
Why does DGT Lose in Tax Disputes? Case Study on Packaged Drinking Water Company

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Abstract

This research is driven by the increasing trend of tax disputes in recent years, the high number of losses of the Directorate General of Taxes (DGT), and intragroup service transactions that are mostly used in tax avoidance. This research was conducted by analyzing judicial verdicts on disputes between the DGT and PT Tirta Investama due to affiliated transactions of management services. This research aims to determine the dispute resolution process and the cause of DGT's loss. The method used is qualitative, by implementing a case study. This research explains that there are five factors that cause DGT's loss in tax disputes, such as justification without in-depth analysis, unsolid fairness test, unsolid benefit test, unsolid existence test, and inconsistency of stance during the court process. This research implies that DGT needs to evaluate and enhance the performance of the tax auditor. Suggestions of this research is DGT needs to improve several regulations related to intragroup services and burden of proof in the tax trial process.

Keywords Tax, disputes, intragroup services, transfer pricing, tax court

1 INTRODUCTION

Economic liberalization encourages multinational companies to expand their business to other countries. The company can execute several ways to enhance the business such as trade through state borders, investing in foreign companies, and providing services to customers in other countries

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(Dangkeng et al., 2023). The phenomenon occurs along with the growth of multinational companies.

As a developing country, Indonesia has received significant amounts of foreign investment. Incoming foreign investment averages USD 21.12 million between 2017 – 2022. This value is equivalent to 12.3% of the investment received by all ASEAN countries (UNCTAD, 2023). This amount placed Indonesia as an ASEAN country with the second-largest receipt of foreign capital after Singapore.

Table 1. Foreign Investment Flows to Indonesia

Year	Nominal (in million USD)
2017	20.579
2018	20.563
2019	23.883
2020	18.591
2021	21.131
2022	21.968

Source: UNCTAD, 2023

In the globalization era, the Directorate General of Taxes (DGT) was assigned to optimize tax revenues (Tambunan & Anwar, 2019). However, the DGT is often constrained by taxpayers' business motives which try to maximize profits in various ways (Puspitaningrum, 2018). For entrepreneurs, the main goal of capital investment is to create profit (Sudjana & Lestari, 2020). Specifically for multinational companies, expansion is conducted to increase company value (Ifada et al., 2023).

Tax is a cost that must be paid to run the business (Moeljono, 2020). Thus, taxpayers tend to minimize tax burden to increase the profit (Lingga, 2012). One of the most common methods is by conducting tax planning. Tax planning is an effort to regulate transactions and tax liabilities. The practice is tailored in such a way as to comply with the prevailing tax laws and regulations. (Djamaa, 2020). Tax planning is not a form of law violation, but it can erode the tax base. Thus, it harms state revenue (Rahayu, 2010). Tax planning is considered in the grey area and causing disputes between taxpayers and DGT (Putri & Pernamasari, 2024).



Meanwhile, a tax dispute is not a virtuous affair as it takes a long processing time. In Indonesia, each disputed case needs an average of 36 months to be resolved. This duration is calculated from the issuance of tax assessment from the Tax Office, until the final decision at the tax court (Hidayah, 2018).

Transfer pricing is a form of tax planning that often triggers tax disputes. In general, transfer pricing is price setting for transactions between companies under the same management (OECD, 2022). Transfer pricing is conducted by the taxpayer to increase the company's efficiency; thus, management can maximize the company's profit (Schön, 2012). However, because of its flexibility, transfer pricing is prone to be used as a tax avoidance instrument. Due to tax avoidance through transfer pricing, developing countries have lost potential tax revenues of up to USD 200 billion cumulatively (Anggarsari, 2023). Therefore, the Indonesian government must overcome the negative impacts of transfer pricing.

Table 2. Tax Disputes Processed Since 2019

No.	Judicial Verdict	Year					Total
		2019	2020	2021	2022	2023	
1	Withdrawal and Assignment	240	141	232	507	339	1459
2	Not Acceptable	621	573	1381	959	1174	4708
3	Refuse	2388	2507	3297	4634	4574	17400
4	Increase the Amount of Payable Tax	1	6	9	1	2	19
5	Granting In-Part	1903	2282	2590	3004	2769	12548
6	Granting Entirely	4937	4598	5338	6374	7399	28646
7	Abort	76	21	112	82	21	312
Total		10166	10128	12959	15561	16278	65092

Source: Sekretariat Jenderal Kementerian Keuangan, 2024



According to data from the Tax Court Secretariat, tax dispute cases in Indonesia have an increasing trend in the last five years. This data illustrates the behavior of taxpayers in minimizing tax debt. On the other hand, the DGT's winning percentage in tax disputes is still very low, which is only 29% (Zulfiqar et al., 2023). This phenomenon may lead to inefficiencies in tax administration by DGT (Nugroho, 2012).

Transfer pricing disputes can be caused by differences in the usage of comparative data, differences in method selection, the fair value calculation process, and the results of functional analysis (Irawan et al., 2020). The current condition of transfer pricing regulations in Indonesia contains many grey areas, making it prone to be disputed (Gunawan & Surjandari, 2022). Besides, differences in accounting principles and taxation laws may lead to different in the determination of income tax amount (Ulhaq, 2021).

This research comprises the analysis of the legal basis and arguments used by taxpayers and tax authorities in a tax dispute decided by the tax court. The research object is the Tax Court Decision Number PUT-014664.15/2021/PP/M.VB Year 2023. This case confronts the DGT represented by the Objection Review Team from the Regional Office for Large Taxpayers to PT Tirta Investama which operates in the industry of packaged drinking water. The court decision for this company was chosen as the research object because the company sells primary goods and maintains a large market share in Indonesia. Thus, the existence of disputes over PT Tirta Investama's transaction is prone to risking tax revenue. In addition, this court decision was issued in 2023 on a tax assessment issued in 2020. So, there is no significant difference in economic conditions. Thus, this research can have a relevant impact on current conditions.

The disputed object is the fiscal correction on the delivery of intragroup management services from Danone Asia Pte. Ltd as one of the shareholders of PT Tirta Investama. Intragroup services are known as a type of affiliated transaction that can be used in tax avoidance (Zaki & Irawan, 2022). Based on research from Zulfiqar et al (2023), intragroup services are one of the seven types of segments in a financial statement that often leads to tax disputes besides gross profit, purchase costs, royalties, dividends, interest expenses, and interest income. The common way of avoidance is by charging service fees at an unreasonable value.



Another way is by charging fees for services that don't exist. Thus, taxpayers can reduce their taxable income and tax liability.

The purpose of this research is to determine the process of dispute resolution over the transaction of intragroup management services and the causes of DGT's defeat. This research is expected to contribute to the improvement of knowledge for DGT to overcome similar practices in the future. The increasing trend of tax disputes in the last five years and the high percentage of DGT's loss enhance the urgency of this research. One of the expected conditions in Indonesia's tax ecosystem is a reduction of tax disputes. Thus, it is important to conduct an in-depth study of previous cases to improve the performance of the tax authority.

2 LITERATURE REVIEW

2.1 Transfer Pricing

Transfer pricing is a practice of price-setting goods or services transferred to other parties (D. Hansen & Mowen, 2007). Tax regulations in Indonesia define transfer pricing as the determination of prices in transactions affected by special relationships. This definition is stated in Article 1 number 9 of PMK 172 Year 2023. Based on its scope, transfer pricing is divided into two types, which are intra-company transfer pricing and inter-company transfer pricing (Nindita et al., 2023). Intra-company transfer pricing is a practice that occurs between divisions within the same company. While inter-company transfer pricing occurs between different companies, but has an affiliation.

There are three ways to set transfer prices between affiliated parties, i.e. market price-based, cost-based, and hybrid (D. Hansen & Mowen, 2007). Market price-based pricing is done when there is a perfectly competitive market and minimal dependence between affiliated parties. Cost-based pricing is done when the market price is not accessible or the value is too expensive. Hybrid pricing combines the two previous methods and involves elements of negotiation between affiliated parties.

Transfer pricing is a way to increase business efficiency. However, it will be a problem if it is done aggressively which leads to unacceptable tax avoidance (Tarigan, 2022). Aggressive transfer pricing can reduce a country's tax base by shifting the company's profits to other countries



with lower tax rates. Directorate General of Taxes recognizes eight different transfer pricing methods which are mentioned in PMK Number 172 Year 2023 including the Comparable Uncontrolled Price Method, Resale Price Method, Cost Plus Method, Transactional Net Margin Method, Profit Split Method, Comparable Uncontrolled Transaction Method, Business Valuation Method, and Tangible and Intangible Asset Valuation Method

2.2 Special Relationship

Several sources explain the definition of the special relationship concept. Article 18 paragraph (4) of the Income Tax Law explains special relationship as a condition due to dependence, ownership, equity investment, and control through management or technology. PMK 172 Year 2023 explains special relationship as a status that is affected by four conditions including attachment, capital ownership, control, and family relationship. Based on this concept, transactions affected by special relationships must be treated specifically in the audit process.

In the global consensus, the Organization for Economic Co-operation and Development (OECD) explains the concept of special relationship from another perspective. Special Relationship is a condition where a company from another country is involved in the management, supervision, and direct or indirect investment in an entity. Special relationships may exist when the same persons and entities are involved in the management, supervision, or capital of a company from another party's country.

2.3 Arm's Length Principle

The arm's length principle (ALP) is a principle used to measure the fairness of transactions between related parties. The goal is to adjust the value of affiliated transactions against independent transactions (Petruzzi, 2016). Adjustments must be made to prevent profit shifting to a lower tax rate country (Devereux & Keuschnigg, 2009). ALP was discovered in 1933, as a reference to analyze comparability of transactions in transfer pricing (Wittendorf, 2011). ALP has become a globally agreed standard by tax authorities around the world, to assess transfer pricing's fairness of multinational companies (Saptono & Khozen, 2022). Furthermore, ALP is not only used to prevent base erosion and profit shifting but also to maintain fairness and competition between countries (Wattel, 2020).



Indonesia adopts the concept from OECD to determine the comparative factors important in applying the arm's length principle. There are five factors used as determinants of comparability, i.e. contractual provisions in the transaction, functions performed, characteristics of the goods or services transferred, economic and market conditions in which the parties are located, and the business strategies undertaken by each party. This concept is stated in Article 1 paragraph (7) of PMK 172 Year 2023. The existence of the arm's length principle in tax regulation is important because every transaction that occurs between affiliated parties must be treated the same as independent transactions. Thus, it is expected that there will be equality among taxpayers (Sidik, 2021).

2.4 Low Value-Added Intragroup Services

Intra-group services are services provided by a member of a corporate group to one or more affiliated companies within the same group (Berger, 2015). Intra-group services are related party transactions that often lead to disputes between tax authorities and taxpayers (Berger, 2015). The most common questions to examine the fairness of intra-group service transactions are whether the service transactions have occurred and whether the transaction amount has met the arm's length principles and business prevalence (Darussalam et al., 2013).

There are several types of intragroup services whose delivery has low added value. It is said so because services are only supporting, not the main business activity, do not use or produce intangible properties, and have low risk (Lee, 2017). Another reference states that low-value-added intragroup services are services that are supporting and not part of an entity's main business (OECD, 2015).



Table 3. Types of Low Value-Added Intragroup Services

No	Types of Service
1	Accounting and Auditing Services
2	Debt and Receivable Processing and Management Services
3	Activities Related to Human Resources Management
4	Monitoring and Data Compilation Services Relating to Health, Work Safety, and Environmental Standards
5	Information Technology Services other than Main Activities
6	Communication and Public Relations Services
7	Law Services
8	Activities Related to Tax Obligations
9	Administrative Services

Source: OECD, 2014

2.5 Fiscal Correction

Fiscal correction is an adjustment to the profit in the taxpayer's commercial financial statements, to produce an amount that is following tax regulations (Kahar & Gunawan, 2020). In preparing financial statements, in general, a company uses Financial Accounting Standards (SAK) as guidance. However, to fulfill tax regulations, Fiscus needs to perform fiscal correction because there is a gap between SAK and Tax Regulations (Sondakh, 2015). Fiscal correction is also known as financial statements examination based on tax laws (Resmi, 2018).

Fiscal correction can decrease (negative correction) or increase (positive correction) taxable income (Kumalawati, 2018). Differences in accounting and taxation make it possible for fiscal corrections to occur in the calculation of income tax (Ulhaq, 2021).

2.6 Tax Disputes

Law Number 14 of 2002 describes tax disputes as conflicts between the government / authorized officials and taxpayers, due to the issuance of tax assessments. Tax disputes can occur due to differences of opinion



between tax authorities and taxpayers (Gotama, 2020). There are two causes of disagreement, which are questions of fact and questions of law (Irawan et al., 2020).

Tax provisions in Indonesia provide an opportunity for taxpayers who are not satisfied with the DGT's determination to submit legal remedies at several levels (Kusuma, 2019). The lowest level is an objection submitted to the DGT Regional Office. Then followed by an appeal, which is submitted to the Tax Court if the taxpayer is not satisfied with the objection verdict. In addition, there is also a legal remedy in the form of a lawsuit that can be filed by taxpayers if they consider that they have been violated by the DGT in the implementation of billing. At the next level, there is a judicial review. This effort can only be submitted if it meets the requirements in Article 91 of Law Number 14 of 2002 (Ispriyarsa, 2018).

Transfer pricing is the most common dispute trigger submitted to the Tax Court (Supriyadi, 2022). According to Irawan (2020), transfer pricing disputes in Indonesia are caused by things such as:

1. Functional analysis by tax authorities
2. Examination of the special relationship
3. Differences in comparative data
4. Reporting of royalty fees which doesn't meet fairness
5. Usage of the most appropriate methods
6. Use of fair value in analysis

Tax disputes cause inefficiencies in tax administration (Nugroho, 2012). In addition, tax disputes also create a bad perception for taxpayers (Novita et al., 2022).

3 METHOD, DATA, AND ANALYSIS

This research uses qualitative methods by analyzing the experiences, interactions, communications, or documents related to the research topic (Flick, 2007). In qualitative research, meaning is obtained from text and images, not numbers (Saunders et al., 2019). The process needs to understand the subjective meaning and social construction of the object (Saunders et al., 2019).

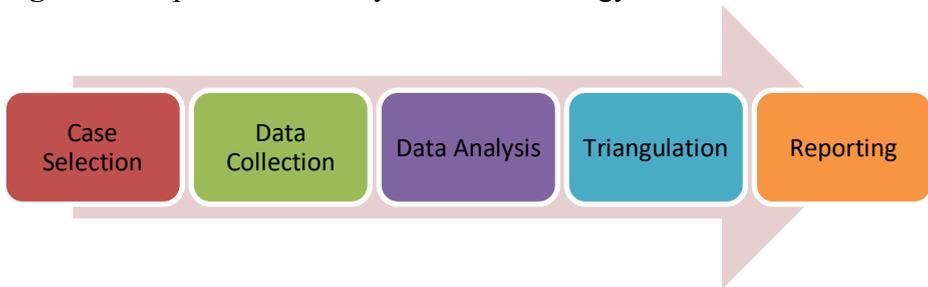
Meanwhile, the research strategy used is a case study. A case study is an



in-depth study of the organic conditions of a phenomenon (Yin, 2018). The process can be applied to organizations, individuals, and events (Saunders et al., 2019). The advantage of a case study is the availability of in-depth exploration which can produce a rich and empirical description of the object studied (Saunders et al., 2019). In this research, case study was conducted in five stages as illustrated in the figure below.

Case selection was performed to determine the object to be studied. According to Curtis et al (2020), six criteria that must be fulfilled in the selection of cases. Among them are relevant to the research question, able to produce rich information, legally accessible, low cost, able to produce adequate descriptions, and able to produce findings that can be generalized. So finally, the scope of the case was narrowed down to the most recent tax dispute related to affiliated transactions for intragroup services.

Figure 1. Steps of Case Study Research Strategy



Source: Author, 2024

In this research, the data used is textual, to produce rich and in-depth information (Saunders, 2019). Data collection was conducted by tracing the official website of the Tax Court Secretariat. From there, Tax Court Decision Number PUT-014664.15/2021/ PP/M.VB Year 2023 and preceding research such as scientific literatures were found to be used as triangulation tools.

Furthermore, data analysis was carried out by exploring the tax court decision. This stage produced the interpretation of textual data into key points to be presented (Saunders, 2019). The analysis was conducted based on an inductive approach, which is analyzing a specific object to be able to produce general conclusions.

In research, it is also important to do triangulation to produce neutral and



factual conclusions. The triangulation used is text triangulation, by comparing the object of research to previous studies. When the previous stages were conducted, the results of the process were presented in the results and discussion section.

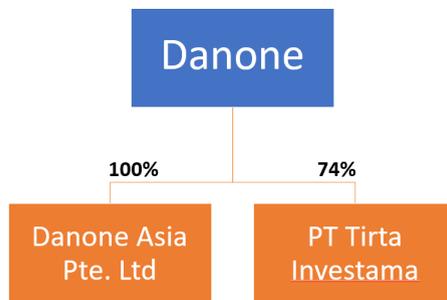
4 RESULTS AND DISCUSSION

4.1 Dispute Process

PT Tirta Investama is a private company operating in the industry of packaged drinking water. The company operates under the control of Danone which is domiciled in France (Kurnia, 2021). The company is registered as a taxpayer at the Large Taxpayer II Tax Office. PT Tirta Investama earns income from the sales of mineral water, electrolyte drinks, and flavored drinks. The tax dispute between PT Tirta Investama and the Directorate General of Taxes began with the issuance of the Tax Underpayment Assessment Letter (SKPKB) for Corporate Income Tax (PPh Badan) for the Fiscal Year of 2015 Number 00001/206/15/092/20 dated January 31st 2020 from the Large Taxpayer II Tax Office. The decree stated the underpayment of corporate income tax of IDR 34,007,798,160.00 by PT Tirta Investama.

Based on the legal product, PT Tirta Investama has submitted an objection to the DGT Regional Office for Large Taxpayers by Letter Number 014/TIV/Tax/X/2020 dated October 26th, 2020. However, the objection decided to grant only IDR 8,395,557,150.00 of the request, equivalent to 24.68% of the total amount objected. This decision is stated in KEP-00764/KEB/WPJ.19/2021 dated September 23rd, 2021.

Figure 2. Ownership Structure of Danone in PT Tirta Investama



Source: Danone, 2023



Hereinafter, PT Tirta Investama submitted an appeal to the Tax Court with Letter Number 001/TIV/TAX/XII/2021 dated 22 December 2021. The submission is conducted based on Law Number 14 of 2002 Tax Court, 2002 Article 35 paragraph (1) and paragraph (2), Article 36 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), Article 37 paragraph (1). Taxpayer includes the arguments contained in the core of the appeal request, attached by compared decision. The appeal application document is also signed by the authorized party of PT Tirta Investama. Taxpayers also paid 50% of the tax owed as a requirement to enforce the appeal.

Table 4. Details of the Dispute

Description	Based on		Appealed Correction
	DGT	Taxpayer	
Positive			
Fiscal	446.739.823.331	388.851.823.331	57.888.000.000
Correction			

Source: Pengadilan Pajak, 2023

Based on the analysis of the judicial verdict, these are several arguments presented by the DGT and taxpayers:

1. Opinion from Appellate (Directorate General of Taxes)

Positive fiscal corrections on the delivery of intragroup management service executed by the tax auditor at the Large Taxpayer II Tax Office. The auditor believed that the service provided by Danone Asia Pte Ltd (DAPL) didn't exist. Apart from that, based on the data provided by the taxpayer, it cannot be considered that the existence of the services has been proven. Another argument that underlies fiscal corrections from DGT is the incompleteness of submitted documents by taxpayers. There are five types of information which not fulfilled, i.e.:

- a. General functions of DAPL (finance, information systems, and legal)
- b. Waters division services implementation process (covering financial, industrial, and procurement aspects)
- c. The nature of the services provided
- d. Performance report of service provider
- e. Calculation of the amount invoiced by DAPL to the taxpayer.



The documents requested by DGT include the list of service types and an explanation of the benefits which demonstrate the needs of management services from DAPL, method of provision, list of DAPL employees who provide management services, evidence of the benefits obtained by a taxpayer for the availability of management services, analysis of the necessity for management services, and the initial receipt of management services. Those are only partially fulfilled by taxpayers. Whereas, books, notes, and documents are important for tax auditors as the information submitted by taxpayers may influence the determination of the tax debt amount. Article 29 paragraph (3) of Law on General Provisions and Tax Procedures requires taxpayers to submit this information. If this is not met, DGT is authorized to determine the tax debt *ex officio*. The correction is based on Article 6 paragraph (1) of the Income Tax Law.

At the objection stage, the Objection Review Team of the Regional Office of DGT for Large Taxpayers maintained the findings of the audit result. This decision was executed after PT Tirta Investama failed to complete documents requested by the DGT to prove the existence of an intragroup management service. In this case, the decision at the objection stage is aligned with the audit results. This often happens in Indonesia. In fact, since 2014 the number of rejected objections from taxpayer applications has been above 70% (Supriyadi et al., 2019).

Table 5. Description of DGT's Arguments in the Dispute

Stage	Argument
Tax Audit	The auditor does not convince the existence of services provided by DAPL to PT Tirta Investama.
Audit	The auditor believes that the information submitted by the taxpayer cannot show the existence of the service.
Objection	The taxpayer cannot prove the existence and benefits of the management services received.
	The taxpayer did not fulfill the requested documents so the tax authorities could not test the existence

Source: Pengadilan Pajak, 2023



2. Opinion from Appellant (Taxpayer)

Taxpayer are always urged to generate the highest probable profits in their own business. Therefore, taxpayer tends to reduce the state-mandated amount of tax (Amalia & Waluyo, 2021). In this case, PT Tirta Investama filed a legal action at the objection and appeal stage. This phenomenon shows the conflict of interest over economic resources between DGT and the taxpayer (Moeljono, 2020). As a form of disagreement, PT Tirta Investama conveyed the points which became the main arguments, including

- a. The use of the legal basis by DGT is considered irrelevant. In the audit process, DGT used Article 6 paragraph (1) of the Income Tax Law which regulates the costs that can be charged to calculate taxable income. This article is not related to affiliate transactions. The taxpayer believes DGT should use Article 18 paragraph (3) of the Income Tax Law, PER-22/PJ/2013, PER-32/PJ/2011, and SE-50/PJ/2013 intended for transfer pricing audits.
- b. The taxpayer stated that the payment of services has met the requirements stated in Chapter IV PER-22/PJ/2013, i.e.:
 - given to the taxpayer
 - provide benefits to the taxpayer
 - service fees have been charged fairly
- c. The charging of management service fees is considered to comply with the arm's length principle. However, the auditor does not believe in the existence of the services charged, based on Article 6 paragraph (1) of the Income Tax Law. This correction is considered irrelevant by PT Tirta Investama because the article regulates different substances.



Table 6. Description of PT Tirta Investama's Arguments for Charging Management Services based on PER-22/PJ/2013

Aspect	Taxpayer's Argument
Existence	PT Tirta Investama submitted service procurement, contract documents, copies of invoices, financial analysis, suggestions, and input regarding expenditure budgets, planning documents, and documentation of activities to DGT. Those documents explained that management services have been provided to taxpayers.
Benefit	PT Tirta Investama submitted information about the benefits of management services including details of the service type, technical use, and benefits obtained which explained the inability of a taxpayer to provide management services itself.
Cost Fairness	Management service rates were by with the arm's length principle. Amount of administrative cost determined through indirect method considered by SE-50/PJ/2013 Appendix I. The markup set by DAPL is 5% of the basic cost within the normal range of interquartile analysis.

Source: Pengadilan Pajak, 2023

Tax auditors should use Article 18 paragraph (3) of the Income Tax Law which regulates affiliate transactions as a basis for correction of management services which the existence unconvicted. However, in the audit results, the tax auditor did not include this article as a legal basis. In addition, the auditor also did not include the legal basis regarding the technical instructions for transfer pricing audits in Indonesia, which are PER-22/PJ/2013 regarding Audit Guidelines for Taxpayers with Special Relationships and SE-50/PJ/2013 regarding Audit Technical Instructions for Taxpayers with Special Relationships. This means the fiscal corrections are not based on the appropriate regulation. Thus, the



taxpayer believes that the correction must be canceled.

Table 7. Details of the Service and Benefits provided by DAPL

Type of Services	Usage
	Benefit
General Management:	Assistance with budgeting, internal controls, cash controls, and long-term planning
- Finance Accounting	& Better budgeting and cash management
- Information System Management	Provided administrative platform through hardware and software Utilization of the latest technology for administration
- Human Resource	Assisted organizational development, training, and recruitment Better budgeting and cash management
- Law	Assistance with legal issue resolution related to contracts and provided legal services for the taxpayer Customers get good quality products thereby increasing sales and profits
Waters Division: - Finance	Helped taxpayers manage and review capital expenditures, budgeting, and strategic review of financial results Better budgeting and cash management
- Industrial	Helped taxpayers manage the factory by referring to best practices More effective and efficient production processes
- Sourcing	Helped taxpayers manage relationships with suppliers Better supply chain than competitors

Source: Pengadilan Pajak, 2023

PT Tirta Investama conducted a comparability analysis to mark up the



rate for management services in other entities. According to the calculation, a 5% markup is within the range of the lower and upper quartiles. Thus, the taxpayer considered the value charged reasonable.

Table 8. Net Margin Benchmarking Analysis

3 Years Weighted Average		Lower Quartile	Median	Upper Quartile
Net	Cost-Plus Margin	2,72%	6,11%	9,40%

Source: Pengadilan Pajak, 2023

In the Transfer Pricing Documentation (TP Doc) submitted, the taxpayer also explained the efficiency obtained from the service rendered. Thus, PT Tirta Investama could compete with competitors in similar industries. This is reflected in the comparability analysis against other competitors in the distribution and manufacturing segments. PT Tirta Investama has much higher margins than the average in a similar industry. The margin generated by the taxpayer shows that the business performed very efficiently. Management services provided by Danone Asia Pte Ltd are considered as one of the reasons.

Table 9. Inter-quartile Analysis on Other Comparable Company

3 Years Weighted Average	Lower Quartile	Median	Upper Quartile	PT Tirta Investama
Operating Margin	0,24%	1,26%	1,44%	14,71%
Net Cost-Plus Margin	2,39%	2,78%	3,64%	19,06%

Source: Pengadilan Pajak, 2023

4.2 Tax Court Decision and Causes of DGT's Defeat

The judgment process refers to Law Number 14 Year 2002 regarding the Tax Court. Article 33 explained the tax court as the court of first and final instance in deciding tax disputes. Thus, the results of the judgment have



permanent legal force and can only be appealed to extraordinary legal action in the form of judicial review. The results of the trial granted all of the taxpayer's requests. Thus, the fiscal correction of IDR 57,888,000,000.00 for the management service fee was canceled. This decision implied the reduction of taxable income amounted to IDR 29,814,117,150.00. The following factors led to DGT's defeat in the dispute:

- a. DGT considered a duplication of services without conducting an in-depth analysis

PT Tirta Investama has a division that performs the same function as the services provided by DAPL. Therefore, DGT considered intragroup services provided as a duplication. Tax regulations in Indonesia don't specifically regulate the rule of the game on duplication of intragroup service. Article 13 paragraph (1) subparagraph f PMK Number 172 of 2023 only states that the tax authorities need to prove that the service is not a duplication of taxpayer's activity.

In practice, DGT considered that the provision of management services is a duplicative practice because it can be provided by the taxpayer itself. However, DGT did not analyze the capacity and capability of the human resources at PT Tirta Investama. This is contrary to the principle in Par 7.10 of the OECD Transfer Pricing Guideline: *“Any consideration of possible duplication of services needs to identify the nature of the services in detail, and the reason why the company appears to be duplicating costs contrary to efficient practices”*. Thus, the judge annulled the DGT's decision

- b. Unsolid Existence Test

The Tax Auditor applied a correction to the management service fee because there was no validity of its existence. However, the existence test was not conducted based on the technical guideline SE-50/PJ/2013. According to the guideline, tax auditors must perform several steps to ensure the existence of intragroup services. These include examination of the background of the service requirement, examination of the appointment process of the service provider and its qualifications, examination of the negotiation of the compensation provided, examination of documents and evidence on the service provision, assessment of contract documents and invoices related to the service provision, and examination of the parties involved in the service



provision. Referring to the tax court decision, the tax auditor only made corrections based on Article 6 of the Income Tax Law. This shows that the DGT did not follow the prevailing regulations.

Of the six actions that should be taken by the DGT, document examination is the most feasible. Other research also explains that the existence of services can be proven by documents such as contracts and payment bills (Siahaan & Riandoko, 2014). However, in this case, PT Tirta Investama only conveyed this at the trial. This evidence included:

- Exhibit P-14: Photocopy of document and evidence of the existence of financial service provision
- Exhibit P-15: Photocopy of documents and evidence of provision of human resources services
- Exhibit P-16: Photocopy of document and evidence of the existence of industrial service provision

Previously, DGT had requested information needed in tax audit to the Taxpayer through letter number S-468/WPJ.19/80.05/2021 dated July 5th 2021. This request was not fulfilled by PT Tirta Investama. However, during the appeal process, taxpayer submitted these informations to the judge. This phenomenon emphasized the legal gap between the Law on General Provisions and Tax Procedures and the Tax Court Law. Article 26 A paragraph (4) of the Law on General Provisions and Tax Procedures states: *“Taxpayers who disclose books, records, data, information, or other information in the objection process that were not provided at the time of audit, other than data and information that at the time of audit have not been obtained by taxpayers from third parties, such books, records, data, information, or other information shall not be considered in the settlement of objections.”*

Meanwhile, the explanation of article 69 paragraph (1) stated that the Tax Court adheres to free evidence. Article 76 further states that: *“The judge determines on what must be proven, the burden of proof as well as the assessment of proof and for the validity of proof, at least 2 (two) evidences are required as referred to in Article 69 paragraph (1).”* The gap within those regulations makes the practices performed by PT Tirta Investama considered as a legitimate legal action.

c. Unsolid Benefit Test



Based on SE-50/PJ/2013, in the examination of the benefits of services rendered, DGT must perform several steps such as:

- Ensure the conformity between the functions performed and the services received
- Examine the details of the services provided
- Ensure that the services provided are not shareholder's activity, incidental services, on-call services, passive association, and duplicative services.

However, based on the court decision, it can be seen that the tax auditor did not perform these three steps. The tax auditor believed the absence of benefits based on the results of the previous stage analysis, which concluded that management services did not exist, instead of conducting a separate analysis. In addition, the DGT made corrections for the lack of benefits at the time the taxpayer was unable to complete the requested documents.

According to PER-22/PJ/2013, intragroup services can be charged in the fiscal financial statement if provide benefits to the recipient. Apart from that, SE-50/PJ/2013 states that the benefit can be reflected through profit growth or operational cost efficiency. This regulation is aligned with current practice in Australia, where local authorities recognize the benefits of services if the operational costs are reduced (Siahaan & Riandoko, 2014). On the other hand, Hansen & Mowen (2006) argued that expenses which not beneficial are indicated by losses experienced by the company. In this case, the economic benefits of service provision can be seen through the taxpayer's net profit margin. For the distribution function, the taxpayer's operating profit margin is 14.71% while the industry average is 1.26%. Meanwhile, for the manufacturing function, the net cost-plus margin of PT Tirta Investama is 19.06% while the average of a similar industry is 2.78%.

Referring to the existing facts, the panel of judges considered that the provision of management services had provided benefits to PT Tirta Investama thus it could be charged on the fiscal financial statements. Apart from that, referring to the documents submitted in the trial, the services provided by Danone Asia Pte Ltd are not considered shareholder activities. If taxpayer provided by DAPL, PT Tirta Investama needs to provide itself or obtain from another third party. This is in line with the benefit test philosophy for intragroup services presented in Par 7.6 of the 2022 OECD Transfer Pricing Guidelines which stated: *"This can be*



determined by considering whether an independent enterprise in comparable circumstances would have been willing to pay for the activity if performed for it by an independent enterprise or would have performed the activity in-house for itself.”

d. Unsolid Fairness Test

According to SE-50/PJ/2013, the tax auditor should conduct a fairness test by assessing the charging basis, examining the cost-related components incurred, and examining the method of charging for the services performed (direct or indirect). The verdict did not state the details of the method of conducting the fairness test. The DGT did not conduct a benchmarking analysis on the management services transactions. Even though this stage is the most important part to ensure that the amount charged in the taxpayer's financial statements is fair.

DGT believed that if services cannot be proven they cannot be charged in the fiscal financial statements. However, taxpayers' Net Cost-Plus Margin and Operating Margin values are above the average of similar industries. This shows that taxpayers can operate efficiently and there are no particular costs that disrupt the company's cost structure. This also shows that taxpayers have a low risk of tax avoidance due to the misuse of transfer pricing practices. Thus, the panel of judges thought that a service fee could be charged. In addition, the markup for management services of 5% is reasonable as it is in the interquartile range of the comparative data in the TP Doc provided by PT Tirta Investama. The existence of a markup is considered to be normal as service providers are also urged to earn income (Siahaan & Riandoko, 2014).

In the verification process, DGT did not conduct a benchmarking analysis on the management services transactions. This procedure is an important component, especially if the DGT introduces a new legal basis regarding transfer pricing transactions in the middle of the trial process. Thus, a panel of judges also considered that the action performed by DGT was unsolid.

e. DGT's Inconsistency in the Trial Process

The DGT is considered inconsistent for changing the legal basis in the process of trial. Initially, the legal basis used was Article 6 paragraph (1)



of the Income Tax Law. This paragraph stated the type of services that can be charged in the taxpayer's fiscal financial statement. However, as it was irrelevant to regulate affiliated transactions, the DGT added PER-22/PJ/2013 as a new legal basis in the trial process. The addition of the legal basis in the middle of the trial process shows the inconsistency of DGT on the legal actions that have been taken previously. Consistency in the implementation of law is an important thing to be implemented by state administrators (Sosiawan, 2022).

Although it has added a new legal basis, in fact, DGT does not implement the provisions stated in the provision. Ideally, DGT needs to perform comparability analysis as stated in Appendix I Chapter II PER-22/PJ/2013. The comparability analysis should be carried out by exploring the characteristics of goods and services to assess their comparability, analyzing the function of goods and services to assess the reasonable expected return, and exploring the specifications of contract provisions. All of these stages were not performed by the tax auditor. However, the DGT only tested the existence and benefits of management services.

Ideally, comparability analysis could be conducted by exploring five comparability factors along with the aspects that formulate those factors. By analyzing the suitability of those five factors, tax authorities can obtain more precise facts regarding taxpayers' transaction. However, DGT did not do so, thus the panel of judges considered that the fiscal correction could not be justified.

5 CONCLUSIONS

Based on the study, it is known that the dispute was caused by different opinions between DGT and the taxpayer over fiscal corrections on the management services. DGT argued that the services provided by DAPL didn't exist and the documents provided could not show the existence and benefit. However, PT Tirta Investama as a taxpayer believes that the legal basis used by DGT is irrelevant to examine the affiliate transactions. Taxpayers also assessed that the services received are aligned with the principles of existence, benefit, and fairness. There are five reasons for DGT's defeat in the dispute which are the absence of in-depth analysis, unsolid existence test, unsolid fairness test, unsolid benefits test, and inconsistency of legal basis during the Trial Process.



This research implies that DGT needs to evaluate and enhance the performance of the tax auditor. Based on this study, it is known that there is a tendency for subjectivity in the tax audit of DGT. This may cause inequality treatment between taxpayers. Training and deepening of the transfer pricing's basic principles must be encouraged within the DGT's tax auditor. In addition, comprehension of prevailing regulations is important to be strengthened. So, every fiscal correction made is based on applicable provisions, instead of subjective assumptions from the tax authorities.

Suggestions of this research is DGT needs to improve several regulations. DGT should regulate allowed service duplication as it's important to provide certainty for tax authorities and taxpayers. Apart from that, another regulation needs to be addressed regarding evidence of transactions by taxpayers. From this research, it is known that there is a discrepancy between Article 26 A paragraph (4) of the Law on General Provisions and Tax Procedures and Article 76 of the Tax Court Law. DGT needs to align the principles of evidence at the examination stage with those at the appeal stage. Thus, it can minimize tax disputes in the future.

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