

INTERPRETATION ISSUE OF THE PRINCIPAL PURPOSE TEST

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ABSTRAK

The existence of tax treaties has raised a base erosion and profit shifting (BEPS) concern through the circumvention of the provisions of those treaties. Consequently, following the release of the BEPS Action 6 Final Report by the Organisation for Economic Co-operation and Development, the Principal Purpose Test (PPT) has been introduced as a general anti-abuse rule (GAAR) for tax treaties. As a BEPS action minimum standard, the PPT clauses are considered sufficient to prevent tax treaty abuses. However, since there has been no sufficiently clear guidance to the PPT implementation, several interpretation issues seem to arise. This situation is likely to put uncertainties for both tax administrations and taxpayers. This article aims to provide a literature review of the PPT clauses interpretation so as to help them to further address such issues. The discussion focuses on 4 (four) main elements of the PPT, (1) the interpretation of the phrase "one of the principal purposes"; (2) the reasonableness element; (3) the object and purpose of the relevant treaty provision; and (4) the burden of proof of the PPT.

Keberadaan Persetujuan Penghindaran Pajak Berganda (P3B) telah menimbulkan permasalahan penggerusan basis pemajakan (*Base Erosion and Profit Shifting*-BEPS) di suatu negara melalui penyalahgunaan atas ketentuan P3B tersebut. Akibatnya, setelah rilis Laporan Akhir Aksi BEPS 6 oleh *Organisation for Economic Co-operation and Development*, Pengujian Tujuan Utama (*Principal Purpose Test*) diperkenalkan sebagai ketentuan umum anti penyalahgunaan P3B. Sebagai standar minimum Aksi BEPS, klausa PPT dianggap cukup untuk mencegah penyalahgunaan P3B. Namun demikian, belum adanya panduan yang cukup jelas untuk implementasi PPT memunculkan beberapa isu dalam interpretasinya. Hal tersebut menimbulkan ketidakpastian baik untuk administrasi perpajakan dan Wajib Pajak. Artikel ini bermaksud menyajikan tinjauan literatur tentang bagaimana interpretasi atas klausa PPT sehingga dapat membantu pihak-pihak yang berkepentingan untuk mengidentifikasi mengatasi masalah yang dapat menyertai dalam penerapan ketentuan PPT. Pembahasan difokuskan pada 4 (empat) elemen utama PPT, yaitu (1) interpretasi frasa "salah satu tujuan utama"; (2) elemen kewajaran; (3) maksud dan tujuan ketentuan P3B yang relevan; dan (4) beban pembuktian atas PPT.

1. INTRODUCTION

Following the release of the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) Action Plans in the late 2015, global taxation landscape has changed significantly. This is particularly true for any arrangement or transaction that leads to non-taxation situation which the BEPS Actions have focused on. In a bilateral tax treaty context, there have been loopholes created by tax treaty clauses, which amounts to non-taxation, such as those related to treaty shopping, the definition of permanent establishment, the dividend transfer transaction, and so forth. Therefore, BEPS Action 6 Report, "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances", has recommended for countries to add an anti-abuse provision to their tax treaties, putting it as one of minimum standards. Such a measure then be adopted by countries and jurisdiction, including Indonesia by signing the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ("Multilateral Instrument" or "MLI"), which modifies their bilateral tax treaties. Of several options provided by the MLI, paragraph 90 of MLI Explanatory Statement emphasizes that the Principal Purpose Test (PPT) serves the only self-standing anti-abuse provision satisfying that BEPS minimum standard; thus, it becomes the default option for those joining MLI.

However, several literatures have shown uncertainties in the interpretation of the PPT as a tool to tackle tax avoidance and/or evasion that involve tax treaty provisions. Thus, this article would discuss several issues leading to those uncertainties in the future implementation of PPT in Indonesia. In fact, Indonesia has ratified the MLI pursuant to the Presidential Decree Number 77 of 2019 which covers 47 out of 69 Indonesia's tax treaties.

The aim of the study is to contribute to the problem mapping that should be addressed by Indonesian Tax Authority and be considered by those conducting cross-border transaction or arrangement. The judges in the Tax Court may also benefit from the issues identified in this article as the dispute of PPT may go before the court.

2. THEORETICAL FRAMEWORK

2.1. PPT Clauses

The OECD/G20 through the Action 6 of the BEPS Project has identified tax treaty abuse, more particularly, treaty shopping as one of critical concerns of BEPS. Member Countries of the Inclusive Framework on BEPS then agree to add a safeguard in their bilateral tax treaties to prevent such abuse. That safeguard may specifically target particular conditions, called the Limitation on Benefits (LOB) Rule, and/or reflect a more general anti-abuse rule, which looks at the principal purpose of a transaction or arrangement, named the Principal Purpose Test (PPT).

As amending tax treaties in a bilateral basis would be burdensome for countries and jurisdictions, the MLI

provides a desirable and feasible solution to a streamlined implementation of BEPS Action recommendation (OECD, 2015). Once a country or jurisdiction opts the PPT as a treaty abuse prevention mechanism in the MLI, the PPT would apply to the covered tax agreement (CTA) notwithstanding the existence of any similar provision within the current tax treaty. According to the MLI, CTA is all tax treaties that an MLI signatory want to modify through the MLI clauses adopted to the extent of their applicability.

Pursuant to Paragraph 1 of Article 7 of the MLI, the PPT clauses are as follow:

Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement.

This new provision was designed as a GAAR, in addition to the more-targeted (specific) anti-abuse rules currently established in the CTA. Given the very broad terms incorporated in the PPT clauses, this may raise uncertainty for taxpayers when it comes to interpretation (Bergedahl, 2018; Danon, 2018; Theodosopoulos, 2018).

To accompany the MLI document, the Explanatory Statement (ES) was delivered in order to clarify the approach under the MLI and reflected the agreed understanding between the MLI negotiators on the operation of MLI clauses to modify the CTA. In that sense, the ES would be of no help for MLI signatories when it comes to MLI interpretation (Bergedahl, 2018).

Weeghel (2019) emphasizes that the uncertainties in the application of the tax treaties tend to happen due to the nature of the PPT, in which the 2017 OECD MTC, particularly the examples provided in the Commentary on Article 29 (9), fail to set forth an implementation mechanism of the PPT. Therefore, it is crucial to draw a consistent interpretation as on the one hand states are in the need of preventing tax treaty abuse, and on the other hand they desire to promote international trade (Weeghel, 2019). In the absence of clear guidance of the PPT interpretation, previous research has identified several elements forming parts of the PPT and has further analyzed and interpreted those elements in order to gain full understanding to the PPT.

De Broe and Luts (2015) and Kok (2016) investigate the objective test and the subjective test under the PPT. Additionally, De Broe and Luts (2015) examine the burden of proof corresponding to both tests. Weber (2017) argues that the PPT encompasses two elements, the reasonableness test and the "principal purpose" test. Taking a broader perspective, Chand (2018) expands his research into the presence of a benefit, the subjective element, and the objective

element, in addition to exploring the burden of proof under the PPT. At a relatively same time, Bergedahl (2018) briefly observes the PPT as one of the Anti-Abuse Measures in Tax Treaties following the OECD MLI. Buriak (2018) conducted a more comprehensive study, which analyzes the wording of the PPT, including the definition of “treaty benefit”, “arrangement or transactions”, and “all relevant facts and circumstances”, the standard of “reasonability” and so forth, beside the main elements of the PPT.

More recently, Weeghel (2019) synthesizes various aspects of the PPT, with the emphasis on the term “one of the Principal Purposes”, and “the object and purpose”, as well as on the burden of proof while Cuoco (2019) investigates the objective and subjective scopes of the PPT, with the focus on its compatibility to the EU Tax Law. Further, Elliffee (2019) uses a normative approach to interpret the substance within the PPT and analyzes several examples to examine the application of the PPT

2.2. PPT Interpretation

All treaties are governed by the Vienna Convention on the Law of Treaties (VCLT) since the VCLT provisions provide the principles of customary international law dealing with treaties (Arnold, 2016). This would also be the case for the MLI as it is a multilateral treaty. Accordingly, the interpretation of the MLI, more particularly the PPT clause, follows the rule set out in the VCLT.

As a general rule of interpretation, Article 31 of the VCLT stipulates that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” Further, such an article mentions that such a context could be derived from “[a]ny instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty, in addition to the text, preamble, and annexes.”

However, pursuant to the provision of Article 32 of the VCLT, in order to confirm the meaning emanated from the application of Article 31; or to determine the ambiguous or obscure meaning due to the application of Article 31, supplementary means of interpretation may be utilized. In that regard, it is arguably that the OECD/G20 work under the BEPS Action 6 including the model text and suggested commentary passages, which now have been included in the 2017 OECD Model Tax Convention (2017 OECD MTC) and its commentaries, may reflect one of those supplementary means (Kolosov, 2017; Bergedahl, 2018). Meanwhile, Danon (2018) contended that the interpretation of the PPT should not exceed the OECD commentaries, which represent the context pursuant to the VCLT. But still, relying on the OECD commentaries hardly provide a guarantee for taxpayers (Lang, 2014 as cited in Bergedahl, 2018).

In relation to statutory interpretation, Carney (2015) concludes that both the civil law approach

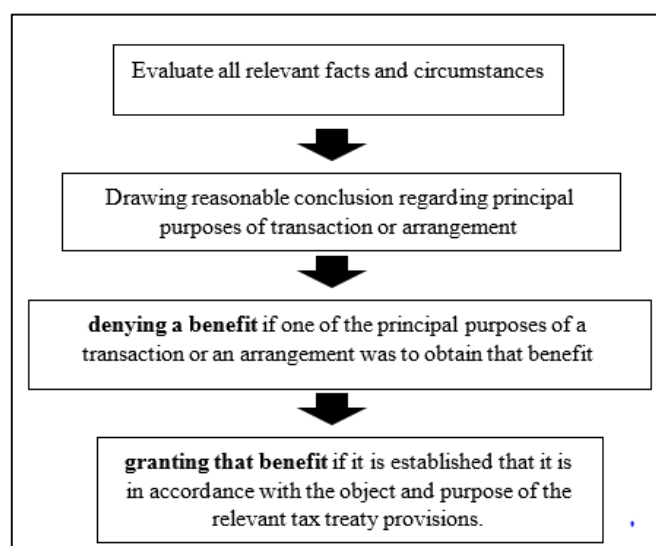
(represented by the French) and common law approaches have focused initially on the intention revealed in the text and the context of the statute. They also incorporate interpretive criteria, which consist of its language, genesis, context within the statute and the legal system as a whole, its purpose and also extralegal values. The interpretation supported by those criteria may depend on “*the equity of the statute and the need to achieve fairness in the case*” (Carney, 2015).

3. RESEARCH METHODOLOGY

In this article, the author conducts a literature review by discussing a range of interpretations of the PPT clauses brought by prior research. Finally, a conclusion is drawn on the width of that interpretation which may lead to uncertainties in combatting tax-treaties-related avoidance and/or evasion.

4. DISCUSSION

In principle, the procedures involved in the application of the PPT can be illustrated as follow:



Source: Adopted from Buriak (2018)

Taking into account all the relevant discussion brought by the prior literature, the author attempts to synthesize the main issue underpinning the interpretation of the PPT clause.

4.1. One of Principal Purposes

It is clear that to satisfy the PPT, getting treaty benefit should be one of the principal purposes of an arrangement or transaction, not necessarily sole or dominant purpose. Nonetheless, the OECD does not provide any guidance on distinguishing between principal purposes and ancillary purposes on the one hand, and between various principal purposes on the other hand (De Broe and Luts, 2015). Further difficulties would be related to the nature of tax treaty itself, which aims to boost transaction between countries by eliminating or reducing tax barrier (De Broe and Luts, 2015). As such, De Broe and Luts (2015)

suggested that treaty benefit should be granted in a situation where a genuine economic objective is present as long as the transaction or arrangement is not inspired by sole or dominant purpose to obtain treaty benefits. It is hardly conclusive whether treaty abuse occurs when a taxpayer has tax motive of a transaction, which equally important to non-tax motive (Kok, 2016). Further, Rosenbloom (1994) argued that a substantial non-tax 'nexus' between the entity and the jurisdiction where it is formed tends to remove the treaty abuse suspicion, because it establishes a purpose for the structure other than borrowing the treaty.

On the other hand, the 2017 OECD Commentary on Article 29 underlines that PPT does not refer to the sole or dominant purpose of a transaction or arrangement. Buriak (2018) mentions that "the PPT does not try to distinguish abusive situations from non-abusive ones for combating tax avoidance and, consequently, it targets all transactions that potentially might be but are not always abusive." Further, he emphasizes that the use of "one of principal purposes" instead of "main purpose" is to prevent the abusive conduct of taxpayers by providing both tax and non-tax justifications for their transactions or arrangements. Paragraph 179 of the 2017 OECD Commentary on Article 29 also emphasizes that "a person cannot avoid the application of this paragraph by merely asserting that the arrangement or transaction was not undertaken or arranged to obtain the benefits of the Convention." In the context of legal certainty, Weeghel (2019) indicates that the subjective test aims to maintain the taxpayer acting in good faith, as well as to test the violation of object and purpose of the relevant provision. Therefore, it seems that part of this subjective element of the PPT would cover broader transactions or arrangements so as to avoid those purporting to circumvent the PPT rule.

On top of that, the 2017 OECD Commentary on Article 29 in fact says that obtaining treaty benefits may not be considered as a principal purpose or one of principal purposes where an arrangement is extremely connected to a core commercial activity and obtaining treaty benefits does not determine the form of such an arrangement. Accordingly, Gomes (2019) following Chand (2018) concludes that when non-tax purposes exceed tax motives, obtaining treaty benefits should be considered as the principal purpose of an arrangement. In that sense, considering all relevant facts and circumstances, such an arrangement has to be fundamentally driven by genuine commercial or economic objectives (Gomes, 2019).

The other relevant issue to consider with respect to determining the principal purpose of a transaction or arrangement is the meaning of the term "purpose" (Elliffe, 2019). It has been analyzed that the term "purpose" should be distinguished from "intention". Therefore, Elliffe (2019) suggests that the whole objective behind such an arrangement, and not necessarily the taxpayer's intention, should be examined. Accordingly, the use "purpose" rather than

"intention" tends to reduce subjectivity level of the PPT.

In the author's opinion, the interpretation of "one of the principal purpose" should primarily rely on its literal (ordinary) meaning, following the Article 31 of the VCLT. Consequently, the PPT seems to widen its net so as to put the previously untouched tax treaty abuse. Having regard to the guiding principle pursuant to the commentary on the 2003 OECD MTC, tax treaty benefit should not be available in a situation where the main purpose of any transaction or arrangement is to secure a more favorable tax position, which would be contrary to the object and purpose of the relevant treaty provision. It does seem that one may easily circumvent such a principle by adding non-tax motives that are as crucial as the tax motive from the taxpayer's perspective. Further, following Elliffe (2019), tax administration should carefully investigate and distinguish the "purpose" of any transaction from the "intention" of the taxpayer conducting such a transaction. This seems to result in an additional uncertainty of the PPT.

4.2. Reasonableness

In order to assess whether obtaining treaty benefit constitutes one of principal purposes of the transaction or arrangement, the PPT requires that such an assessment has to be reasonably made. The reasonableness test is arguably a mechanism to objectify the subjective element of the PPT (Weber, 2017; Danon, 2018; Gomes, 2019).

However, difficulties seem to arise as the OECD does not elaborate clearly the detailed criteria that meet the reasonableness requirement. According to the 2017 OECD Commentary on Article 29, which only provides limited guidance, the conclusive proof of a person's intention with regard to an arrangement or transaction is not required. In accordance, Lang (2014) mentions that "reasonable" does not mean "compelling". An objective analysis based on all relevant facts and circumstances should be conducted in order to investigate the principal purpose of a transaction or arrangement. The 2017 OECD Commentary suggests that the reasonableness involves considering different interpretations toward the investigated transaction or arrangement. Thus, Weber (2017) argues that the objectivity is satisfied when such interpretation is made as if the reasonable third person would do. In that sense, Weber (2017) seems to put an emphasis that one should not undermine the reasonableness requirement.

Lang (2014) and Cunha (2016) relate the reasonableness requirement to the lower burden of proof for tax administration. Further, Cunha (2016) concludes that the standard of proof under the PPT is lower from the perspective of tax administration than that applicable under the 2014 OECD Commentary related to treaty abuse. In practice, it is arguably irrelevant to provide evidence as the existence of benefit will drive the tax administration to presume the intention (Lang, 2014). On the contrary, Weber (2017)

emphasizes that the reasonableness test should not result in the lower burden for tax administration. The assessment conducted by tax administration should not be based on assumption or the presence of the benefit, without having regard to the economic reasons provided by taxpayers (Weber, 2017). In accordance, the OECD underlines that the effects of an arrangement does not necessarily reflect its purpose. An arrangement with large tax benefits should not directly confirm that it is designated to derive such benefits, but the tax authority is required to conduct an objective analysis first (Weber, 2017).

From the perspective of tax administration, it seems that certain level of discretion is allowed due to the absence of clear guidance under the 2017 OECD Commentary on Article 29. Indeed, the subjectivity seems to appear even though the objective analysis by the tax administration already involves different interpretations and also considers non-tax motives according to taxpayers. This is due to the fact that the PPT would still allow the granting of treaty benefits if it would be in accordance with the object and purpose of the relevant provisions of the convention (discussed in section 4.3). Such a precondition is considered as the other objective element of the PPT in addition to the reasonableness requirement that should be satisfied in the first place. Thus, the reasonable conclusion made by tax administration, in which a tax motive as the principal purpose of the transaction or arrangement, would be further tested. The later test seems more decisive and the taxpayers tend to be those having more burden to prove than the tax administration (discussed in section 4.4).

On the whole, critical points of the reasonable conclusion from the tax administration side involve (1) considering all relevant facts and circumstances related to the transaction or arrangement; and (2) analysis of tax and non-tax motives of the transaction or arrangement. As such, those preconditions must be presented regardless of the level of burden for tax administration.

4.3. Object and Purpose of Relevant Treaty Provision

As previously mentioned in section 3, the PPT would allow for treaty benefits to be granted if the granting of those benefits in such circumstances would be in accordance to the object and purpose of the relevant provisions of the tax treaty. The explanation of such object and purpose thus is needed when apply the PPT. The relevant treaty provisions to be observed in this case likely refer to the distributive rules and double taxation relief mechanism provided under the tax treaty (Kuzniacki, 2018).

The reference to the object and purpose of the relevant provisions of the tax treaty clearly requires the examination of the related provisions of the tax treaty. In doing so, Weeghel (2019) emphasizes that the interpretation rules under the VCLT should guide the determination of these object and purpose. Thus, in order to interpret the object and purpose of a treaty provision, regard should be given to the object and

purpose of the treaty. In fact, the examples provided in the 2017 OECD MTC Commentary on Article 29 also refer to the object and purpose of the tax convention when determining whether the granting of treaty benefit in each circumstance stated is allowed under the PPT. Further, Kuzniacki (2018) cites that a reference to the ultimate treaty purposes and context as well as its operative purposes should be made due to the absence of individual purpose of each treaty provision. As such, each treaty provision is designated to achieve the ultimate purpose of the treaty, thus its wording, context and purpose are integrated (cited by Kuzniacki, 2018).

The analysis conducted by Kuzniacki (2018) results in the finding that once transactions or arrangements come with economic substance and business purpose, they contribute to the international commerce; correspondingly, the ultimate purpose of the treaty would be achieved. Such an interpretation is suggested even though the PPT does not explicitly mention both economic substance and business purpose (Kuzniacki, 2018). The 2017 OECD MTC actually considers the economic substance and business purpose as the relevant facts and circumstances (Kuzniacki, 2018).

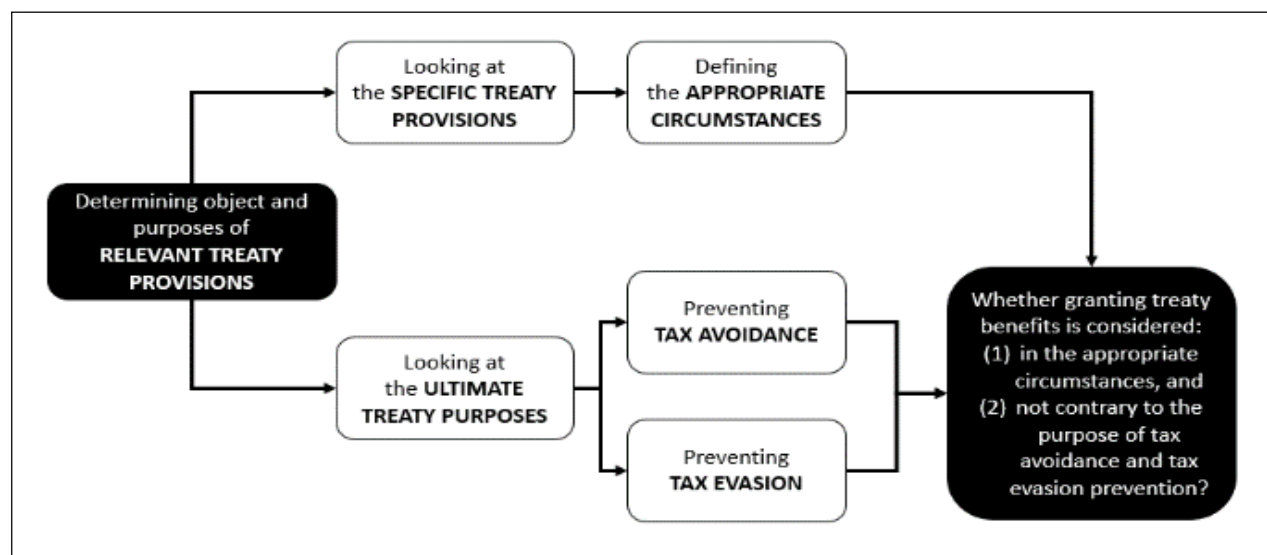
Before the BEPS Action Plans were delivered and adopted in the text of the MLI, the purposes of tax treaties is mostly reflected in their preamble, which are avoiding double taxation and preventing tax evasion. The prevention from fiscal evasion would be achieved through the exchange of information mechanism, mutual assistance in tax collection and mutual agreement procedure for dispute resolution (Bissel & Reynolds, 2018). There has been no explicit reference to double non-taxation or tax avoidance including through treaty shopping prior to the 2017 OECD MTC. Nonetheless, basically income from cross-border transaction should not be precluded from taxation; but, such income should only be taxed once (Arnold, 2016).

According to the 2017 OECD MTC, in its preamble and commentary, the purposes of the convention clearly cover (1) the elimination of double taxation so as to boost goods and services exchange and capital and person movement; (2) the prevention of tax evasion; and (3) the prevention of tax avoidance (Weeghel, 2019). Arnold (2016) emphasizes that the objectives of preventing tax evasion without facilitating double non-taxation should be seen as having of equal importance to the elimination of double taxation objective. However, with regard to implementing the PPT, more weight should be given to the purpose of preventing tax evasion and avoidance than on the purpose of eliminating double taxation (Weeghel, 2019). In fact, as the real cases may not be that straight-forward as exemplified in the 2017 OECD MTC Commentary on Article 29, the more interpretive issues may arise. As a matter of policy, Weeghel (2019) argues that such interpretive issues should be addressed by balancing those various treaty objects and purposes. In these regard, it seems that this objective element still involve certain level of

subjectivity from the perspective of tax administration. The discretion of the tax administration thus is arguably exist in the interpretation of object and purpose of the relevant treaty provision.

However, looking particularly at the specific treaty provisions is still necessary. Based on the 2017 OECD MTC treaty benefits would only be granted in appropriate circumstances (Buriak, 2018). Thus, in order to define those appropriate circumstances, Buriak (2018) mentions that the reference should be made to the respective treaty provision that provide such benefits. In doing so, he takes the provision of Article 10 of the 2017 OECD MTC as an example. That provision in principle is designated to allocate taxing rights of dividend with a special reduced rate for particular direct investment on shares. In that sense, it is desirable that the provision would incentivize direct investment than portfolio. Taxpayers tend to have two options of investment types. Buriak (2018) thus states that the object and purpose of the relevant treaty

of the PPT. He emphasizes that pursuant to the guiding principle, tax authorities have to provide a clear evidence of tax motives of taxpayers. Conversely, under the PPT, a reasonable conclusion that getting tax benefit becomes one of the principal purposes of a transaction or arrangement is sufficient to deny such benefit. Also, the 2017 OECD MTC states that the PPT does not require a conclusive proof of such motives. In that regard, the burden of proof for tax authorities in the implementation of the PPT seems lower (Buriak, 2018). On the other hand, Buriak (2018) underlines that the taxpayers' burden would be higher as they have to demonstrate that their tax motives are not contrary to the object and purpose of the relevant tax treaty provision. As such, according to him, a satisfactory evidence has to be furnished by the taxpayers. In the same way, De Broe and Luts (2015) have previously acknowledged that the PPT has tried to change the allocation of burden of proof even though its clauses do not state explicitly.



provisions would be of help to determine the true intention of the treaty provision. Further, he advocates that the background of the treaty provision, the context, the object and purpose of the provision and the tax convention are intertwined and should not be considered separately when applying the PPT.

4.4. Burden of Proof

The PPT has set both the said subjective and objective tests in order to prove the existence of tax avoidance and/or evasion from tax treaty context. Nonetheless, neither the 2017 OECD Commentary nor the Explanatory Statement of the MLI explained further concerning who should conduct the test, more importantly, which party will bear the primary burden of proof. Consequently, the allocation of burden of proof seems less clear and so raise uncertainties for them. Indeed, prior literatures acknowledge the unbalanced and unreasonable burden of proof under the PPT (Chand, 2018).

Buriak (2018) tried to compare the burden of proof for the domestic anti-avoidance rules under the guiding principle set out in the 2014 OECD MTC to that

The more burden of proof for taxpayer is arguably resulted from the discretion "granted" to tax authorities under the PPT. Gomes (2018) mentions that the absence of (1) burden of proof framework and (2) criteria for the "principal purpose" would create discretion for tax authorities when applying the PPT. Further, such a discretion seems to alter the burden of tax authorities to conduct the objective assessment which theoretically should take the object and purpose of the relevant treaty provision into account. In fact, following the Article 31 of the VCLT, the interpretation of the relevant treaty provisions should refer to the intention of the two contracting states when concluding the treaty (Arnold, 2016). Unfortunately, the common intention of both states are rarely documented or published (De Broe & Luts, 2015; Kuzniacki, 2018); even, they may not have a similar idea regarding the object and purpose of treaty provision and/or the tax treaty (Kuzniacki, 2018). In that sense, the difficulties to establish such object and purpose lead the tax administrations to shift their burden of proof the objective element to taxpayers (Weeghel, 2019).

Above all, Chand (2018) has focused on how the burden of proof under the PPT would be allocated in the context of litigation before the Tax Court. In such a case, Chand (2018) states that the tax administration would have to prove the tax motive of a taxpayer which become one of his principal purpose of conducting a transaction or arrangement under investigation. As part of the objective element of the PPT, the taxpayer then should be given a chance to rebut the conclusion of the tax administration by demonstrating his non-tax purposes or disputing that getting tax benefit is not one of his principal purposes. In the next step, if the court is satisfied with the existence of such a benefit, the taxpayer should have an opportunity to prove that it is in line with the object and purpose of the relevant tax treaty provision. The tax administration then may dispute the taxpayer's claim. Finally, considering all relevant facts and circumstances, the court would make a decision whether treaty benefit should be granted. However, Chand (2018) emphasizes, in a situation where the conclusion brought by the tax administration is considered unclear, the taxpayer would be benefited from the doubt.

To sum up, for the sake of practicality, tax administrations may shift their burden of proof when applying the PPT to taxpayers. However, they have to remember that when the case goes before court, objective evidences should be on their hand. Otherwise, taxpayers will obtain benefit from the tax administrations' doubt. Thus, the argument of unbalanced burden of proof seems unwarranted.

5. CONCLUSION AND RECOMMENDATION

The incorporation of the PPT in the text of the DTA reflects the existence of a more powerful tool for contracting states to address tax treaty abuse. This is also true in the case of Indonesia as it has not had a GAAR in its domestic tax law. However, such a tool seem to be in conflict to the other object and purpose of the treaty. This is particularly due to the subjectivity element of the PPT, regardless of any objective element adhered to balance it. Of several issues of the PPT, the interpretation of the phrase "one of the principal purpose", the reasonableness element, the object and purpose of the relevant treaty provision, and the burden of proof under the PPT is likely the main concern according to recent research investigated. Notwithstanding the discretion that is apparently granted to tax administrations when conducting the test, it is important to note that the tax court would always be able to challenge their claim. In that sense, the taxpayers should be aware of the practicality risk of the PPT.

Further, as suggested by Gomes (2019), a guideline for the PPT implementation is necessary, particularly concerning the application of the discretionary power of the tax administrations. It is also designated to alleviate the risk of unpredictable conclusion made by the tax court as no sufficient guideline on the implementation of the PPT (Gomes, 2019). Further, Rao (2018) a domestic guideline,

which serves as framework to shed light on the extensively broad subjective element of the PPT, and so resulting in the more clarity and easiness for taxpayer as well as investor concerns.

6. LIMITATION

The result of this research is based on selected recent literature, which mainly focuses on the PPT. As a consequence, it may not cover all relevant issue in the interpretation of the PPT. Further research, which incorporates relevant case analysis is suggested either to confirm the result of this research or to show how the PPT applies to such a case.

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