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# Tax Avoidance Actions in Indonesia

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**Abstract**

The numerous tax avoidance cases amounting to Rp 68.7 trillion can be considered as significantly detrimental to the state. Tax avoidance actions are carried out by exploiting existing legal loopholes to reduce the tax burden. One of the factors driving tax avoidance actions is the substantial amount of taxes that a company is required to pay. Ultimately, this can lead to the reluctance of other taxpayers to fulfill their tax obligations, resulting in the ineffectiveness of the tax system.

**Keywords:**

Tax Avoidance; Tax Law.

## Introduction

Tax is one of the main sources of income for the state. According to the *Undang-Undang Republik Indonesia Nomor 16 Tahun 2009 tentang Ketentuan Umum dan Tata Cara Perpajakan* (Republic of Indonesia Law Number 16 of 2009 concerning General Provisions and Procedures for Taxation, hereinafter referred to as "*UU No. 16 Tahun 2009*"), tax can be defined as a mandatory contribution or payment by citizens to the state by individuals or business entities that is coercive based on regulations and without direct reciprocation, and is used for the maximum welfare of the people. Tax, as a source of state revenue, provides benefits for financing government expenditures, serving as a driver of governance, funding national development, supporting economic activities, and acting as a tool to regulate or implement government policies in the social and economic sectors through the provision of public facilities for the community.[1]

One of the taxable entities in Indonesia is a corporate taxpayer, such as a company. It is undeniable that the existence of companies has played a significant role in the nation's life. Company activities have become a crucial component in the formation of the country's economic structure. For instance, companies absorb production factors provided by households and the community, then process them into goods or production services consumed by the public. From an economic perspective, the goal of a company is to process the production factors available in the community and maximize profit.

Over time, companies have made a substantial contribution to state tax revenue, making their existence crucial for the country and society. However, the satisfaction of maximizing profits for companies diminishes due to the obligation to pay taxes to the state. This situation creates a conflict of interest between the state and the company. The state views taxes as a company's obligation and a primary source of state revenue, while companies see taxes as a burden that reduces net profit. This leads companies to seek ways to reduce the amount of tax payments.

The government, in its effort to enhance or optimize tax revenue, takes intensive and extensive steps in tax collection. Intensive steps involve the improvement of tax administration, the enhancement of the quality of tax collection officers, and the refinement of tax regulations. Meanwhile, extensive steps are taken by expanding the coverage of taxpayers and adjusting tax rates.[2] However, the government's efforts to optimize tax revenue for national development face numerous challenges. The inability to achieve the realization of tax revenue is likely due to the low awareness of taxpayers, both individuals and corporations. Despite being obligated to pay taxes to the state treasury, taxpayers often lack the necessary awareness. In practice, there is a lack of alignment between the goals of taxpayers and the government. For taxpayers, the tax paid is a cost that can reduce net profit,

[1] Moeljono Moeljono, "Faktor-Faktor Yang Mempengaruhi Penghindaran Pajak," *Jurnal Penelitian Ekonomi Dan Bisnis* 5, no. 1 (2020): 103–121.

[2] Calvin Swingly and I Made Sukartha, "Pengaruh Karakter Eksekutif, Komite Audit, Ukuran Perusahaan, Leverage, Dan Sales Growth Pada Tax Avoidance," *E-Jurnal Akuntansi Universitas Udayana* 10, no. 1 (2015): 47–62.

while for the government, taxes are a source of national financing needed for national development. Due to this misalignment of goals, taxpayers tend to make efforts to minimize tax costs by engaging in tax avoidance.

Tax avoidance is a method used by companies to reduce the taxes they have to pay by exploiting the weaknesses in tax regulations set by the government. Tax avoidance, also known as tax planning, is the process of controlling actions to avoid undesirable tax consequences. Illegal tax planning is often referred to as tax evasion, which involves attempting to minimize tax burdens by breaking the law. On the other hand, legal tax planning or tax avoidance is typically done by utilizing aspects not covered by the law or exploiting gaps in tax legislation. One underlying perspective for such actions is that taxpayers do not directly benefit from their tax payments, even though the funds generated from taxes are intended for the benefit of the nation and the welfare of the people.[3]

According to the Tax Justice Network report, Indonesia is estimated to incur losses of $4.86 billion per year or approximately Rp 68.7 trillion (at an exchange rate of Rp 14,149 per US dollar) due to tax avoidance. The report titled "The State of Tax Justice 2020: Tax Justice in the Time of COVID-19" by Tax Justice News states that out of the total of Rp 68.7 trillion, these losses are caused by corporate taxpayers engaging in tax avoidance in Indonesia. The estimated losses from corporate taxpayers amount to $4.78 billion or approximately Rp 67.6 trillion, while the remainder comes from individual taxpayers with an estimated amount of $78.83 million or around Rp 1.1 trillion. The Ministry of Finance of the Republic of Indonesia has set a clear target for tax revenue in 2020, aiming for Rp 1,198.82 trillion. Thus, the estimated tax avoidance represents 5.7% of the year-end 2020 target. In terms of the tax avoidance value, it is estimated to be equivalent to 5.16% when compared to the actual tax revenue in 2019, amounting to Rp 1,332 trillion.[4]

The impact of tax avoidance practices can be direct or indirect. The direct impact includes, for example, the stagnation of economic growth and the slowing

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[3] Citra Windy Lubis, “Faktor-Faktor Yang Mempengaruhi Penghindaran Pajak,” *Accumulated Journal (Accounting and Management Research Edition)* 2, no. 2 (2020): 99–110.

[4] Fatimah, “Dampak Penghindaran Pajak Indonesia Diperkirakan Rugi Rp68,7 Trilliun,” *Pajakku.Com*.

down of the country's economic wheel, as state revenue and income from the tax sector significantly decrease. On the other hand, the indirect impact includes, for example, a reduction in government subsidies for the poor.

Indonesia has experienced significant losses due to tax avoidance actions. The consequences of these losses will affect the country's development. Interestingly, tax avoidance is not considered an illegal act. This means that there are no legal sanctions for those who engage in it (it is legal). The behavior of tax avoidance in the eyes of positive law (tax law) does not fall within the domain of violating legal norms. However, this behavior clearly erodes state revenue from the tax sector.

The amount of tax that must be paid by corporate taxpayers is a crucial factor in tax avoidance. In Indonesia, many taxes must be paid by companies. According to the return on assets (ROA) theory, the higher the profit a company earns, the higher the tax burden it must bear.[5] Thus, the company's profits are reduced. One of the company's objectives is to enhance the well-being of shareholders by maximizing corporate profits. This is one of the reasons companies engage in tax avoidance.

Based on the background description, the core issues addressed in this article are, firstly, the reasons companies engage in tax avoidance. Secondly, the effectiveness of the laws in Indonesia to address tax avoidance actions that could harm the state.

## Method

The type of research in this article is juridical-empirical, which examines the applicable legal provisions and what actually happens in society. The data sources used are obtained using the library research method, which involves collecting data such as books, articles, regulations, and written materials closely related to the research object. The discussion in this article is descriptive-analytical, meaning that the research results are expected to depict the reality or facts related to the research

[5] Winanda Wahana Warga Dalam and Indah Novriyanti, “Faktor-Faktor Yang Mempengaruhi Penghindaran Pajak,” *Journal of Applied Accounting and Taxation* 5, no. 1 (2020): 24–35.

object, which are then analyzed and elaborated to produce a conclusion as an answer to the researched problems.

## Regulations on Tax Obligations

Taxes are mandatory contributions to the state owed by individuals or entities, enforced by law, without direct compensation, and used for the needs of the state for the greatest prosperity of the people. Paying taxes is the embodiment of civic obligation and the taxpayer's participation in fulfilling tax obligations for state financing and national development. According to the philosophy of tax law, paying taxes is not only an obligation but also a right of every citizen and a contribution to national development.[6] The state requires funds for tax development from the people. Tax collection must first be approved by the people, as stated in Article 23 paragraph (2) of the *Undang-Undang Dasar Negara Republik Indonesia* (1945 Constitution of the Republic of Indonesia), which states that all taxes for the needs of the state are based on the law.

Referring to Article 1 paragraph (2) of *UU No. 16 Tahun 2009*, taxpayers are individuals or entities that include taxpayers, tax withholders, and tax collectors, and have rights and obligations in accordance with tax laws and regulations. Individuals or entities that meet the criteria for taxpayers must report their taxes on income, wealth, and owned properties. Tax is an obligation for every entity within a country, whether it be an individual or a legal entity, company, or corporation.

Paying taxes is a form of contribution and appreciation for the country, as taxes are distributed for community welfare programs. Besides being an obligation, taxes can also serve as a tool to enhance a company's credibility. Companies that regularly pay their taxes can be considered financially healthy. This, in turn, makes it easier for the company to apply for loans and facilitates other business processes.

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[6] Haryo Limanseto, “Menko Airlangga: Membayar Dan Melaporkan Pajak Merupakan Bentuk Kecintaan Kepada Negara,” *Kementerian Koordinator Bidang Perekonomian Republik Indonesia*.

The numerous transactions conducted by a company naturally lead to a significant amount of tax reporting that needs to be done. Here is a list of taxes that must be reported by the company:[7]

1. *Pajak Penghasilan Pasal 21* is a tax on the income of a company based on the work performed by its employees.
2. *Pajak Penghasilan Pasal 22* (is imposed on companies engaged in trade or import-export activities. Article 22 only applies to transactions where both parties benefit.
3. *Pajak Penghasilan Pasal 23*. Companies are required to pay Article 23 Income Tax when conducting transactions involving royalty payments for specific works, distribution of stock profits (dividends), payments for gifts, awards, and bonuses, as well as payments for services such as management, legal consulting, financial consulting, engineering, etc., as stipulated in the *Peraturan Menteri Keuangan Republik Indonesia Nomor: 141/PMK.03/2015* (Regulation of the Minister of Finance of the Republic of Indonesia Number: 141/PMK.03/2015).
4. *Pajak Penghasilan Pasal 26* applies when a company engages in transactions with foreign taxpayers. This tax is levied on transactions such as employee salaries, bonuses, allowances, royalties, dividends, services, pensions, or others, in accordance with regulations.
5. *Pajak Penghasilan Pasal 29*. Companies will be subject to Article 29 Income Tax if the annual tax payable by the company exceeds the total credits already deposited with the tax office (KPP). Therefore, it is often referred to as underpaid income tax.
6. *Pajak Pertambahan Nilai* (*PPN*). *PPN* is a tax imposed when there is an increase in the value of goods as they move from the producer to the consumer.
7. *Pajak Penghasilan Pasal 15*. This corporate tax is levied on the income obtained by certain taxpayers.

[7] Tommy, "Ini Dia, Pajak-Pajak Yang Wajib Dibayar Perusahaan," *Pajakku.Com*.

8. *Pajak Penghasilan Pasal 4 ayat (2)*. This corporate tax is imposed on various types of income obtained and its deductions that are of a final nature.

## Forms of Tax Avoidance Measures

The practice of tax avoidance by multinational corporations is generally carried out in several ways. Firstly, through transfer pricing, typically done by inflating purchase prices (markup) and deflating selling prices between companies within the same group, thereby transferring profits to a corporate group domiciled in a country with low or zero taxes. In the context of tax avoidance practices, the transfer pricing scheme involves engineering transaction prices between companies with special relationships to minimize the overall tax burden on the corporate group.[8]

Secondly, thin capitalization is achieved through loans provided by the parent company to its subsidiary located in another country. In this case, the parent company prefers to fund its subsidiary through loans rather than capital contributions because interest costs can be deducted from the taxable income of the subsidiary, whereas dividends cannot be claimed as a deduction from taxable income. The regulation regarding thin capitalization was first introduced in Article 18 (1) of *UU No. 7 Tahun 1983*, which states, "*Menteri Keuangan berwenang mengeluarkan keputusan mengenai besarnya perbandingan antara utang dan modal perusahaan untuk kepentingan penghitungan pajak berdasarkan undang-undang ini* (The Minister of Finance has the authority to issue decisions regarding the ratio between debt and capital of a company for the purpose of tax calculation based on this law)".

Thirdly, treaty shopping is conducted by exploiting the tax treaty facilities of a country by a company that is not entitled to those treaty benefits. In summary, treaty shopping is an effort by a taxpayer who is not entitled to enjoy the tax treaty benefits of a particular country. However, the taxpayer establishes a company in a country that has the tax treaty to avail themselves of the tax facilities outlined in that country's tax treaty.

[8] Russel Butarbutar, *Hukum Pajak Indonesia Dan Internasional*, ed. Olvi Destiani Putri (Gramata Publishing, 2017).

Fourthly, controlled foreign corporation (CFC) is a tax avoidance practice that involves deferring the recognition of foreign-sourced capital income (usually in a tax haven) to be taxed domestically. In Indonesia, CFC was introduced in Article 18 paragraph (2) of *UU No. 10 Tahun 1994*, stating that the Minister of Finance has the authority to determine the timing of dividends received by domestic taxpayers from capital participation in foreign entities, except for entities that sell their shares on the stock exchange, under the following conditions: (1) the amount of capital participation by the domestic taxpayer is at least 50% of the subscribed shares; or (2) jointly with other domestic taxpayers, they have a capital participation of 50% or more of the subscribed shares.

Fifthly, the utilization of a tax haven country is characterized by a country that either does not levy taxes at all or, if taxes are imposed, the tax rate is low. Additionally, the country has strict regulations regarding bank and business confidentiality, offering no opportunity to disclose this confidentiality to anyone from any country, even though disclosure may be possible based on international agreements. Furthermore, there is lax supervision over foreign exchange transactions, including deposits originating from foreign individuals or entities.

Sixthly, a Special Purpose Company (SPC). In his book, Adrianto adds SPC as a technique in tax avoidance.[9] Regulations regarding Special Purpose Companies (SPC) were first introduced in the fourth amendment to the tax law, specifically in Article 18 paragraph (3b) of *UU No. 36 Tahun 2008*. This article states, "*Wajib Pajak yang melakukan pembelian atau aktiva perusahaan melalui pihak lain atau badan yang dibentuk untuk maksud demikian (spesial purpouse company) dapat ditetapkan sebagai pihak yang sebenarnya melakukan pembelian tersebut sepanjang Wajib Pajak yang bersangkutan memiliki hubungan istimewa dengan pihak lain atau badan tersebut ketidakwajaran penetapan harga* (Taxpayers who purchase company assets through another party or a body formed for such purposes (special purpose company) can be designated as the party actually making the purchase, as long as

[9] Adrianto Dwi Nugroho, *Hukum Pidana Pajak Indonesia* (PT Citra Aditya Bakti, 2018).

the taxpayer concerned has a special relationship with the other party or entity, and the pricing is deemed unreasonable)".

Tax avoidance activities are carried out by several companies. Take, for example, the tax avoidance practices of PT Bentoel Internasional Investama Tbk., a subsidiary of British American Tobacco (BAT) in Indonesia in the year 2019. According to the Tax Justice Network's report, the tax avoidance practices of PT Bentoel Internasional Investama Tbk. resulted in the country incurring losses of up to US$14 million per year. The method used involved payments for technology and information costs, expenses, and royalties. The avoidance was executed through the transfer of transactions with British American Tobacco subsidiaries in countries that have tax agreements with Indonesia.[10]

The case of tax avoidance is also evident in the coal mining sector managed by PT Adaro Energy Tbk. in South Kalimantan, which is the largest coal company in Indonesia owned by businessman Garibaldi Thohir. According to a Global Witness report, the foreign network of companies affiliated with PT Adaro Energy Tbk. took this approach through its subsidiary in Singapore named Coaltrade Services International. PT Adaro Energy Tbk. sold coal mined in Indonesia at a low price to Coaltrade Services International for resale by its subsidiary at a higher price from 2009 to 2017. Global Witness notes that more than 70% of the coal sold by Coaltrade Services International comes from PT Adaro Energy Tbk.'s coal mines. Coaltrade Services International is also suspected of receiving commissions from third parties and other subsidiaries of PT Adaro Energy Tbk. The commission for coal sales was approximately US$4 million per year before 2009, but from 2009 to 2017, this figure increased to US$55 million per year.[11]

## The Factors Causing Tax Avoidance

The factors influencing taxpayers not to fulfill their tax obligations are diverse. It ranges from perceiving taxes as a life burden, public distrust in the government,

[10] Benedicta Prima, "Tax Justice Laporkan Bentoel Lakukan Penghindaran Pajak, Indonesia Rugi US$ 14 Juta," *Kontan.Com*.

[11] Danang Sugianto, "Mengenal Soal Penghindaran Pajak Yang Dituduhkan Ke Adaro," *DetikFinance*.

irresponsible tax officials, easily corruptible tax officers, the lack of assurance that taxes are used appropriately, lenient sanctions imposed on tax evaders, insufficient understanding of the importance of taxes for taxpayers' welfare, lack of knowledge, a lack of public awareness in keeping up with the latest regulations, to weak government oversight.[12]

According to research conducted by Arif A. Palowa and colleagues, the factors driving small and medium-sized taxpayers to engage in tax reduction actions include the perceived high tax burden, economic factors, government ambiguity, compliance issues, and distrust in government bureaucracy.[13] Meanwhile, corporate tax avoidance practices are influenced by various factors, including return on assets, leverage, company size, fiscal loss compensation, institutional ownership, and corporate risk.[14]

Return on assets reflects a company's ability to generate profits with the support of its overall assets. The higher the profit a company earns, the higher the tax burden it must pay, leading to a reduction in the company's net profit. One of the company's objectives is to enhance the well-being of shareholders by maximizing corporate profits. Therefore, companies will seek ways to minimize the reduction of their profits. One approach to prevent a decrease in profits is by exploiting weaknesses in the tax system, such as engaging in tax avoidance.

On the other hand, leverage is a ratio that measures the ability of both long-term and short-term debt to finance a company's assets. This ratio is used to gauge how much of the company's assets are funded by total debt. A higher leverage ratio indicates a larger amount of borrowed capital used by the company to invest in assets for generating profits.[15]

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[12] Maria Melisa and Vivi Adeyani Tandean, "Faktor-Faktor Yang Mempengaruhi Penghindaran Pajak (Tax Avoidance)," *Jurnal Akuntansi Bisnis* 8, no. 1 (2015): 95–111.

[13] Arif A Palowa, Grace B Nangoi, and Natalia Y T Gerungai, "Analisis Faktor–Faktor Yang Mendorong Tindakan Tax Evasion Pada Wajib Pajak UMKM Di Kecamatan Madidir Kota Bitung," *Going Concern: Jurnal Riset Akuntansi* 13, no. 04 (2018).

[14] Moeljono, "Faktor-Faktor Yang Mempengaruhi Penghindaran Pajak."

[15] Suryati resti and Sri Ayem, "Pengungkapan Corporate Social Responsibility Dan Leverage Penghindaran Pajak Dengan Kepemilikan Institusional Sebagai Variabel Modern Yang Terdaftar Di Bursa Efek Indonesia," *Jurnal Akuntansi & Manajemen* 32, no. 2 (2016): 101–109.

The relationship between leverage and tax avoidance practices lies in a company's use of external financing (debt) to achieve an optimal capital structure. An optimal capital structure provides flexibility for management to implement strategies for maximizing results. The hope is that the more optimal the company's capital structure, the higher the return received by the company. With higher returns, tax burdens also increase, prompting companies to find ways to minimize their overall expenses. One of these expenses is tax payments.

Furthermore, the size of the company, interpreted as a scale by which a company can be classified based on various criteria, including the size of the assets owned, is another factor. The relationship between the size of the company and tax avoidance is that a company with large assets will likely incur substantial expenses, including tax expenses. Companies aim to minimize all expenses for financial efficiency, and the expenditure on tax expenses is managed by the management through tax avoidance practices.[16]

Furthermore, fiscal loss compensation is a gap in Article 6 paragraph (2) of *UU No. 36 Tahun 2008*, where companies that have incurred losses in one accounting period are granted relief in paying their taxes. These losses can be compensated for up to 5 (five) years, and the company's profits will be used to reduce the amount of loss compensation. This loss compensation can be utilized as a form of tax avoidance because companies receiving compensation can avoid high tax burdens.

Moreover, a high level of institutional ownership tends to reduce tax avoidance. The role of institutional owners is to oversee and ensure that management complies with tax regulations. However, in tax planning efforts to minimize tax burdens, the percentage of institutional ownership can be used to reduce the taxable income of the company. This is because the presence of publicly traded shares or shares held by institutional owners can lead to the imposition of

[16] Juan Nathanael Tebiono and Ida Bagus Nyoman Sukanda, “Faktor-Faktor Yang Mempengaruhi Tax Avoidance Pada Perusahaan Manufaktur Yang Terdaftar Di BEI,” *Jurnal Bisnis dan Akuntansi* 21, no. 1 (2019): 101–123.

dividend burdens, which can be utilized to reduce the taxable income of the company.[17]

Finally, the company's risk level reflects the executive management's policy and falls into the categories of risk-taking or risk-averse. A higher level of risk indicates that the executive management is more inclined towards risk-taking, while a lower level of risk suggests that the executive management is more risk-averse. Another factor is the company's risk, which is the volatility of the company's earnings, measured using the standard deviation formula.

The influence of the company's risk on tax avoidance is evident when the management's policy is geared towards taking risks. In this case, the company engages in various activities through external financing. As a result, the company's debt level will be high, leading to a reduction in tax burdens.

## Conclusion

According to tax law, tax avoidance is not prohibited, although it often receives unfavorable attention from tax authorities due to its perceived negative connotations. This is because tax avoidance results in the state losing tens to hundreds of billions of rupiahs each year in tax sector revenue. From a tax policy perspective, turning a blind eye to tax avoidance practices can lead to injustice and a decrease in the efficiency of a tax system.

Tax avoidance is generally carried out through complex transaction schemes systematically designed and typically only feasible for large corporations. This perception of unfairness can, in turn, lead to reluctance among other taxpayers to pay taxes, resulting in the ineffectiveness of the tax system.

## Recommendation

The government should strengthen tax regulations by adopting General Anti Avoidance Rules (GAAR) and Special Anti Avoidance Rules (SAAR). The objective

[17] Melisa Fadila, M Rasuli, and Rusli Rusli, "Pengaruh Return on Asset, Leverage, Ukuran Perusahaan Kompensasi Rugi Fiskal, Kepemilikan Institusional, Dan Koneksi Politik Terhadap Penghindaran Pajak (Studi Empiris Pada Perusahaan Manufaktur Yang Terdaftar Di Bei Tahun 2011-2015)," *Jurnal Online Mahasiswa Fakultas Ekonomi Universitas Riau* 4, no. 1 (2017): 1671–1684.

is to provide guidelines for combating tax avoidance that serve as legal references for both the government and taxpayers, particularly in dealing with various tax avoidance schemes.

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