Chapter

Analysis of Transfer Tax Imposition on Properties Exchange in Indonesia

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Abstract

Income tax reported by the taxpayer to the Tax Service Office after an inspection and there is evidence of non-reporting of tax such as additional cash of four billion rupiah in this case, the Director General of Taxes has the authority to issue a Tax Assessment Letter for unpaid or unreported taxes and plus administrative sanctions in the form of interest of 2% per month on the actual amount of tax owed as provisions of Article 13 of Law Number 6 of 1983 concerning General Provisions and Tax Procedures. And taxpayers after paying and reporting the Land and Building Rights Acquisition Duty Tax there is a tax calculation error because the e-BPHTB system used to report the Land and Building Rights Acquisition Duty tax for the second shophouse unit in this case, a reduction in the Acquisition Value of Non-Taxable Tax Objects is applied which reduction is not in accordance with the provisions of Article 46 paragraph 5 of Law Number 1 of 2022 concerning Financial Relations Between the Government Central to the Regional Government, taxpayers can make their own corrections for the underpayment tax to the Regional Revenue Office.

Keywords: transfer of land rights, deed of exchange, land deed making officer, income tax, land and building rights acquisition duty

1. Introduction

Investment in the property sector has constantly grown as evident from the variety of products promoted at a large scale through various media channels in 2019. Such growth was generally expected due to the promising return on investment in the sector and the fact that properties are considered long term assets due to its permanent nature and the considerable lifespan of the property attached on it [1]. The price point of land parcels in Indonesia increases by 15–20% per annum [2]. Survey of residential properties price conducted by the Bank of Indonesia indicates a positive trend of property sales growth up to 13.95% in 2021.

There are several reasons as to why Indonesia is named one of the best location for property investment. To begin with, the political and economical stability in Indonesia is relatively conducive in improving foreign investment climate as well as the involvement of the Government in anticipating the rapid development by

enacting the Ministry of Public Works and Residences No. 11 Year 2019 concerning Pre-Agreement System of Sales and Purchase of Homes on July 18th, 2019. Secondly, the population's needs for residential properties is very high, in proportion with the growing population of Indonesia. Based on the data collected by the Centre of Statistics (Badan Pusat Statistik/BPS), the population of Indonesia has reached 275 million in 2022. Such growth automatically leads to increasing needs in the property sector, particularly for homes; the demand for development of strata title/ apartment buildings, shopping center, offices, and other utilities [2].

Property is something that can be owned or anything that can be considered possession. Meanwhile, real property translates to all interests, benefits, and rights derived from the ownership of land and buildings as well as all renovation works on the building concerned [3].

The most common means of property transfer is through sale and purchase, however the Law No. 5 Year 1960 concerning Basic Agrarian Principles mentioned of another means i.e., property exchange, which, as is the case with sale and purchase, shall be proven through a deed made before an authorized Land Deed Officer. The same Law also regulated the various rights over land available in Indonesia, which can be possessed individually, shared among several people, and/or by certain legal entity.[1]

Exchange of land and/or other properties has very rarely occurred in Indonesia since very few understand the implementing procedure and the taxes imposed on the transaction. However, in order to fulfill the needs and demand for property exchanges, the State is present to govern the implementation and tax reporting procedure by releasing the necessary regulations as well as appointing the authorized officers, among others the Land Deed Officials, Directorate General for Taxation, and Regional Government officials.

Exchange of properties is regulated in Article 1541 of the Indonesian Civil Code (ICC) ICC, which define exchange as [4]:

> *An agreement through which two parties binding themselves to give certain goods reciprocally in exchange for another.*

Article 1542 of the ICC regulates that the object qualified for exchange of properties are all goods, both movable and immovable, land and building included [4]. The transfer of rights over land and building through property exchange shows of a voluntary legal action by one party along with another with the intention to reciprocate in giving one's possession, therefore such transfer of possession is known and desired by all parties involved in the exchange of properties.

The income received from the transfer of rights through properties exchange by individuals or legal entities, from one to another, shall be subject to final income tax by the Central Government through the Local Office of Tax Services, as regulated in Article 4(2) of the Law No. 7 Year 1983 concerning Income Tax, which has been amended several times, the last one was done through the Law No. 36 Year 2008 [5]. Also for each acquisition of rights over land and building, the acquiring person (individual and/or legal entity) is subject to land and building rights acquisition duty (hereinafter referred to as "acquisition duty"). In a sale and purchase transaction, the first is commonly referred to as buyer's duty and the latter is referred to as seller's duty. While in a properties exchange, both parties are subject to both income tax *and* acquisition duty. The underlying philosophy for tax collection is the people's

[1] Indonesia, Law No. 5 Year 1960 concerning Peraturan Dasar Pokok-Pokok Agraria, Article 4.

participation in boosting development and welfare, as well as prosperity through State income generated from tax collection [6].

The income tax rate imposed on individuals or entities receiving/ obtaining income from the transaction through properties exchange as regulated in Article 2(1) of the Government Regulation No.34 Year 2016 concerning Income Tax on Income Generated from the Transfer of Land and Building Rights as well as the Contract to Sell and Its Amendments is 2.5% of the agreed upon gross value of transaction.

The acquisition duty on the exchange of properties is imposed based on the acquisition value of taxable object (*Nilai Perolehan Objek Pajak*/NPOP), which essentially is the mutually agreed upon price. Where such value cannot be determined or is below the regionally-set tax object sales value (*Nilai Jual Objek Pajak*/NJOP), then the basis to impose the above taxes is the regionally-set value. In Article 47(1) of the Law No. 1 Year 2022 concerning the Financial Relations between Central and Regional Government mentioned that the tariff imposed as acquisition duty is set to be at a maximum of 5%. Acquisition duty due to exchange of properties becomes an impending obligation on the effective date as shown in the exchange deed [7]. Acquisition duty is essentially the main source of regional tax generation. However, there remains also some hindrances in optimalizing acquisition duty generation due to the inconsistency of data presented as the basis for imposing acquisition duty as compared to the real market/transaction value.

Article 45(5) of the Law No. 1 Year 2022 concerning the Financial Relations between Central and Regional Governments elaborates that the NPOP is deducted by the non-taxable acquisition value of taxable object (*Nilai Perolehan Objek Pajak Tidak Kena Pajak*/NPOPTKP), which is regionally-set at Rp. 80.000.000,- for the first acquisition of land rights by the respective tax subject in the region of Jakarta, where BPHTB becomes due. This is regulated in the regional regulations, hence the different NPOPTKP across regions as set by the respective regional regulations.

In an existing case of rights transfer in Indonesia, a house with regionally-set NJOP of Rp. 8.000.000.000,- is exchanged with 2 (two) units of shophouses with NPOP amounting at Rp. 2.000.000.000,- per unit, in addition to cash amounting Rp. 4.000.000.000,-, where the acquisition duty imposed for the acquisition of the second shophouse unit is deducted by the regionally-set NPOPTKP amounting Rp. 80.000.000,00,- (amount applicable in Jakarta).

This went against Article 46(5) of Law No. 1 Year 2022 concerning the Financial Relations between Central and Regional Government, which elaborates that the deduction by NPOPTKP is applicable only for the first rights acquisition in each year, meaning that the deduction by NPOPTKP is not actually applicable to calculate the acquisition duty for the second and all following unit(s) attained in the same year. Just as well, the capital gain of Rp. 4.000.000.000,- in cash due to the properties exchange is not subject to income tax. This went against the Law as mentioned in Articles 4(1) and 4(2) of Law No. 36 Year 2008 concerning the Fourth Amendment on Law No. 7 Year 1983 concerning Income Tax, which regulates that taxable objects are income i.e., any increase in economic capacity attained in any form by certain tax subject which can be ploted for consumption or to further increase the wealth of the tax subject concerned, including additional cash income from an exchange of rights over land and building.

Therefore, this research aims to analyze the legal protection due for the public where an error in tax calculation is made by the authorized officials from the Central Government and the Regional Government Institution. The analysis elaborated further in this text stemmed from a comprehensive research concerning past dispute

settlements which shall result in reductions in tax generations due to the mistakes of tax miscalculation as well as the negligence of the authorized tax officers in supervising tax filing.

2. Research metods

This legal research is normative-empirical in nature as it is intended to seek and find regulations, legal principles, or doctrines concerning what shall be align with the prescriptive characteristics of legal scholarship [8]. The methods deployed herein is a study of literatures in order to attain legal materials for reference on the normative system or regulations (*das sollen*), followed by field research to observe real public phenomenon as the research object, particularly the making of Deed of Properties Exchange made by the Land Deed Official as well as the taxes and levies imposed on the transaction of properties exchange, in order to seek for solution(s) that enable more effective implementation of the prevailing norms. Gathered from the existing body of legal literatures [9], the data generated during this research is therefore secondary in nature in the form of non-legal materials, among others the relevant non-legal books, research reports, and scientific journals.

3. Results and discussion

3.1 The transfer of rights over land and building through properties exchange

The transfer of land rights is a legal action intended to transfer the ownership of land to another legal subject [10]. The transfer of land parcels can be carried out by means of sale and purchase, exchange of properties, grant/gifting, asset in lieu of capital injection into a legal entity, as well as other legal actions involving transfer of land rights. Any transfer of land rights shall be proven by transfer deeds made before an authorized Land Deed Official, therefore fulfilling the aspect of absolute necessity in any rights transfer i.e., deeds of land rights transfer made before the authorized Land Deed Official.

The term "exchange of properties" is mentioned in Article 1541 of the ICC i.e., an agreement with which both parties bind themselves to mutually leverage upon another certain goods in exchange for another. Agreement of properties exchange is consensually made, meaning it becomes final and binding the moment agreement is finalized concerning the object matters of the agreement [11].

According to Salim H.S [12], exchange of properties is "an agreement made by one party with another, where one is obliged to hand certain goods over while the other receive another goods in exchange. The goods exchanged can be in the form of movable or otherwise immovable goods. The leverage of movable goods is adequate through real handover or proven by authentic deeds made before a notary public in the form of titled agreement (Indonesian: *perjanjian bernama*), while immovable goods are leveraged in juridical-formal manner or through deeds made before the authorized Land Deed Official". The elements inherent in the above definition are [12]: (a) consent, (b) legal subjects, (c) certain objects, both movable and immovable goods, (d) reciprocal exchange of rights and obligations. In other words, the parties reciprocate in presenting goods which are the objects agreed upon for exchange.

There are notable differences between movable and immovable goods, According to Frieda Husni Hasbullah, immovable goods can be classified into 3 categories [13]: (a) immovable goods due to its nature (Article 506 of the ICC) e.g., land and anything attached or built upon it, trees and other plants which are rooted deep into the land surface, unharvested fruits, as well as raw mining products, (b) immovable goods due to its intended uses (Article 507 of the ICC) e.g., factories and the goods produced, residences and all things affixed on the walls, paintings, jewelleries, those related to land ownership such as certificate of rights over land and building, honey cluster on the trees and fish in the pond, etc.; and (c) immovable goods as stipulated by law (Article 508 of the ICC) e.g., right to use produces, immovable goods, hak pengabdian tanah, hak numpang karang, right to work on land, etc.

Meanwhile movable goods can be divided into 2 categories [14]: (a) Movable goods due to its nature (Article 509 of the ICC) e.g., chicken, goat, books, pencils, tables, chairs, also ships, boats, machines and bathtubs on ship, etc. (Article 510 of the ICC); (b) Movable goods as stipulated by law (Article 511 of the ICC) e.g., (1) Rights to utilize produces and movable goods; (2) rights for promised interests; (3) receivables; and 4) shares in commercial endeavors, etc.

The term "property" is anything that can be possessed or be considered as an object possible for ownership. While real properties are all interests, benefits, and rights pertaining to the ownership of land and building as well as their fixated renovations [3]. Properties can be classified into: (a) tangible assets consisting of real property in the form of land, building, and utilities, and personal properties such as machineries and office utilities, vehicles, and furnitures; (b) intangible assets in the form of goodwill, franchises, trade mark, patent, copyright; (c) valuable notes such as shares, saving accounts, and promissory notes [2]. This text elaborates on the transfer of ownership rights over land and building within the category of immovable goods.

The term for "land" in Dutch *aarde* or *grondgebied*, which holds crucial role in the national development framework, among others in sectors like residences, business district, and shopping centres. The term "land" within the Land Law regime is used in its juridical definition within the limitations set by the Law No. 5 Year 1960 concerning Basic Agrarian Principles, which in Article 4 stated the following:

> *Based on the right of control of the State referred to in Article 2, there are defined many rights on the earth surface, which is called land, which can be granted to and owned by person(s), individually or otherwise shared with other person(s) or legal entities.*

Based on the rights of the State to control as shown above and since the use of land is crucial for human life, the possession of land rights is regulated in the Law No. 5 Year 1960 concerning Basic Agrarian Principles, where various land rights have been regulated which are made available to be granted to and owned by natural legal persons or entities in Indonesia, shared or individually.[2] The land rights as referred to in Article 4(1) which are further mentioned in Article 16(1) of Law No. 5 Year 1960 concerning Basic Agrarian Principles are as follows[3]:

1. The Right of Ownership (in Dutch: *eigendomsrecht*), which is a right to own land [15]. In the ICC, Right of Ownership allows freedom in fully enjoying the function of certain goods and to freely taking actions concerning said goods with full

[2] Ibid.

[3] Ibid., Article 16.

independence insofar as such actions align with the prevailing laws, public order, and not in violation of another's rights;

2. The Right to Cultivate (in Dutch: *teelt rechten*), refers to the land rights deployed for commercial purposes by natural person(s) or legal entities established based on Indonesian laws and is domiciled in Indonesia [16]. It is defined in Article 720 of the ICC as a property right that grant full enjoyment of the functions of certain immovable goods owned by another person in return for compulsory obligation to pay annual levies to the owner as acknowledgment of his ownership, in the form of cash, produces, or income. Another definition as given in Article 28 of the Law on Basic Agrarian Principles is the right to work on the land parcels which are directly under the State's control within the duration set in Article 29, intended for farmland, fisheries, or plantations. The right is essentially transferable but only given over land parcels with an area measured at a minimum of 5 hectares, and under the condition that when the area exceeds 25 hectares, proper capital investment as well as good corporate governance shall be made compulsory in accordance with the latest development.

3. The Right of Building Use (in Dutch: *bouwrechten*), which is defined in the Law on Basic Agrarian Principles Article 35 as the right to build and own buildings on land parcels which are not his own for a maximum duration of 30 years;

4. The Right to Use (in Dutch: *gebruiksrechten*), which is regulated in Article 41 of the Law on Basic Agrarian Principles, is the right to use and/or colect produces from the land parcels which are under the direct control of the State or is owned by another person(s), who has given the authority and the responsibilities through a Government Decision or Private Agreement, which are neither Lease Agreement nor any land cultivating agreement, anything goes insofar as it does not go against the stipulations of Law on Basic Agrarian Principles and Government Regulation No. 18 Year 2021 Articles 39–58) [17].

3.2 General overview of the authority of land deed officials

Land Deed Officials (in Dutch: *land titles register*) hold crucial position and roles in the national lives of the nation as a whole due to the authority endowed on them to make deeds of land rights transfer as well as other deeds [18]. Article 1 of Government Regulation No. 37 Year 1998 concerning the Regulation on the Office of Authorized Land Deed Official mentioned the following: (a) Land Deed Official is a public official endowed with the authority to make authentic deeds concerning certain legal actions involving land rights or right of ownership over strata title units; (b) Temporary Land Deed Official is a government official appointed temporarily *ex officio* to fulfill the duties of a Land Deed Official by making Land Deed in regions lacking of sufficient officials; and (c) Special Land Deed Official is an official of the National Land Institution appointed *ex officio* to fulfill the duties of a Land Deed Official by making certain special Land Deeds in order to implement certain Government program or mandate.

The legally-endowed authority of the Land Deed Official (in Dutch: *autoriteit* or *gezag*) to make authentic deeds concerning certain legal actions involving land rights or right of ownership over strata title units as well as his other responsibilities and authorities have been regulated in Article 2 of Government Regulation No. 37 Year 1998

concerning the Regulation on the Office of Land Deed Official i.e., that: "the Land Deed Official is mainly responsible to undertake in parts the land registration process by making certain deeds to be furnished as evidence of the occurrence of certain legal action concerning land rights or right of ownership over strata title units, which shall serve as as the ground for the registration of land data modifications resulting from said legal action," the exchange of properties being only one of such actions.

In making the Deed of Properties Exchange, the Land Deed Official shall defer to all regulations in the Ministry of Agrarian Affairs and Spatial Management/Head of the National Land Institution Regulation No. 8 Year 2012 concerning the Amendment on State Minister for Agrarian Affairs/Head of the National Land Institution Regulation No. 3 Year 1997 concerning the Implementing Stipulations of Government Regulation No. 24 Year 1997 concerning Land Registration.

The Deed of Properties Exchange (in Dutch: *akte uitwisseling*) is quintessential in the leveraging process of land and/or bangunan rights from one party to another and the other way around. In addition to the instructions given through the Ministry of Agrarian Affairs and Spatial Management/Head of the National Land Institution Regulation No. 8 Year 2012, the comparition and substance parts in the anatomy of the Deed of Properties Exchange are where particular attention shall be paid in the making of the Deed [19].

The comparition part of the Deed of Properties Exchange (in Dutch "*comparitie akte van uitwisseling*"), is part of the Deed of Properties Exchange which elaborates the identity of the parties involved, including the full name, place and date of birth, nationality, occupation, address, and national identification number. Further, the capacity of the respective parties to undertake the legal action through the Deed is also elaborated, so as to giving legitimacy of said action, be it representing oneself, another person(s), certain business, or legal entity. The parties in the case at hand undertook the legal action for and on behalf of themselves [20].

The next important part of the Deed of Properties Exchange is the substance (in Dutch "*de substantie akte van wisselen*"), which contains the intention of the parties to exchange their respective rights over land. Through the Deed of Properties Exchange as regulated in the Ministry of Agrarian Affairs and Spatial Management/Head of the National Land Institution No. 8 Year 2012, all 4 land rights can be exchanged, including: (1) the Right of Ownership; (2) the Right to Cultivate; (3) the Right of Building Use; and (4) the Right to Use [21].

3.3 The prevailing legal concept of tax collection on the acquisition of rights over land and building in Indonesia

The transfer of rights over land and building results in the rights and obligations to to pay income tax and acquisition duty for the involved individual(s) or legal entities, both the acquirer and the one attaining property, be it through sale and purchase, exchange of properties, release of right, grant, grant given through testament, auction, inheritance, or other means as agreed upon by the parties [22].

The underlying legal basis for tax collection in Indonesia is the stipulation in the Third Amendment of Constitution 1945 Article 23(A), which stated that "[a] ll taxes and other levies for the needs of the State of a compulsory nature shall be regulated by law." This is the legal ground of all tax obligations serving as the basis for the Government to collect taxes from the people. Said amendment gave off positive impact, particularly in ensuring that there shall be no arbitrary undertaking in the imposition of compulsory levies upon the people. Moreover, in relation to the legality principle which endow authority to the State to collect taxes only when it is needed

and that it shall be based the Law and in no way will be imposed without the consent of the people conveyed through their chosen representative seating in the House of Representatives [23].

The understanding of tax based on Article 1 Law No. 28 Year 2007 concerning the Third Amendment of Law No. 6 Year 1983 concerning General Stipulations and Taxation Procedures is that "[t]ax is the obligatory contribution towards the State due and payable by individual(s) or entities that is compulsory in nature based on the laws, without any direct return and yet is utilized to fund the needs of the State in working to achieve the maximum possible prosperity of the people." According to P.J.A. Andriani as bridged by Santoso Brotodihardjo [24], limitations are given to the definition of tax, as follows: "[t]ax is the collectible to the State that is enforceable and is due and payable by those obliged to pay according to the laws and regulations, without obtaining any direct return of services, which purpose is to fund general expenses related to the State's duty to run the governance".

There are several differences between tax and official levies. Taxes (such as Income Tax) are collected based on law, are compulsory in nature, and there is no direct return received by the tax subject, yet it is to be utilized to achieve prosperity for the Indonesian people. Acquisition duty are classified as regional taxes and shall be borne by the buyer or the person acquiring the land rights. While official levies are charged based on the regulations issued by certain Government institution, yet their collection is not mandatory although it results in direct return. The regional retribution for waste and cleaning services, fees for printing ID card or other civil documents, or retributions related to legal permits, such as the Land Building Permit (*izin mendirikan ba*ngunan) [25].

In implementing tax collection, attention shall be given to the principles underlying tax collection in Indonesia, as follows [26]:

1. Financial principle, which aims for tax collection to be adjusted to the income, gross or otherwise, attained by the tax subject, hence the difference in the tax collection from each tax subjects;

2. Economic principle, which aims that the amount collected from the tax subject as taxes shall result in real impact to improve wealth and prosperity of the people and the public interests. Tax collection prevents the decline of the people's economy;

3. Juridical principle, which aims that tax collection be legitimately regulated based on the Law, such as Article 23(a) of the Indonesian Constitution 1945 as well as other laws;

4. General principle, which surmises that tax collection shall be based on the public sense of fairness rather than individuals, therefore said collection and its uses shall be carried out by and for the Indonesian people;

5. Nationality principle, meaning that each person born and lived in Indonesia or converting to become Indonesian citizen are obliged to pay taxes in accordance with the prevailing laws and regulations;

6. Principle of source, meaning that tax collection is imposed only upon the tax subject whose source of income is from Indonesia or in accordance with his domicile;

7. Principle of regions, meaning that tax collection is classified based on the the domicile of the tax subject. If the tax subject resides abroad, the Indonesian Government cannot impose upon him any due levies.

The implementation of tax collection in Indonesia includes: (1) *Self Assessment System* i.e., the tax collection system which liberates the tax subject to actively participate in calculating, paying, and independently filing/ submitting the Tax Forms to the Office of Taxation Services. The tax officers only carry out supervisory function as well as tax investigative measures. This tax collection system is usually applicable for income tax, value added tax (VAT), as well as acquisition duty. This is regulated in Article 4(1) and 4(2) of Law No. 7 Year 1983 concerning Income Tax, which has been amended several times, the last one through the Law No. 36 Year 2008 and the Governor of Jakarta Regulation No. 34 Year 2022 concerning the Procedures for Electronic Payment, Filing, Services, and Supervision of Acquisition Duty; (2) *Official Assessment System* i.e., a sistem relying on the tax officer to determine the amount of tax due for payment by the tax subject. The role of the tax subject is relatively passive due to all the help provided by the appointed officer. This system is usually applied to regional taxes such as daerah seperti Tax over Land and Building as well as other regional taxes; and (3) *Witholding System* i.e., the tax collection system which authorized third parties (neither the tax subject nor the tax official) to determine the amount of taxes due and payable by the tax subject. Third parties involved are usually tax consultants, public consultants, public notary, land deed official, and the treasurers or the department responsible for tax affairs who exercise pay cut to settle the employees' income tax on their behalf.

Income tax is the deduction on income due and payable in relation to any gain attained through asset transfer by means of grant, aids, or charities, with the exception of transfer to 1st degree blood-related relatives as well as religious, educational, or socially-oriented entities including foundation, cooperation, or individuals running micro and small enterprises, which is further regulated in the Ministry of Finance Regulation, insofar as there is no relationship among the enterprise concerned, occupation, ownership, or possession among the parties involved.[4]

In short, Article 4 regulates of income tax on certain incomes with nature of finality and which cannot be creditted as due income tax.[5] Article 4(1) and (2) of Law No. 36 Year 2008 concerning the Fourth Amendment of Law No. 7 Year Notification concerning Income Tax elaborates that tax object is any increase in economic capacity received or attained in any form by certain tax subject which can be ploted for consumption or to further increase the wealth of the tax subject concerned, including additional cash income from an exchange of rights over land and building.

The tariff of income tax due to the transfer of land rights and/or building is[6]: (1) 2,5% of the gross value of rights transfer, payable by the tax subject whose main business involves transfering of rights over land and/or building; (2) 1% of the gross value of rights transfer when it involves rights over modest housing or strata title units, (3) 0% for the transfer of rights to the Government, State-Owned Entities with special

[4] Indonesia, Law Republik Indonesia No. 36 Year 2008 concerning Perubahan Keempat Atas Law No. 7 Year 1983 concerning Pajak Penghasilan, Article 4 (1).

[5] Indonesia, Law Republik Indonesia No. 36 Year 2008 concerning Perubahan Keempat Atas Law No. 7 Year 1983 concerning Pajak Penghasilan, Article 26 (5).

[6] Indonesia, Law Republik Indonesia No. 36 Year 2008 concerning Perubahan Keempat Atas Law No. 7 Year 1983 concerning Pajak Penghasilan.

	Land and building objects exchanged	Selling value of tax objects	Income tax deposit letter
First party	House	Rp. 8.000.000.000	2.5% × Rp. 8.000.000.000
	Income from land and building exchange transactions	Rp. 4.000.000.000	2.5% × Rp. 4.000.000.000
Second party	First shophouse	Rp. 2.000.000.000	2.5% × Rp. 2.000.000.000
	Second shophouse	Rp. 2.000.000.000	2.5% × Rp. 2.000.000.000

Table 1.
Income tax calculation.

Government mandate, or Regional-Owned Entities with special mandate from the Head of Region, in accordance with the law regulating land procurement for development purposes in the public interests.

In this particular case, the calculation of income taxes due to transfer of rights over land and building through properties exchange are as follows (**Table 1**):

Since there is a capital gain or increase in wealth due to the additional cash amounting Rp. 4.000.000.000,- given by the Second Party to the First Party due to the properties exchange, said additional capital shall be subject to income tax in accordance with Article 4(1) of Law No. 36 Year 2008 concerning the Fourth Amendment on Law No. 7 Year Notification concerning Income Tax. In this case however, said additional capital was not reported as a ground to impose income tax and, just as well, there has yet to be any actions from the Directorate General of Taxation concerning any underpayment or miscalculation in the tax report filed which results in the loss of the State income.

The main analysis of the case focus on the issue of the income tax on the capital gain amounting Rp. 4.000.000.000-, resulting from the transfer of rights through properties exchange. Should this gain not reported to the tax authority, the tax subject shall be charged an administrative sanction and fines amounting 2% monthly of the underpaid amount, but if the tax subject is not given the Notification Letter of Tax Underpayment isssued by the Directorate General of Taxation, then the administrative sanction cannot be enforced to be paid, however it is only right for the tax subject to report said underpayment through DJP Online website. If no such report is filed whether because of miscalculation or simple mistake in writing/calculating the income tax or the tax subject does not try to petition for tax correction, then upon comprehensive inspection the tax subject shall be charged by taxation criminal and administrative sanction as well as fines amounting 2% per month for up to 24 months of the underpaid amount or calculated since the tax is due or until the Letter of Tax Billing is issued by the Office of Taxation Services. This is regulated in the Law No. 28 Year 2007 concerning the Third Amendment on Law No. 6 Year Notification concerning General Regulations and Taxation Procedures.

Acquisition duty is the tax imposed the acquisition of rights over land and building, while the acquisition of rights over land and building is a legal action or event which results in the attaining of rights over land and building by individual or legal entity through sale and purchase, exchange of properties, inheritance, grant, and other means of property transfer.

In the light of the above, acquisition duty falls into the category of enforceable regional tax and the tax rate due is set by the Regional Government Institution based

on the prevailing laws and regulations, the amount collected is then utilized to achieve the highest possible level of prosperity for the people. Based on Law No. 1 Year 2022 concerning the Financial Relations between Central and Regional Government, one of the previously centrally-collected tax which has been shifted into becoming a source of regional income is acquisition duty. The policy accounted for the shift was decided through a lengthy deliberation process of the proposed regulatory bill between the Government and the People's Representatives. Taking into account various strategic factors and differing regional conditions, the Government and the People's Representatives have finally agreed to shift acquisition duty to become a source of regional tax under several conditions, among others [27]: (1) the collection of acquisition duty can be carried out by the regional government offices in an optimal manner; and (2) there will not be any reduction in the quality of services towards the people.

The policy to shift acquisition duty to become part of regional taxation is based on the consideration that acquisition duty fits the criteria of a good regional tax, could increase the native regional income, improves *local accountability*, as well as adjusting the local standard in accordance with the *international good practice* [28]. The legal subject of acquisition duty is individual(s) and/or legal entities that acquires rights over land and/or building.[7] Whilst tax object is the acquisition of rights over land and/or building, which includes[8]: (1) the transfer of rights by means of sale and purchase, exchange of properties, grant/gifting, grant given through testament, inheritance, asset in lieu of capital injection into a legal entity, separation of rights resulting in rights transfer, appointment of buyer in an auction, execution of final and binding court verdict, merger, consolidation, business expansion; (2) the granting of new rights following a release of rights or otherwise.

The maximum tax rate of acquisition duty is set at 5%. The determination of tax rate is also stipulated by regional laws/regulations, and the due amount of acquisition duty is calculated based on the tax rate of Tax Object Acquisition Value.[9] The imposition of acquisition duty on properties exchange is based on the Tax Object Acquisition Value or the market value as the tax basis to calculate acquisition duty, where the Tax Object Acquisition Value or market value is according to the value agreed upon by the parties, and if the Acquisition Value of Tax Objects is unknown or if the value and market value are below the regionally determined Acquisition Value of Tax Objects, then the calculation of Land and Building Rights Acquisition Duty tax that will be used to determine the tax rate is the regionally determined Selling Value of Tax Objects determined by the Regional Government.

Article 46(5) of the Law No. 1 Year 2022 concerning the Financial Relations between Central and Regional Government regulates that NPOPTKP is set at a minimum of Rp. 80.000.000,- (eighty million rupiah) applicable for each tax subject for their first right acquisition in the year in the region where the acquisition duty is due. The Non-Taxable Tax Object Acquisition Value for acquisitions due to inheritance or grant based on testament attained by individual(s) who are blood-related in the first degree with the testator, including husband/wife, is set at at minimum of Rp 300.000.000,- (Three hundred million rupiah) in Jakarta.[10] Each regions can set a

[7] Indonesia, Law No. 28 Year 2009 concerning Pajak Daerah dan Retribusi Daerah, Article 186 (1).

[8] Indonesia, Law No. 28 Year 2009 concerning Pajak Daerah dan Retribusi Daerah, Article 185.

[9] Indonesia, Law Republik Indonesia No. 1 Year 2022 concerning Hubungan Keuangan Antara Pemerintah Pusat Dan Pemerintahan Daerah, Article 47 (5).

[10] Indonesia, Law Republik Indonesia No. 1 Year 2022 concerning Hubungan Keuangan Antara Pemerintah Pusat Dan Pemerintahan Daerah, Article 46 (5).

	Land and building objects exchanged	Selling value of tax objects	Tax deposit letter ofland and building rights acquisition duty
First party	House	Rp. 8.000.000.000	5% × (Rp. 8.000.000.000 – Rp.80.000.000 (Non-Taxable Tax Object Acquisition Value))
Second party	First shophouse	Rp. 2.000.000.000	5% × (Rp. 2.000.000.000 – Rp. 80.000.000 (Non-Taxable Tax Object Acquisition Value))
	Second Shophouse	Rp. 2.000.000.000	5% × (Rp. 2.000.000.000 – Rp.80.000.000 (Non-Taxable Tax Object Acquisition Value))

Table 2.
Calculation of tax duty on acquisition of land and building rights.

different amount of Non-Taxable Tax Object Acquisition Value insofar as it is not below the the value determined by the Law mentioned above [29].

The calculation of acquisition duties due to transfer of rights over land and building through properties exchange in this case are as follows (**Table 2**):

In this case, the second shophouse unit was given deduction amounting the regionally-set the value of the acquisition of non-taxable tax objects, which went against the Law No. 1 Year 2022 concerning the Financial Relations between Central and Regional Government Article 46(5), which stipulates that the value of the acquisition of non-taxable tax objects is set at a minimum of Rp. 80.000.000,- for each tax subject, applicable only to the first acquisition of land rights by the tax subject in the year in the region where the acquisition duty is due. This means that the deduction by The value of the acquisition of non-taxable tax objects set by the Jakarta Regional Government at the amount of Rp. 80.000.000,00,- is no longer applicable in calculating the acquisition duty due for the second and all following acquisition(s) made on the same year.

The collection of acquisition duty is carried out based on the self-assessment system, where the tax subject is supposed to calculate, pay, and file the amount of due acquisition duty, all by himself [26]. Within this scheme, the acquisition duty payment by the tax subject shall be validated by the tax official to know the truth of the payment as proven by filling out the Local Tax Return. One of the elements that needs validation is the truth concerning the taxable amount as the basis to calculate the acquisition duty, that is the Tax Object Acquisition Value i.e., the acquisition (and most of the time, market) value of the objects of properties exchange. Therefore if the validation process of the acquisition duty is approved and cleared, then the tax subject shall receive the proof of Local Tax Return.

Should any amount underpaid or miscalculation is found only after the tax subject has properly filed the Local Tax Return in 2023, such as in this case where the error occurred during the tax validation stage, then within 5 years following such finding the Regional Head shall issue the Notification Letter of Regional Tax Underpayment as well as imposing administrative sanction set in Article 97(2) i.e., a 2% interest per month for maximum 24 months, calculated based on the amount unpaid or still due. The legitimacy for the Regional Head to issue said Letter is based on the following[11]: (1) if based on inspection the tax due is found to have not been reported, unpaid, or underpaid; (2) if Local Tax Return is not filed in time and still is not filed in the timeframe given

[11] Indonesia, Law No. 28 Year 2009 concerning Pajak Daerah dan Retribusi Daerah, Article 97.

following a written warning; (3) if the obligation to fill the Local Tax Return, the tax due is calculated secara jabatan, artinya dalam penjelasan pada ayat (1) huruf a angka 3 is imposed an administrative sanction amounting 25% of the taxable amount.

Likewise in the case at hand, the second party in filing the Local Tax Return to the Regional Government Institution is bound to a miscalculation and therefore underpayment since the acquisition duty imposed on the second shophouse unit was deducted by Non-Taxable Tax Object Acquisition Value. Such deduction is actually applicable only to 1 shophouse unit as the first acquisition made in the year by the tax subject. Nonetheless this fact went amiss during the Notification of Regional Tax (*Surat Pemberitahuan Pajak Daerah*/ Local Tax Return) validation process and the Regional Government Institution has approved of the filing/report and validation process of the acquisition duty including said deduction.

The error made in validating the Local Tax Return results in administrative sanction which is charged upon the tax subject and there has yet to be any sanction against such mistake made and approved by the Regional Government Institution in charge of supervising the regional tax filing. The lack of precision in supervising the validation process of Local Tax Return filing gives way to potential future burdens and losses on the part of the tax subject, who assumes that all tax obligations have been cleared through the submission of Local Tax Return for the payment of acquisition duty due to exchange of properties. This mistake is understandable though due to the rarity of transactions occured involving the exchange of 2 land rights which resulted in the mistake concerning the application of Non-Taxable Tax Object Acquisition Value, whether for the first right acquisition by the tax subject or the non-applicability of deduction by Non-Taxable Tax Object Acquisition Value for the second right acquisition, and even whether categorized as 1 single transaction of exchange of properties involving the exchange of 2 land rights. The lack of clarity in Law No. 1 Year 2022 concerning the Financial Relations between Central and Regional Government, specifically in the matter of Non-Taxable Tax Object Acquisition Value resulting in multiple interpretations concerning the implementation of land rights transfer through properties exchange, where the object matters are 1 land right in exchange for 2.

3.4 Title transfer process by the Indonesian National Land Institution

In the process of application for land and/or building title transfer submitted to the National Land Institution, there are differences in the requirements demanded for individual persons and legal entities. The set required for personal Right of Ownership shall include the following: (a) Application form duly filled and signed by the applicant or his proxy on a stamp duty, (b) Authorization letter if the application is submitted by another person on his behalf, (c) Copies of National ID and Family Card which has been stamped as a true copy of the original by the land loket official, (d) the original Land Certificate, (e) the Deed of Properties Exchange made before an authorized Land Deed Official, (f) the original document(s) that furnish evidence of the rights transfer and full payment of the transaction, (g) copies of Notification of Tax Due for Tax over Land and Building, as well as payment slip of fees due for rights registration, (h) Income Tax and Acquisition Duty Payment Slips, (i) Statement Letter assuring there is no ongoing legal dispute involving the land parcel concerned, and (j) Statement Letter assuring the physical control of the land parcel concerned.

Meanwhile for legal entities, the above requirements remain with exception of the following additionals: the Deed of Establishment/Articles of Association made before a notary public, Ministry of Law and Human Rights Decision Letter on the

Establishment of Legal Entity eligible to apply for land rights, and the Permission Letter to Acquire Land Rights issued by the Head of National Land Institution [30]. The title transfer process will require about 5 or more working days, depending on the number of rights transfer/permohonan submitted at the same time to the National Land Institution local offices.

4. Conclusion

The transfer of property ownership through land and building exchange transactions is evidenced by the existence of a Deed of Exchange made by the Land Deed Making Officer, before the signing of the exchange deed the parties or taxpayers are required to pay Income Tax on additional income from the transfer of rights to land and buildings through exchange transactions, if income tax is reported to the Tax Service Office after it has been carried out examination and there is evidence of underpayment of taxes or there is unreported income tax such as additional money of Rp. 4,000,000,000-, (four billion rupiah) which is the result of obtaining rights in the form of land and buildings from exchange transactions, then the Director General of Taxes has the authority to issue a Tax Assessment Letter to taxpayers for underpaid or unpaid taxes and added sanctions administrative in the form of interest of 2% per month on the actual amount of tax payable as stipulated in Article 13 of Law Number 6 of 1983 concerning General Provisions and Tax Procedures, but if the taxpayer does not get an underpayment tax assessment letter from the Director General of Taxes and after 10 years from the time of tax payable, then the tax underpayment along with administrative sanctions in the form of interest of 2% per month does not need to be paid and Income tax reporting is considered correct.

And taxpayers are required to pay Land and Building Rights Acquisition Duty Tax on the acquisition of land and building rights exchanged, proof of tax deposit is proven by a regional tax return, if the reported tax is underpaid or there is a tax calculation error due to the e-BPHTB system such as tax reporting Land and Building Rights Acquisition Duty for the second Unit Shophouse is subject to a reduction in the Acquisition Value of Non-Taxable Tax Objects The tax in which the reduction is not in accordance with the provisions of Article 46 paragraph 5 of Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments. To improve the situation, the obligation as a taxpayer is underpayment or miscalculation of the application of the Acquisition Value of Non-Taxable Tax Objects that are not in accordance with the provisions of the laws and regulations, taxpayers can report and make their own corrections for the underpaid tax to the Regional Revenue Office. To ensure optimal tax collection and minimize the reduction of state tax revenues, the way forward calls for wider and directed public socialization of procedures for submitting income tax and duty tax on land and building rights acquisition duties on exchange transactions.

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