positive or negative impacts, whether intentional or unintentional, at a higher level. The dimensions tested in the impact criteria include: significance and unintended impacts.

The last evaluation criterion, sustainability, relates to whether a policy can survive both the policy and its benefits. This evaluation involves analyzing resilience, risks, and possible trade-offs. The dimensions tested in the sustainability criteria include: continued positive effects and risks or potential trade-offs.

## RESULTS AND DISCUSSION

The first evaluation criterion is relevance. The results showed that in the relevance evaluation criteria, the dimensions of suitability to needs and design quality had been fulfilled. Meanwhile, the context-sensitive dimension has not been fully met.

The first dimension, which is related to the suitability of the needs, is tested by asking whether the imposition of tax on constructive dividends is necessary in Indonesia and what is the background. Based on the results of interviews with resource persons from policy makers (PP2, PI, and P2), the information obtained is that taxation of constructive dividends is indeed necessary as a form of further adjustment of primary correction. Constructive dividends are important in the adjustment process. on the fairness of a transaction affected by a special relationship. Constructive dividends are required to harmonize tax accounts and cash accounts that become different in connection with the primary adjustment. The difference between the correction related to the primary adjustment and the commercial transaction in the context of Indonesian tax regulations is considered as an indirect distribution of profit.

When compared with the OECD (2022) in the TP Guidelines, it is explained that secondary adjustment is carried out as a further adjustment so that the transactions that occur commercially become appropriate or in line with the primary correction, namely by setting the unreasonable difference in the form of constructive transactions. And in Indonesia, secondary adjustment in the form of dividends is chosen because this form is considered the easiest to impose. Because there is no follow-up as if imposing secondary adjustment in the form of constructive debt or distribution of constructive ownership which can later lead to further constructive interest or further constructive dividends. This was also conveyed in the interview with resource person D1 from PP2.

*"First one, secondary adjustment is a fictitious transaction, meaning that it doesn't really exist. There is not really a loan but we consider it a loan. Now above the notional loan, we will make further fiction, in the form of fictitious interest on the fictitious loan. That's twice the fiction, two stages of fiction. Well first, are we ready with two levels of fiction like that? And the second one, it will impose high costs for DGT to calculate the fair interest and for the taxpayers as well. Perhaps there will be another dispute, how much should be the notional interest payable on the constructive loan. So the dispute is multi-layered." – D1*

In Indonesian tax regulations, the difference arising in connection with the primary adjustment is considered an indirect distribution of profit to affiliated

entities so that it is treated as a dividend. This is regulated in Article 36 paragraph 6 of Government Regulation 55 Year 2022 Regarding Adjustment of Regulations in the Income Tax Sector and Article 37 paragraph 1 of PMK 172. When compared with the weighing clause in PMK 172, it can be seen that the consideration for the formation of this regulation is to provide justice, legal certainty, and ease in exercising rights and fulfilling obligations in special relationship transactions. So that every norm or instrument in it should be made by considering these objectives. And it can be seen that the selection of the constructive dividend mechanism is already the most suitable option for Indonesia's needs. From the explanation above, it can be concluded that the dimension of suitability to needs is fulfilled because secondary adjustment is indeed needed in Indonesia as a further adjustment after primary correction.

Furthermore, the context-sensitive dimension is evaluated by asking how constructive dividend taxation is carried out in different conditions. The interviews with resource persons from P2, PP2, and PI show that this correction can be applied in almost all transfer pricing audit conditions. The interviewee from DG. PP2 added that the imposition of constructive dividend is not sensitive in the context of special relationship due to management and technology relationship or blood relationship. This is because there is no ownership relationship which is one of the nature of dividends as in the following interview.

*"How about the transaction with a sister company? This is actually quite a complicated issue. The issue is even more complicated if I change the transaction not with a sister company but a transaction with an affiliated party, where the affiliation is not because of shares but because of control of management or technology. Or the transaction between persons for example, the transaction is between the son and the father. Is the transaction between person which not comply to the arm's length principle also considered dividend? Meanwhile, according to our understanding, dividends are only relevant if it is an entity"* - D1

Meanwhile, resource person D2 from PI responded that this indeed did cause debate in the field, but the tax rules actually already clearly regulate this.

*"Are sister companies subject to constructive dividend? That is indeed a debate of understanding for those in the field. Because several times when I gave training at KPP before PMK 172 was not clear, who exactly should be subject to it, does it have to be the shareholder? ... Furthermore, if we read PMK 172, it is even clearer that it is treated as indirect profit sharing."* - D2

According to the latest regulation, PMK 172, it is emphasized that secondary adjustment can be imposed on transfer pricing corrections with sister companies, even special relationships arising from management or technology control. The provision is mentioned in the provisions of Article 38 paragraph (1) letter b, namely the provision of constructive dividend taxation stipulated in Article 37 applies to all forms of special relationships. Therefore, it can be seen from this regulation that there is no provision indicating that special relationship transactions that do not fulfill PKKU are not subject to constructive dividends because the special relationship is not due to ownership or shares. Indonesian taxation rules do not regulate other forms of secondary adjustment other than constructive dividends.

When compared to the application of secondary adjustment in India in Dugar & Bhandari (2017), the provisions of secondary adjustment in Indonesia are quite different. The provisions in India have regulated transaction criteria that do not need to be subject to secondary adjustment corrections such as the number of transactions, repatriation, and others. Although there is no specific context in secondary adjustment in Indonesia, the repatriation provisions have provided a way out for taxpayers not to be subject to secondary adjustment. In addition, the ease of dividend imposition and the need to align primary and commercial corrections in various special relationship contexts mentioned earlier make this policy still quite acceptable.

So from the discussion, it can be concluded that although there are some parts where taxation of constructive dividends can be considered insensitive to the context, but for clear reasons and necessity factors, this policy is still acceptable. So for this dimension it can be concluded that it is not fully fulfilled but still with clear reasons and objectives.

The last dimension, design quality, is tested with the question of the potential for double taxation with the imposition of tax on constructive dividends. This potential double taxation is also a concern of the OECD, as can be seen in Paragraph 4.70 Section C.5 on secondary adjustment in the OECD TP Guidelines. The latest regulation, PMK-172, has actually provided one of the solutions to prevent double taxation with the mechanism in Chapter VII of the regulation, namely the Mutual Agreement Procedure (MAP). In addition, double taxation can be minimized by the provisions of Article 37 paragraph (4), which is the provision of agreeing primary correction and repatriation to avoid secondary adjustment.

Previous research has highlighted the potential for double taxation in relation to secondary adjustment corrections. However, based on the results of interviews with various sources, although tax auditors, taxpayers, and policy makers are aware of this potential, in reality it is not an issue that often arises in the field. The main issues of concern to both taxpayers and tax consultants are related to the strength of the primary correction and the amount of the secondary correction value itself. The strength of the primary correction is related to whether or not the potential for tax avoidance is large and whether the primary correction is based on the right calculation and clear legal basis. This is in accordance with the results of interviews with all examiner and taxpayer resource persons. Such as the response submitted by taxpayer W1 regarding the statement as follows.

*"But that was never a concern. The issue of, we've been taxed here, we'll be taxed again in Korea, it's never been a concern" - W1*

In general, taxpayers are not too concerned about the potential imposition of double taxation. The main concern of taxpayers is the correctness of the application of primary adjustment. So it can be said that the design quality dimension is sufficiently fulfilled.

The second evaluation criterion is coherence, in the coherence evaluation criteria, the external coherence dimension has been fulfilled while the internal coherence cannot be said to be fulfilled. The first dimension evaluated in coherence is internal coherence. This dimension is evaluated by asking whether tax auditors at KPP Madya Bekasi have the same understanding regarding the imposition of tax on constructive dividends. The results of interviews with tax auditors show



that there are still differences in the application of tax imposition on constructive dividends. Some of the differences in understanding are such as whether or not there is a need to transfer money out like dividends in general, whether or not it can be imposed on sister companies, and its imposition in domestic transfer pricing. The most striking difference in understanding or application occurs in the application of secondary adjustment for transfer pricing between domestic companies.

The taxpayers themselves see that there are still differences in understanding from tax auditors regarding this matter. However, the policy-making unit states that basically the rules are clear enough and there have even been several official memoranda of affirmation regarding this matter. They are aware of these doubts but they should be answered by the issuance of PMK-172 which should be clearer, more complete, and fairer. From the discussion above, it can be seen that basically internal coherence is not fulfilled because there are still various examiners' understanding of constructive dividends. Similarly, the implementation or treatment in the field also turns out to be different. Although the policy maker states that basically the rules are clear and have also been emphasized.

The second dimension is external coherence. To evaluate the dimension, it is done with the statement of the existence of regulations or policies outside the tax rules that conflict with the imposition of tax on constructive dividends. From the results of the interviews, almost all of them stated that no conflicting external rules were found. One interviewee from the examiner mentioned that he had encountered taxpayers who used the definition of dividends in the PT Law to refute the correction of constructive dividends. This is also reinforced by the response from consultant K1, who stated that the PT Law and PSAK are strong legal bases, especially when challenging constructive dividend corrections imposed between sister companies. Related to this, both resource persons from P2, PP2, and PI stated that the taxpayer's response in this case was not correct. Because in constructive dividends, the position of the tax rules is *lex specialis* because it is intended for tax purposes, not for corporate governance as referred to in the Limited Company Law. Based on interviewee D2, the OECD also stated that in terms of defining dividends, it is necessary to look at domestic rules before using international provisions. And in domestic rules, the more relevant rules, namely tax rules, are used first.

What the source is referring to is the OECD (2017) Commentary to the Model Tax Convention, namely for Article 10 Dividends. In commentary Paragraph 3, it is stated that it is impossible to define dividends in a complete and comprehensive manner for all OECD members. In the process of revising the 1963 Draft Convention, a study was conducted to find a solution to make the definition of dividend independent of domestic law. But the study concluded that, given the dissimilarities among member countries in the areas of corporate law and tax law, it was unlikely to establish a definition of the concept of dividend that did not rely on domestic law. From this, it can be seen that dividend-related regulations are highly dependent on domestic rules and in that case, of course, for tax purposes, the tax rules are the first to be used or applied.

So it can be concluded that the regulation related to constructive dividends is a different regulation from the dividend regulation in the Limited Company Law. The constructive dividend regulation is related to the application of PKKU in transfer pricing while the Limited Company Law regulates different things. From the discussion above, it can be seen that external coherence has been fulfilled, because in general, all parties do not see any contradiction in the taxation of constructive dividends with provisions outside the tax provisions except for tax consultants and some taxpayers. From these two dimensions, it can be concluded that in terms of coherence, it can be said that the taxation of constructive dividends is still lacking.

The third evaluation criterion is effectiveness, which has generally been met. The research results of the effectiveness criteria show that the three dimensions tested have generally been met. The first dimension, namely goal achievement, was tested with the question of what is the main objective of constructive dividend taxation. Based on the results of interviews with policy makers from P2, there are two main objectives of constructive dividend taxation, namely to encourage compliance and align the primary adjustment with the commercial transaction. In the second objective, there are consequences that arise, namely the emergence of economic capabilities which are tax objects that have not been taxed. So it can be said that the second objective is analogously related to tax revenue. Taxpayer interviewees also view that the purpose of constructive dividend taxation is a revenue objective.

Furthermore, when it was confirmed to tax auditors, whether the imposition of tax on constructive dividends succeeded in reducing tax avoidance, tax auditors generally stated that it was quite successful. Based on the opinion of interviewee F4, the taxation of constructive dividends can neutralize the effect of tax avoidance efforts through transfer pricing mechanisms and will also have a deterrent effect. This can be seen from the examiner's response as follows.

*"So the tax avoidance is really neutralized. So, if the question is whether it succeeds in reducing tax avoidance, obviously yes, it is more fair and even has a deterrent effect. From the sanction, it should also be successful" - F4*

Another source of auditors F2 and F3, also added that constructive dividend taxation is quite effective for taxpayers who use transfer pricing strategies that can be seen from the company's continuous loss. Because for the condition of loss companies, sometimes the imposition of primary adjustment will only reduce the amount of loss or overpayment requested. So that because there is no tax to be paid, it can encourage taxpayers to continue to use their strategy and maintain a continuous commercial loss company. From the above discussion it can be concluded that the dimension of goal achievement in the effectiveness criteria has been met.

The next dimension tested was the different results for each group. This dimension is evaluated by asking whether there are certain business sectors that tend to agree or reject the correction of secondary adjustment. In general, the examiner stated that the two things are not related. The type of taxpayer's business sector has no relationship with whether or not they agree with the imposition of tax on constructive dividends. However, if it is related to the scale of business, one of the auditors stated that large companies tend to disagree with the taxation of

constructive dividends and small companies tend to agree. So it can be said that constructive dividends do not show different results in each group, in this case the business sector.

The last dimension is influencing factors. This dimension is tested with the question, what are the factors that influence taxpayers to agree to the imposition of tax on constructive dividends. Almost all the interviewees who were asked about this, namely taxpayers, tax consultants, and tax auditors, agreed that the main factor for taxpayers to agree with the secondary adjustment lies in the primary adjustment. This means that the basis for correction in the primary adjustment is strong, which can be seen from the size of the risk of tax avoidance, the correct calculation, and a clear legal basis. The tax auditor resource person also added that another factor is the value of the secondary adjustment correction itself. The taxpayer considers whether there are payments that must still be made by the taxpayer either because the condition is still a loss, overpayment, or taxation of constructive dividends that do not cause tax underpayment because the commercial transaction has the same rate as dividends in the P3B. Other factors according to the auditors are taxpayer awareness and company profitability.

The fourth evaluation criterion is efficiency. The results show that economic efficiency has been met while the operational dimension has not been fully met. The economic efficiency dimension is evaluated with the question of whether there are additional costs incurred in connection with the taxation of constructive dividends. The resource person from Dit. P2 stated that there are no additional costs incurred in connection with this policy. In the sense that taxation on constructive dividend is part of the examination in relation to transfer pricing, not conducted specifically or separate examination. The same thing was conveyed by resource persons from Dit. PP2 and PI that the cost that may arise is related to socialization or education. Especially, for example, in connection with the newly issued PMK-172. However, this is a normal thing for a newly issued policy, and does not apply only in relation to constructive dividends.

The second dimension is operational efficiency. This dimension is evaluated with several questions. The first question is whether taxation of constructive dividends is complicated or difficult. When this question was asked to the interviewees from both examiners and regulators, they generally admitted that it is basically not difficult. Secondary adjustment in the form of dividends is the simplest option to implement. The difficulty actually lies in testing PKKU or primary adjustment as stated by the F1 examiner interviewee. However, the examiners added that difficulties may arise in trying to encourage taxpayers to agree to the correction.

The next question to test operational efficiency is whether the existing regulations have been able to explain well about constructive dividends. Interviewee W1 answered that with the audit and the explanation from the examiner, taxpayers understand more about constructive dividends. However, another taxpayer W2 explained that the regulations already exist but taxpayers still do not understand or are confused regarding the legal basis reference. Moreover, the lack of socialization related to this matter.

From the discussion above, it can be said that the efficiency criteria are basically met. Operational efficiency has constraints due to the lack of internal

coherence, including the lack of socialization regarding this matter. However, from an operational perspective, the ease of implementation has been fulfilled.

The fifth evaluation criterion is impact. The dimension that has not been fully met is the dimension of unexpected impact in relation to the potential to increase tax disputes. The significance dimension can generally be said to have been met. The significance dimension is evaluated with the question of whether constructive dividend taxation will increase taxpayer compliance. Tax consultant interviewee K1 stated that theoretically, constructive dividend taxation should encourage taxpayer compliance. However, related to this statement, taxpayers provide different answers. Interviewee W1 stated that constructive dividend taxation will clearly increase taxpayer compliance in fulfilling tax obligations. Meanwhile, taxpayer W2 stated that he could not fully assess this, the informant stated that without constructive dividends, taxpayers had tried to comply.

To evaluate the significance, it is also done through a statement submitted to tax auditors and policy makers, namely how much benefit is obtained from the imposition of tax on constructive dividends. Tax auditors argue that in addition to being beneficial in terms of tax revenue, taxation of constructive dividends is also beneficial in an effort to prevent tax avoidance. The Tax Auditor also emphasizes the importance of secondary adjustment in the face of continuous losses so that they never have a tax burden to pay. From this discussion, it can be concluded that the significance dimension has been fulfilled.

The next dimension of impact is unexpected impact. The evaluation of this dimension is carried out with the question of whether there are any impacts arising from the policy of imposing tax on constructive dividends other than those expected. Interviewees from tax auditors generally mentioned that the unexpected effect is to increase disputes or increase the potential for disputes with taxpayers. This is intended because there is already a potential dispute in the primary adjustment, the potential dispute will be even greater with additional corrections from the secondary adjustment. The interviewees conveyed this as in the following interview excerpt.

*"Maybe it will increase... what's the name? Objections and appeals ... Like PT AAA, they agreed about the primary adjustment. But did not agree about the secondary. [In the end] objected." - F2*

Taxpayer interviewee W2 also confirmed that the imposition of constructive dividends has the potential to increase tax disputes. So from the results of the interviews above, it can be concluded that there are indeed unintended effects that arise due to the taxation of constructive dividends. The effect is the potential for increased tax disputes. Previous research from several countries also shows that secondary adjustment corrections can lead to increased dispute potential. This is supported by Dugar & Bhandari (2017), Manca (2019), dan Weiss (2016).

So it can be concluded that the dimensions of impact are only partially fulfilled. The dimension of significance can generally be said to be fulfilled while the dimension of unexpected impact turns out to exist, namely the potential to increase tax disputes.

The last evaluation criterion is sustainability, which generally fulfills both the dimensions of continuing positive effects and exchange risk. The first

dimension, the continuing positive effect, was tested with the question of whether the constructive dividend taxation policy should be continued or not. In general, the interviewees from the tax auditors expected that this policy should be continued with the rules being made clearer. Tax consultant K1 also gave the same response that the constructive dividend taxation policy should be continued especially in the context of Indonesia as the source country. This policy should also be accompanied by clear technical guidelines and should not be floating or too general. Because according to the tax consultant, if not regulated properly and clearly, the provisions in Article 37 paragraph (4) of PMK 172 can be a tool used by auditors to encourage taxpayers to agree to primary adjustment, without regard to the validity or reliability of primary correction.

*"This regulation should not be too general in nature and can also be used as a tool of power for the Tax Audit Team." - K1*

While the interviewees from taxpayers have different opinions, W1 tax agrees that this policy should be continued but W2 believes that this policy does not need to be continued. These interviewees expect other methods to solve existing problems without going through secondary adjustment.

The next question used to evaluate the continuing positive effect is the question of whether MoF Regulation 172 is better, clearer, and fairer than the previous regulation with respect to constructive dividends. Almost all interviewees stated that PMK 172 is generally better, fairer, and clearer than the previous regulation. And in general, they also expect clearer and firmer technical instructions. The results of the literature study also show that the repatriation option as regulated in PMK 172 is indeed a form of improvement in the taxation of constructive dividends. As has also been done in India and suggested in Manca's research in Italy. So it can be concluded that the taxation of constructive dividends has fulfilled the dimension of continuing positive effects.

The second dimension of sustainability is the potential or risk of tradeoffs. This dimension was evaluated by asking whether there are alternatives to taxing constructive dividends. All interviewees were of the opinion that constructive dividends are basically the best option. Some interviewees mentioned several options presented by the OECD in its TP Guidelines such as constructive loan and constructive equity distribution. However, the effects of these two options are also quite numerous and not necessarily clearer, fairer, or simpler than constructive dividends. So when viewed from the potential for exchange, it is quite low because other options are not better than constructive dividends. And it can be concluded that the exchange risk dimension has been fulfilled. So that the taxation of constructive dividends has met the sustainability criteria.

## CONCLUSION

From the evaluation conducted on the imposition of tax on constructive dividends in tax audits at KPP Madya Bekasi, it can be concluded that in general the policy has met the evaluation criteria according to the OECD. Taxation of constructive dividends is most appropriate and fulfills the effectiveness and sustainability criteria. And what only partially fulfills are the criteria of coherence and impact.

There are several limitations to this research. First, the interviews were conducted entirely using online media, which may have limited the depth of

discussion. Secondly, this research was conducted in one intermediate tax office and may not necessarily describe the condition of all tax offices at different levels in Indonesia. And third, this research was conducted approximately four months after the issuance of PMK 172 Year 2023, so the opinions expressed by the interviewees were still based on the experience of implementing PMK 22 Year 2020.

Suggestions for further research can be done by adding other sources with different backgrounds such as academics, Fiscal Policy Agency employees, or a larger number of taxpayers or based on business scale. Research can also be conducted on the relationship between secondary adjustment and tax disputes or other relevant variables. In connection with several studies that have been conducted in other countries, research can also be conducted by comparing the application with countries that have implemented secondary adjustment correction with different approaches or have not implemented it at all.

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