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FOREIGN CAPITAL LOSS, FOREIGN INCOME TAX CREDIT, AND DOMESTIC INCOMES

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Abstract

A taxpayer has a different interpretation about compensation for capital loss in the USA with taxable income in Indonesia from the tax authority (DGT). This compensation is related to foreign income tax credit. Tax court states that if the capital loss is recognized in calculating the foreign income tax credit, the capital loss must be considered in calculating the taxable income. By using the case in the tax court decision in Indonesia and analysis of existing regulations, this paper finds that are multiple interpretations in a regulation. The capital loss in the USA only can be compensated in the USA, not in Indonesia. This paper finds that besides the actual tax payments, the calculation of foreign income tax credit can use the tax rates in the tax treaty and effective tax rate from tax payment in a foreign country. The existing tax regulations should be revised to reduce multiple interpretations.

Keywords: *Capital Loss, Compensation, Foreign Income Tax Credit, Taxable Income*

1. Introduction

In doing business, entrepreneurs do not always gain profits. At certain times, the business may get losses. The losses calculated under tax regulations can reduce taxable income in the following and previous tax years, and this is called compensation for losses. Tax regulations in Indonesia allow compensation for these losses for the next 5 years (Indonesia, 2008). This allowed compensation is for domestic businesses' losses to domestic business profits.

A state with a domicile principle to collect income tax has a certain regulation. If a domestic taxpayer has a business overseas, and this business gains a profit, then this foreign profit is also taxed domestically by combining it with domestic income. The total income is taxing domestically by applicable regulations. If a business overseas suffers a loss, the foreign loss cannot be

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compensated for by domestic profit in the domestic country (Keuangan, 2002; Pajak 2004). To be taxed in Indonesia, the foreign income is calculated based on the regulations in the source country. The value of foreign capital loss that cannot be calculated to offset the profit in Indonesia as a domicile country is a loss calculated based on the tax regulations in the source country. Domestic income is income that is taxed based on the tax regulations in which the taxpayer is domiciled.

In the real-life, there are still differences in the interpretation between a tax authority and a taxpayer on how to compensate for losses if the domestic taxpayer has several types of income from abroad. Some foreign incomes gain profits and others suffer losses. Whether all of these losses cannot be compensated for with domestic income, or the foreign losses can be compensated by foreign profits first, is still a dispute. If there is a net profit from foreign income, then this net profit is combined with the net income in the domestic country. The different interpretation is found in the resume of the tax court decision in Indonesia number PUT-108701.14/2010/PP/ M.XVA 2019 (Court Decision).

This Court decision explains that the taxpayer and the Directorate General Tax (DGT) as a tax authority have different opinions regarding the losses suffered by the taxpayer in the USA in compensating for losses. This difference of opinion occurs because of different interpretations of the same rules. The taxpayer interprets that the foreign losses per country cannot be compensated for the domestic income. If there are some sources of income in a foreign country, then the income reported in the domestic tax return is the net income per country. So, if there is some source of income in a country, which consists of losses and profits, then these losses can be compensated for the profits in the same country. Meanwhile, DGT interprets that compensation for losses is per type of business, not per country. If there are losses and profits from some sources of foreign income, then the existing losses cannot be used to reduce both totals the foreign income and domestic income. Regarding this dispute, the panel of judges supports the taxpayer's argument. The taxpayer considers the foreign loss on calculating the foreign income tax credit report and this foreign loss is not corrected by the DGT, consequently, the foreign loss is also not corrected in calculating the taxable income. Foreign income tax credit or tax credit method is income tax calculated in the domicile country and paid in the source country on income in the source country. This income tax paid is the revenues of the source State. The domicile country has the sovereignty to recognize part or all of this foreign income tax credit when the taxpayer calculates the taxable income in the tax return. The panel of judges argues that if the DGT makes corrections on the foreign losses in calculating the taxable income, then the foreign income tax credit reported by the taxpayer must also be corrected.

This paper finds that the regulations as arguments used by the taxpayer and DGT are correct. However, it needs further explanations or revisions from DGT regarding the regulations used to reduce multiple interpretations.

Conceptually, the DGT correction for the foreign loss on the taxpayer tax return is correct. Because there is no affirmation to the tax regulation used in this case, this regulation can be interpreted differently. This paper also finds that in calculating the foreign income tax credits, it does not pay attention to the tax treaty between Indonesia and the USA. By considering this tax treaty, DGT should also make corrections to the foreign income tax credit calculated by the taxpayer. This paper also finds that the decision of the panel of judges can be used by taxpayers to do tax avoidance, that is, the losses can be compensated twice, for income in Indonesia and income in the USA (IRS, 2020).

Some statistical information about Indonesia to help understand the subject is given below. The source of Indonesia's state revenue is mostly from taxes, and income taxes non-oil and gas provide the largest contribution of all types of taxes. The contribution of taxes as state revenues in Indonesia is shown in Table 1.

Table 1. Composition of Taxes As Indonesia's State Revenues (IDR Trillion)

Description (IDR, %)	2013	2014	2015	2016	2017	2018	2019
Income Tax – Non-Oil and Gas	417.70	458.74	552.64	630.11	596.48	685.32	713.10
	45.33%	46.57%	52.09%	56.97%	51.82%	52.19%	53.51%
Value-Added and Luxury Sales Tax	384.71	409.18	423.71	412.21	480.72	537.42	531.60
	41.75%	41.54%	39.94%	37.27%	41.76%	40.93%	39.89%
Property Tax	25.30	23.48	29.25	19.44	16.77	19.43	21.10
	2.75%	2.38%	2.76%	1.76%	1.46%	1.48%	1.58%
Other Taxes	4.94	6.29	5.57	8.10	6.74	6.61	7.70
	0.54%	0.64%	0.53%	0.73%	0.59%	0.50%	0.58%
Income Tax – Oil and Gas	88.75	87.45	49.67	36.10	50.32	64.39	59.20
	9.63%	8.88%	4.68%	3.26%	4.37%	4.90%	4.44%
Total Tax Revenues	921.40	985.14	1,060.84	1,105.96	1,151.03	1,313.17	1,332.70

Source: The DGT

Table 1 explains that the contribution of non-oil and gas income tax is getting bigger in rupiah and percentage. This explains that the non-oil and gas income tax is the DGT's concern. With the increasing number of taxpayers in Indonesia, the DGT must carry out monitoring through tax audits to ensure that taxpayers comply with tax regulations. The number of taxpayers in Indonesia is shown in Table 2.

Table 2. Number and Composition of Taxpayers in Indonesia

Year	Individual Taxpayers	Corporate Taxpayers	Treasurer Taxpayers	Total Taxpayers
2013	89.66%	8.31%	2.01%	28,004,218
2014	90.56%	8.09%	1.35%	30,574,428
2015	90.60%	8.05%	1.36%	33,336,122
2016	90.66%	8.01%	1.33%	36,446,616
2017	90.78%	7.95%	1.28%	39,151,603
2018	90.98%	7.82%	1.20%	42,479,485
2019	92.02%	7.73%	0.25%	45,950,440

Source: The DGT

There are many differences in the interpretation of tax regulations between the taxpayers and the DGT. Many cases related to taxation (income tax and value-added tax) have been resolved in the Tax Court in Indonesia as seen in Table 3. The trend of this case is increasing.

Table 3. Number of Disputes Resolved at the Tax Court

Description	2014	2015	2016	2017	2018	2019	2020
The Results	7,386	7,669	7,109	5,553	7,813	12,882	14,660

Source: Tax Court Secretariat http://www.setpp.kemenkeu.go.id/statistik

The remainder of this paper is organized as follows. Section 2 discusses the previous literature on tax avoidance, tax audit, and tax regulations related to loss compensation. Section 3 discusses the research method in this paper, which covers transaction schema and disputes that occurred. Section 4 discusses the results and discussion covering loss from foreign, and foreign income tax credit. Section 5 presents the conclusion.

2. Literature Review

In doing business, entrepreneurs try to maximize profits by maximizing incomes and minimal expenses or expenditures. This behavior is related to the traditional production theory (Fandel and Lorth, 2009). One of the expenses that can be deducted is income tax (Graham et al., 2014; Hoffman, 1961; Lietz, 2013). A small income tax payment will interfere with state revenue from the taxation sector, especially the tax avoidance actions carried out by multinational companies (Pieretti and Pulina, 2020). To ensure the state revenues from taxes are achieved, there are many ways to do by tax authorities, one of which is through tax audits (Mills, 1998; Snow and Warren, 2007). This tax audit is one of the most optimal ways to maximize tax revenue ((Paramonova) Kuchumova, 2017).

Tax audit must be with the right strategy ((Paramonova) Kuchumova, 2017), so that taxpayers with tax avoidance strategy can be minimized, both the number of taxpayers and the rupiah value. The reduction in tax avoidance can be seen from the taxpayer reports and tax compliance (Kurauone et al., 2020). Some of the tax audit strategies are examining large taxpayers' compliance and taxpayers who carry out cross-country transactions or multinational companies (MNC). The MNCs have more ability to do tax avoidance, such as transfer pricing manipulation as an essential activity of MNC (Cooper and Nguyen, 2020). Some previous literature discusses how large companies do tax avoidance. The MNCs with activities abroad have a lot of low effective tax rates (ETR) globally compared to other companies (Rego, 2003). To reduce their income taxes, the MNE moves its profits to countries with low tax rates and uses different tax systems between countries and uses system tax benefits (Johansson et al., 2017). The MNCs with offshore firms are more aggressive in implementing tax avoidance strategies (Kim and Li, 2014). The differences in tax rates on dividends and operating incomes are factors in determining MNC strategies related to tax planning (Lu and Wu, 2020).

The audit strategy with the main objective to increase state tax revenues aims to catch and prevent tax evasion carried out by the taxpayers (European Commission, 2006). Another study explains that the purpose of tax revenue is not only for state revenue, but also broadly affects the economy (Bayer and Cowell, 2016) by means that the results of this tax audit can create external information and be used by economic actors. The results of the tax audit are expected to be a trigger for other taxpayers to be more efficient.

The tax audit policy set by the DGT can be different every year. This audit policy is made with the consideration of several factors, including the internal conditions of the DGT and the condition of the Indonesian economy. The DGT audit policy in 2020 is stipulated in the Director-General of Taxes Circular (SE) Number SE-07/PJ/2020 dated 27 February 2020 (SE-07) (Pajak, 2020). This SE-07 explains that to supervise the taxpayers, the taxpayers are divided into 2 segments, namely strategic taxpayers and other taxpayers. In general, the criteria for the strategic taxpayers are taxpayers whose assets are quite large and pay more taxes. The taxpayers who are included in these segmentation criteria are examined and if they meet the requirements for further inspection, then proceed to tax audit. The objective of SE-07 is to increase the compliance of taxpayers so that the tax base is broader and tax revenue increases.

Taxpayers reporting losses in their tax return may meet the criteria for examination because the losses suffered by taxpayers can be compensated for with taxable income, both in the current year and the following year (Indonesia, 2008). Therefore, DGT needs to ensure that the amount of loss reported by the taxpayer relates to the regulations through a tax audit. In the USA, losses from business transactions, operating losses, and capital losses are not only compensated for the following year but can also be offset against the previous tax year (IRS, 2020). 26 U.S. Code § 1212 (IRS, 2020) states that a capital loss can be compensated for the previous year for a maximum of 3 years until the loss is used up and with several limitations. Determination of the year in which the loss is compensated, previous or next year, is regulated by the tax regulations in a country. Taxation regulations in Indonesia allow compensation for losses of the next 5 years from the year the loss occurred.

In the USA, there is a tendency for taxpayers to sell their shares and get capital loss due to tax motivation (Poterba and Weisbenner, 2001). With several requirements, this capital loss can reduce taxable income. When a taxpayer in the domicile country earns income and pays income taxes in the source country, there is an option to avoid double taxation. In the tax treaty, there are options, namely the exemption method and the credit method. There are 2 approaches to the exemption method, namely full exemption and exemption with progression. The application of the credit method can take 2 approaches, namely full credit and ordinary credit (Kurniawan, 2017). The principle of the exemption method is that the domicile country does not tax any income based on the tax treaty is subject to income tax in the source country. The principle of the credit method is that the domicile country imposes a tax on the total amount of income, both income from the domicile country and the source country, but the income tax imposed in the source country can be deducted in calculating the income tax payable that must be paid in the domicile country. The Indonesian and the USA tax treaty applies the principle of the credit method to a certain limitation (ordinary credit) to avoid double taxation (Indonesia and the USA, 1988). The choice of this avoiding double taxation method depends on the strategy of each country (Dickescheid, 2004). For export capital countries, the credit method is more efficient. If there are tariff differences between countries, the credit method can produce an anti-trade bias (Bond and Samuelson, 1989).

There are 3 stipulations of taxation principles, namely the domicile/ residence principle, the source principle, and nationality/citizenship principle. Tax regulations in Indonesia implement the domicile principle for domestic taxpayers and the source principle for foreign taxpayers. Individual taxpayers, both Indonesian and non-Indonesian citizens, as long as they meet the requirements to be domestic taxpayers, are implemented the domicile principle in determining the tax collection (Indonesia, 2020). The Indonesian domestic taxpayers are taxed in Indonesia on all their income from around the world (worldwide income). Income tax paid in the source country can be credited, with certain calculations, in the country of domicile (Indonesia) as long as income from the source country is reported together with income in Indonesia. If there is a loss from abroad, the tax regulations in Indonesia prohibit the taxpayer to compensate the foreign losses to income in Indonesia (Keuangan, 2002).

DGT also audits Individual tax returns that have income from abroad. These individual taxpayers have cross-country activities similar to MNC in terms of tax compliance. This condition can be seen in the court decision in Indonesia number PUT-108701.14/2010/PP/ M.XVA 2019. From this decision, the individual taxpayer reports the loss abroad (USA) and calculates the loss to reduce taxable income in Indonesia. Due to the multiple interpretations of the tax regulations, this condition is used by Taxpayers to reduce the income tax payable.

3. Research Method

This paper uses a case study method sourced from a tax court decision in Indonesia. This case explains how the taxpayer compensates the income losses in the USA with other income profits in the USA. The taxpayer calculates net income from the USA to net income in Indonesia. This taxpayer calculation in an Indonesian individual tax return is corrected by the DGT when conducting a tax audit. The discussion begins by explaining the transaction scheme and disputes that occur along with the arguments given. An analysis is carried out on the existing regulations, the panel of judges' considerations, and the alternative dispute resolution.

3.1. Transaction Schema

The tax court decision number PUT-108701.14/2010/PP/M.XVA 2019 (P. Pajak, 2019) resolved the dispute between the taxpayers and the DGT for the taxpayer's loss in the USA could not be compensated for the taxable income in Indonesia. The taxpayer, who is an individual, reports the incomes from the USA in the Indonesia individual income tax return 2010. The income from the USA corresponds to US 1040 (US Individual Income Tax Return) as follows:

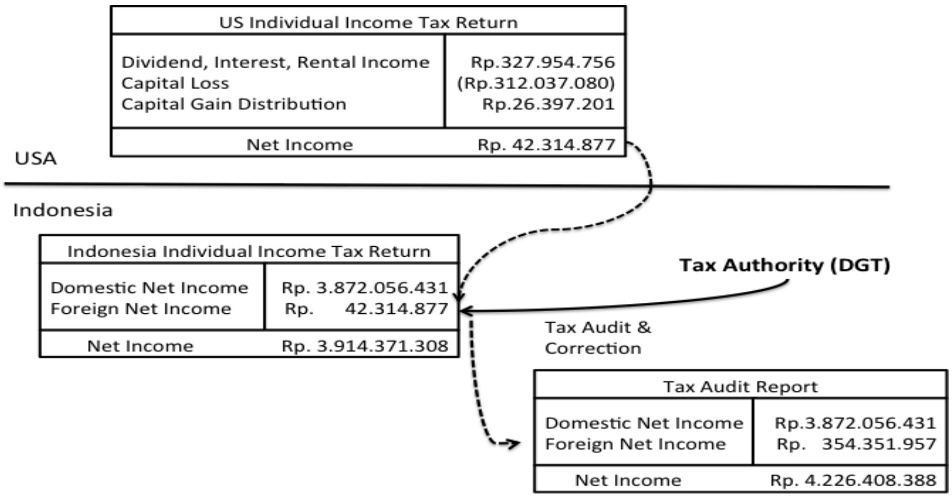
- Income from dividend, interest, and rental is Rp. 327,954,756.

- Capital Loss is Rp. 312,037,080.

- Capital gain distribution is Rp. 26,397,201.

The net income from the USA reported in the Indonesia individual tax return 2010 is Rp. 42,314,871. The taxpayer argues that capital loss Rp. 312.037.080 can be compensated based on Article 2 KMK Number 164/KMK.03/2002. The DGT argues that this loss cannot be compensated for the net income in Indonesia based on Article 1 paragraph (3) KMK Number 164/KMK.03/2002. The DGT also provides an argument based on the explanation of Article 4 paragraph (1) of Law Number 36 the year 2008 concerning Income Tax (Indonesia 2008), which explains that in one tax year, foreign losses are not compensated for by domestic income in calculating the taxable income tax. The schema of the tax reporting process by the taxpayer and the audit conducted by the DGT is shown in Figure 1. The taxpayer reports that the income tax paid in the USA as a foreign income tax credit in Indonesia is Rp. 10,206,249. There is no difference of opinion between the taxpayer and the DGT regarding this foreign income tax credit.

Figure 1: Transaction Schema



3.2. Dispute

The taxpayer argues that the net loss per country cannot be compensated for by domestic income as in the calculation example provided in KMK.164/KMK.03/ 2002 (KMK-164). There is no information in articles in KMK.164 regarding compensation for losses made per country. Because the income from the USA consists of several incomes and a loss, the taxpayer concludes the loss can reduce the income. Since net income from the USA is still positive, this net income can be combined with the domestic net income. The taxpayer also uses the Director-General of Taxes Circular Number SE-03/PJ.31/2004 (SE-03) to support the argument. The number 4 letter e in SE-03 explains, "Fiscal loss basis from income originating abroad can only be compensated by income from the same sources abroad". The taxpayer argues that the meaning of the same source is the same country. However, the use of the SE-03 as a legal source is rejected by DGT because, during the discussion with the tax auditor, the taxpayer does not use this SE-03.

The DGT uses Article 1 paragraph (3) in KMK.164/KMK.03/2002, which states "Losses suffered abroad do not be combined in calculating Taxable Income". The DGT and the taxpayer both use the KMK.164 as a legal basis, but they differ in interpretation. The DGT interprets the number 4 letter e in SE-03/PJ.31/2004 regarding the same source income for compensation in the following year as income from the same type of income from abroad in the same country. The DGT and the taxpayer have different interpretations regarding the SE-03.

The calculation of income tax paid in the USA as the foreign income tax credit by the Taxpayer uses the effective tax rate. There is no information on how much income tax paid in the USA in US dollar value or Rupiah value for each foreign income reported in Indonesia Individual tax return. The calculation of the foreign income tax credit by the taxpayer that is Rp. 10,206,249 is not corrected and acknowledged by DGT

4. Results and Discussion

Elucidation of Article 4 paragraph (1) of Law number 7 of 1983 concerning Income Tax that is last amended in Article 111 of Law Number 11 of 2020 concerning Job Creation (Cipta Kerja) states that "... Therefore, if in one tax year a business or activity suffers a loss, the loss is compensated with other income (horizontal compensation), except for losses suffered abroad ....". Article 16 paragraph (1) of the Income Tax Law explains that to determine the amount of taxable income, income is deducted by expenses, certain expenses, and compensation for losses. Losses abroad cannot be compensated for by domestic income. Article 1 paragraph (3) KMK Number 164/KMK.03/2002 explains, "Losses suffered abroad do not be combined in calculating Taxable Income".

The Income Tax Law and the Ministry of Finance Decree (KMK.164) do not further explanation whether the overseas losses come from business income, income from capital, other income, net income per country, or income per type of business. The appendix of KMK.164 provides some examples of how to calculate a foreign income tax credit. The example given is a combination of income from each country. If there is a loss in one country, the loss is not combined with domestic income to calculate taxable income. In this appendix, there is no explanation whether the income from a source country abroad is a net income or net loss from 1 type of business or more types of business.

Number 4 letter e of the Director-General of Taxes Circular Letter Number SE-03/PJ.31/2004 Regarding Compensation for Fiscal Losses in Income Tax Calculation explains, "Fiscal losses from income sourced abroad can only be compensated by income from the same source overseas". SE-03 does not further explain the meaning of the word 'income from the same source abroad'. This sentence is interpreted by the taxpayer as income originating from the same country. DGT interprets this sentence as the same type of source of income, not the country.

In resolving the dispute, the panel of judges does not consider which one is more appropriate in interpreting this rule. The panel of judges considers how consistent DGT is in determining the results of the tax audit. The foreign income tax credit calculated by the taxpayer includes the capital loss and this calculation is recognized by the DGT. The panel of judges states that because the DGT acknowledges the taxpayers 'foreign income tax credit calculation, it means that DGT recognizes the taxpayer's capital loss. Thus, the panel of judges cancels the correction for the taxpayer's loss in the USA by DGT. The calculation of foreign income tax credit by the taxpayer is using the effective tax rate from the income tax payment in the USA. The calculation of the effective tax rate is shown in Table 4.

Table 4: Effective Tax Rate Calculation

Description	USD, %
Total Net Income in the USA	425,199.00
Total Income Tax Paid in the USA	102,557.00
Effective Tax Rate (102,557/425,199)	24.12%

Source: Tax Court Decision

The calculation of the foreign income tax credit value on the incomes and loss in the USA, and reported in the Indonesia Individual Tax Return 2010 is described in Table 5.

Table 5: Foreign Income Tax Credit from the USA

Description	USD	Rp	Effective Tax Rate	Foreign Income Tax Credit from USA (Rp)
Interest Income	1,770	16,100,292.00	24.12%	3,883,352.61
Dividend	25,531	232,235,338.00	24.12%	56,014,618.00
Rent Income	8,753	79,619,126.30	24.12%	19,203,946.24
Selling Shares	(31,902)	(285,639,878.48)*	24.12%	(68,895,667.72)
Total	4,152	42,314,877.82		10,206,249.13

* = Rp.312.037.080 – Rp.26.397.201.

Source: Tax Court Decision

There is no explanation on the resume of the tax court's decision regarding the difference in income of USD 421,047, which consists of reports in the US Individual Tax Return (USD 425,199) and in the Indonesia Individual Tax Return 2010 reports (USD 4,152 or Rp. 42,314,877.82).

4.1. Loss from Foreign Country

This different interpretation of the fiscal loss from abroad should be DGT's concern. This case is a trigger for DGT to improve regulations so that differences in interpretation can be reduced. Based on this case, it is necessary to look first, whether the loss of share sales suffered by the Indonesian taxpayer can be compensated or not on the US Individual Tax Return. If the regulations in the USA state that the losses due to the sale of shares can be compensated for to the following year or the previous year, then this loss cannot be compensated for in the Indonesia Individual tax return. If the loss from the sale of shares cannot be compensated for to the following year or the previous year in the source country abroad, then what the Taxpayer has done in this case is acceptable considering that there are still differences in the tax regulation interpretations.

The 26 U.S. Code § 1212 (IRS 2020) states that capital loss can be compensated for the previous year and the following year, but only for a capital gain, not for the business profit. There is no information on the resume of this court decision discussing how the taxpayer plans or actions to compensate for this capital loss in the USA. Supposedly, DGT and the taxpayer discuss the possibility of doing this capital loss compensation in the USA. Capital loss compensation provisions in the USA are an indication that taxpayers can get multiple benefits as part of tax avoidance. The decision of the panel of judges provides an opportunity for the taxpayer to receive compensation benefits in Indonesia and the USA.

The imposition of taxes on income or loss from the sale of shares, especially shares of listed companies in the domestic capital market, differs in the USA from that of Indonesia. This difference can be a way for the taxpayer to do tax avoidance (Johansson et al. 2017). Therefore, DGT needs to emphasize again whether the income from abroad that is combined in Indonesia is net income per country or net income per type of business.

With the assumption that the taxpayer does not compensate for his capital loss in the USA and the loss from the sale of shares is the shares of companies listed on the capital market, it is estimated that the loss suffered by the taxpayer is a tax avoidance strategy and this loss is deliberate. This strategy is similar to that described by Lu and Wu (2020). In the disputed tax year, 2010, the effective tax rate for this individual taxpayer in the USA was 24.12% (Table 1) and this individual income tax rate in Indonesia was 30%. This Individual taxpayer received tax savings due to tariff differences. Besides, when selling the shares, the taxpayer receives cash equal to the selling price. In terms of the foreign income tax credit, the taxpayer cannot credit taxes paid in the USA amounting to Rp. 68,895,667.72 (Table 2). By acknowledging the loss from the sale of the shares based on the panel of judges' decision, the taxpayer does not need to pay income tax in Indonesia of Rp .93,611,124 (Rp. 312,037,080 x 30%). So the taxpayer can save tax payments of Rp. 24,715,456.28 (Rp. 93,611,124 - Rp. 68,895,667.72) or 7.92% of Rp. 312,037,080.

Tax imposition on income from transactions of companies' shares listed in the capital market in Indonesia (IDX) is the final income tax. The final income tax means that the imposition of income tax on share transactions based on the selling price regardless of the profit or loss from the transactions. In the USA, the tax imposition on share transactions is not final income tax. These differences of both systems can provoke a possible tax avoidance schema. Besides affirming the determination of compensation for losses from abroad such as in SE-03, the DGT also needs to emphasize that if there is a loss from abroad whose income subject to final income tax in Indonesia, then the loss cannot be compensated for any income, either in Indonesia or in the source country. The establishment of this rule can reduce tax avoidance schema for taxpayers in paying taxes in Indonesia.

4.2. Foreign Income Tax Credit

In calculating the foreign income tax credit on income received in the USA, it is necessary to pay attention to whether the Individual taxpayer is taking advantage of the existing income tax rates in the tax treaty between Indonesia and the USA. Tax on dividends received by Indonesian Taxpayers in the USA based on the tax treaty is at a maximum of 10% if share ownership is at least 25% of voting rights, and 15% if share ownership is other than that. The tax on interest received by Indonesian taxpayers in the USA based on the tax treaty is a maximum of 10%. By determining the 24.12% foreign income tax credit rate, the taxpayers' calculation is too large (Indonesia and the USA 1988).

The fact from the resume of this tax court decision, the DGT does not want to adjust the foreign income tax credit calculation reported by the taxpayer due to a correction of capital loss in the USA. The following is the calculation of the foreign income tax credit that can be credited by considering information from the tax treaty between Indonesia and the USA. This alternative calculation removes the capital loss in the USA. The calculation is shown in Table 6.

Table 6: Alternative Foreign Income Tax Credit

Foreign Income (USA):	Income (Rp)	Tax Rate	Foreign Income Tax Credit (Rp)
Interest Income	16,100,292	10%	1,610,029
Dividend Income	232,235,338	10%	23,223,534
Rent Income	79,619,126	24.12%	19,204,133
Capital Loss (Selling Shares)	-	-	-
Capital Gain Distribution	26,397,201	24.12%	6,367,005
Net Income	354,351,957		50,404,701

Source: Tax Court Decision and Tax Treaty Indonesia and the USA

Assumptions:

1. This income no relation to a permanent establishment in the USA.
2. The share ownership does not exceed 25% of voting rights.

The comparison between the value of foreign income tax credit in Table 2 and Table 3, explains that the value of foreign income tax credit that can be claimed by the taxpayers has increased to be Rp. 50,404,701 from the initial Rp. 10,206,249. By increasing this value, payable income tax for the taxpayer can be recalculated. The calculation is shown in Table 7.

Table 7. Alternative Taxable Income

No.	Description	Individual Taxpayer Tax Return (Rp)	Alternative Calculation (Rp)
1	Net Domestic Income	3,872,056,431	3,872,056,431
2	Net Foreign Income	42,314,877	354,351,957
3	Total Net Income (1+2)	3,914,371,308	4,226,408,388
4	Non-Taxable Income	18,480,000	18,480,000
5	Taxable Income (3-4)	3,895,891,308	4,207,928,388
6	Rounding	3,895,891,000	4,207,928,000
7	Income Tax Payable (cfm. Income Tax Law)	1,113,767,300	1,207,378,400
8	Maximum Foreign Income Tax Credit ((2/5) x 7))	12,097,084	101,673,997
9	Income Tax Paid in USA (Credited)	10,206,249	50,404,701
10	Taxable Income in Indonesia (7- 9)	1,103,561,051	1,156,973,699

Source: Tax Court Decision

Table 4 explains that the maximum foreign income tax credit allowed by Income Tax Law (No. 8) is greater than the actual income tax paid in the USA (No. 9). Thus, all income tax paid in the USA can be credited to Indonesia. This alternative calculation has resulted in the taxable income of this taxpayer in Indonesia increasing by Rp. 53,412,648 (from Rp. 1,103,561,051 to Rp. 1,156,973,699). This alternative calculation illustrates if there is a consistency of DGT that corrects capital loss and also corrects foreign income tax credit, payable income tax for the taxpayer can increase. This consistency is not detrimental to taxpayers. The taxpayer has benefited from the increase of the foreign income tax credit. Besides, the capital loss can be compensated in US Individual Tax Return.

The DGT agrees with the method of calculating the foreign income tax credit from the USA, namely using the effective tax rate instead of the amount of income tax paid. There is also no data on why DGT does not want to change the value of foreign income taxes paid in the USA. Besides, there is no data on why the tax treaty between Indonesia and the USA is not a reference in calculating foreign income tax credits. This condition is considered inconsistent so that it became the reason for the panel of judges to reject the correction made by DGT.

Losses from the sale of shares (capital loss) in the USA can be compensated for the previous tax year, a maximum of 3 years, and to the next tax year, a maximum of 5 years (IRS 2020). If DGT corrects this capital loss, the taxpayer will not suffer a loss because this capital loss can be compensated for in the US Individual tax return. The decision of the panel of judges can give the taxpayer's opportunity to compensate for this capital loss in the USA. The Individual taxpayer can benefit, namely 2 times the compensation, namely in Indonesia and the USA.

There are data limitations in discussing this case, such as the inability to access US Individual Tax returns, Indonesian Individual tax returns, and complete data from tax court, as well as tax audit working papers. For this reason, this analysis uses some assumptions to explain opinions. Based on the principles in the Income Tax Law, all losses suffered abroad should not be compensated for domestic income. Losses abroad may be compensated against similar income in the source country. Because regulations in Indonesia still have multiple interpretations, it is necessary to revise them so that multiple interpretations can be reduced. When conducting a tax audit, DGT needs to consider making corrections that result in an additional foreign income tax credit as long as there is evidence to support it and is consistent with other audit results.

The analysis described in this paper can be used in other similar cases, such as foreign loss treatment that comes from many sources, and the calculation of foreign income tax credits not from real tax payments. Actual income tax payments abroad should be calculated as foreign income tax credits to calculate the income tax payable. However, this paper suggests that the calculation of the foreign income tax credit can use the tax rates in the tax treaty. The calculation of the foreign income tax credit with the effective tax rate of income tax payments abroad, even though it is not in the tax regulations, is considered correct by the panel of judges.

5. Conclusion

There are multiple interpretations of the income tax regulations concerning foreign losses when compensated by domestic income. Conceptually, foreign losses cannot be compensated for by domestic profits, because the foreign losses can be compensated for the income in the same source country. If this foreign loss can be compensated for by the domestic profit, then this loss can also be compensated in the source country. To reduce this multi-interpretation, DGT needs to revise the unclear regulations about compensation for foreign losses.

Foreign income tax credits are income taxes paid in the source country. If the data and information on tax payments in the source country do not yet exist in detail, other supporting data can be used, such as effective tax rate, and tax treaty with the source country. The tax authority can make foreign income tax credit corrections, such as foreign income tax paid in the source country, even though the foreign income tax credit value increases. These corrections should be supported by evidence and consistent with other audit results.

The analysis, in this case, has shortcomings because it does not obtain confidential data, including data on the tax return. This analysis uses assumptions about data that are not obtained to facilitate discussion.

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