



Taxing Digital Economy through Online Marketplace in Indonesia[#]

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Received: 06 November 2019

Accepted: 15 January 2020

DOI: <https://doi.org/10.32479/ijefi.9071>

ABSTRACT

This article examines the challenges on taxing digital economic performed by Indonesian government through online marketplaces engaged as the withholder of the merchants selling their products through their platform on gross basis. Online marketplace, seen as potential sector contributing to the state revenue. The research show that tax imposition on the merchant through marketplace has raised debates, since the merchant which mostly start-up and micro-business should not be taxed like established business. Small and micro-scale business registered on an online marketplace will potentially change their marketing mode to avoid tax to get higher return on the mode could be detected by government, such as social media. Further, the online marketplace has to do another risky responsibilities beside their core business; withhold the tax and remit it to the government following the prevailing law. The heat debate on the publish lead the government to postpone the policy engaging online marketplace as withholder. As the final solution, the government imposes small percentage final tax for the business who has the turn over classified as SMEs.

Keywords: Digital Economy, Tax Policy, Withholding Tax, International Tax

JEL Classifications: H2, K34

[#] This paper has been presented in Japan-Indonesia International Scientific Conference 2018, Osaka University Japan.

1. INTRODUCTION

This article examines the challenges of taxing massive transaction on digital economic in this digital era and how Indonesia Tax Authority impose tax on the digital economy activities through online marketplaces. The government planned to engage the online marketplaces as the withholder of the merchants who sell the products through their platform on gross basis. For the government, this plan would ease them on collecting the potential tax revenue on high volume transaction between customers and merchants on an efficient way. For small and micro-scale business who have registered on an online marketplace, this government's plan will potentially change their mode of marketing which has not be withhold to get higher return on the mode could not easily be detected by Indonesia tax administration. In addition, the online marketplace has to

do another risky responsibilities other than their core business activities, which consist of withhold the tax and remit it to the government following the prevailing law.

Digital economic activities are growing rapidly in Indonesia. According to the information published by the Ministry of Finance in 2017, around 24.7 millions people in Indonesia made the purchase transaction online. The numbers of online marketplaces are rising since the online transaction has become very popular among the citizens. The potential transaction volume of this activities is predicted to rise in the following years since the number of internet users in Indonesia in 2017 has reached 132.7 millions people, of which the 106 millions are also social media users. In 2018, the e-commerce trade value in Indonesia is ranked the 6th in Asia Pacific region with growth at US\$10.92 billions or equal to IDR147.4 trillions. According to the analysis conducted

by Fiscal Policy Institution, in 2017 the online selling has taken up 3.5% of the retail selling portion, reaching to 4.8% in 2019.

The government, particularly the financial authority views that there is large potential for taxing the online transaction activities. Citing the statement of Directorate of Counselling, Service and Public Relations (P2 Humas) Directorate General of Taxes (DJP), there is an intention to set the marketplace as withholder for the tax collection to be much easily done¹. Moreover, according to the Director of P2 Humas, setting up the marketplace as withholder is intended to ease the government work for the identification process of the merchant taxpayer.

On the other hand, DJP also realizes that this plan could trigger the merchant movement from the marketplace to other trading mode. The equal fulfilment of obligations has been the consideration in setting up the tax for the marketplace similar to other conventional trading, despite the fact that there are still e-commerce non-marketplace platforms have not been included in the taxing scheme. This issue becomes the concern of Indonesian e-commerce association that the e-commerce tax regulation should not only target online sellers and buyers in the marketplace, but also in other platforms such as social media and chat applications to reach an equal level of business playing field. The expected equal playing field by e-commerce business party does not merely between offline and online, but also includes e-commerce marketplaces and other platforms being taxed simultaneously.

Moreover, it is also important to note whether imposing tax on marketplace will have an impact to the elimination of multiplier effect, since the government favour is to have an upward movement in micro, small, medium-scale business, where a number of the economic actors are included in the marketplace. For the marketplace merchant, imposing tax to the trader in their platform, where marketplace serves as withholder will reduce the numbers of activities in the marketplace, which was previously designed with an effortless investment to attract sellers making them prefer to choose the marketplace for trading. The tax imposed to the marketplace will cause sellers who have joined the marketplace to move to social media selling mode that has not been “covered” by the regulation². Meanwhile, according to the marketplace merchant, when sellers move from marketplace to social media, they will lose chances and scale up received, when they were in the marketplace. On the other hand, most of buyers tend to have more trust if the transaction conducted through the marketplace as there is no customer service and lack of transaction secure guarantee available in other platform. On top of that, it is also easier to reach the market within the marketplace.

This article discusses the tax regulation aspect and administration related to the tax imposed on e-commerce activities where the

marketplace has a role as the taxpayer followed by the challenges on imposing tax on them that lead the government to set a short-term tax policy solution.

2. RESEARCH METHOD

This research occupies constructivist paradigm with qualitative research method. Data collection technique was conducted through literature review and documentation study. The collected data was then analysed by using qualitative method.

3. CONCEPTUAL FRAMEWORK OF TAXING DIGITAL ECONOMY

The use of digital technology in the modern life is the driving force for rapid innovation and economic growth during the last decade. Meanwhile, the development in tax law is still relatively slow except regulations on transfer pricing, controlled foreign corporation, which are used as an instrument to minimize the aggressive tax planning strategy by some multinational scale business entities³. On the other hand, before the existence of digital technology, manufacture industry held an important role, where the vital intellectual property (IP) in doing business has not yet been a concern compared to nowadays, where IP can be transferred and represents the stock ownership.

Stig Sollund⁴ stated that digitalization will be a continuing process. For tax authority, this will have an impact on how business activities should be taxed efficiently. Sollund also emphasized that the tax regulation needs to be adaptable to the changes and business dynamics, not only to secure income to the government from the existing potential economic activities but also to rapidly provide security to the business entities regarding their tax obligations and burden that needs to be fulfilled. During the implementation, government should pay attention to the changes they made to avoid any negative impacts to the business entities, or in other words, the changes in regulation should not hindrance the business entities to create efficiency by using their own business model. Sollund⁵ (2018) also emphasized that the tax regulation should avoid any action that will wipe out the digital business entities.

International consensus through OECD/G20 Inclusive Network on Base Erosion and Profit Shifting (BEPS) published an interim report in 2018 with the title “Tax Challenges Arising from Digitalization”. The report described several things as follows⁶ that the tax administrator should consider while formulating tax regulation on digital business:

- 3 Kadet, (2017) Submission Concerning Tax Challenges Of Digitalization, Task Force On The Digital Economy.
- 4 Interview Of Denny Vissaro With Stig Sollund, Retrieved From <https://news.dtc.co.id/tantangan-pajak-digital-perlu-solusi-jangka-panjang-12347>, Accessed On January 20, 2019.
- 5 Interview Of Denny Vissaro With Stig Sollund, <https://news.dtc.co.id/tantangan-pajak-digital-perlu-solusi-jangka-panjang-12347>, Accessed On January 20, 2019.
- 6 Cited From OECD Brief On The Tax Challenges Arising From Digitalization: Interim Report 2018.

1 Citation from interview by bisnis.com to Hestu Yoga Saksama, the Director of Counselling, Services and Public Relations (P2 Humas) Directorate General of Taxes, “We emphasis more on the e-commerce who uses marketplace, because they are more applicable at the moment,” said Yoga to Bisnis, Sunday (4/2/2018).

2 Summary of the interview by katadata.co.id with the General Head of Asosiasi E-Commerce Indonesia (idEA), Erysyah Marinto uploaded on February 7, 2018.

1. Digitalization of business model has a close relationship to the value creation. Therefore, the intangible property aspect becomes very important due to its impact to the ability to generate income in a jurisdiction without the physical presence (scale without mass). Moreover, the availability of the data and user participation has also become crucial. Therefore, the concept of value creation needs to be discussed thoroughly. Business models will keep growing, but here we only cover 4 digital business models, i.e. (i) multi-sided platform (Uber, Airbnb, Facebook, Google, etc.), (ii) resellers (Alibaba, Spotify, Amazon e-commerce), (iii) vertically integrated firms (Xiaomi, Netflix, etc.), (iv) input supplier (Intel, Tsinghua Unigroup).
2. There is growing implementation of BEPS Package related to the digital economy⁷, with emphasis on (i) prevention of permanent establishment (PE) status (ii) insurance on the implementation of value creation on transfer pricing regulation, (iii) special attention is required to the Controlled Foreign Company (CFC) regulation and the needs to discuss the development of Multilateral Instrument. In this report, OECD stated that the decrease in tax avoidance practices cannot be measured, due to the presence of BEPS Action Plan initiation, particularly related to closing the gap for tax avoidance by digital merchant. The success in minimizing tax avoidance depends on the commitment of each country in implementing regulation on permanent establishment (PE) presence status avoidance⁸. Several options of regulations on permanent establishment avoidance that can be selected include: (i) performing modification on permanent establishment threshold with the significant economic presence test or by expanding the scope of fixed place of business definition for digital platform, (ii) unilateral action through withholding tax mechanism, by expanding the scope of withholding tax or royalty or adopting withholding tax on cost of technical services, (iii) special tax regulation to target multinational companies, such as diverted profit tax in The UK⁹, Multinational Anti-Avoidance Law in Australia and Base Erosion Anti-Abuse Tax/BEAT in the United States.
3. The interim report also provides investigation on various domestic tax regulations that has been implemented in various countries since 2015, related to the tax imposition on cross-jurisdiction digital economic activities. The regulations are categorized into four main parts, i.e.: (i) domestic regulation, which covers protection aspect as well as expansion of tax basis in the buyers or users location, (ii) the large proportion of the regulation design uses elements related to the market as the tax basis, for example: selling, consumption location, (iii) final turnover tax with equalization levy, advertisement tax and even tax on audio-visual content distribution activities (iv) the regulation reflects dissatisfaction of profit distribution model of the currently applicable international tax system.
4. There are different opinions on how much transformation is required in the tax system related to the transaction activities between jurisdictions, particularly in respond to the incompatible regulations between jurisdictions regarding taxation on profit at the place¹⁰ where value creation took place. Therefore, changes on system are required to accommodate profit allocation or nexus that consider the role of data and users participation. Some countries put emphasis on the high dependency to the knowledge-based capital and the needs in changing the definition of permanent establishment, while other countries have different opinions that refuse fundamental changes.
5. Several elements should be considered in the global consensus context, i.e. (i) refers to the Double Tax Agreement (DTA) principle and World Trade Organization (WTO), (ii) targeted and not valid for general public (iii) does not lead to excessive tax burden (iv) no destructive impacts to the start-up, and (v) does not increase compliance cost burden and other new complications.
6. There is equal tax treatment to ensure no particular tax regime of a special business model and no negative impacts on various sharing economic activities.

Sollund (2018) stated that the report does not include or has not reached to the agreement on how countries should tax digital industry in the short and long-term periods¹¹. It needs to emphasize that short-term solution is not a reliable choice because digital business is very dynamic and will likely to develop further rapidly. Due to the facts and potentials mentioned, the application of long-term solution is very crucial but difficult to reach, as it requires mutual agreement¹².

In regards to the development of digital business, each country has several variants of taxation issues on the economic activities, as a result of different business development. The mutual problem selection and formulation also become another task to be solved. There is possibility for each country to have tax regulation preferences, for example when related to cross-country transaction, there is an option to change the general regulation of the tax regulation, following the development of digital economic activities or to organize the ring-fence (to form a special regulation) of the digital economic activities.

3.1. Current Policy of Taxing Digital Economy in Indonesia

In general, the government of Indonesia has realized the rapid development of e-commerce activities, thus there is a requirement

7 OECD (2015), Addressing the Tax Challenges on the Digital Economy, Action 1 2015 Final Report.

8 Ganesh (2016), Equalization Levy Applicability of Non-Discrimination Rules in International Agreements, Report of CBDT Committee on Taxation of E-Commerce, published by Journal of the Chamber of Tax Consultants.

9 Backer (2015), Diverted Profit Tax, UK Development Update, January 2015; Ernst and Young. (2014), UK Releases Details Regarding Diverted Profit Tax, Global Tax Alert December. London, United Kingdom: Ernst and Young.

10 Indian Equalization Levy has been enforced, legal sourced through the domestic regulation, see Deloitte. (2016), Equalization Levy 2016, Is it Equitable? India: Deloitte, Mehta, A. (2017), Is the Equalization Levy Compatible with India's Existing Tax Treaty Network? White Paper 1, India International Tax., Mohanti, C.A.R. (2016), Overview and Practical Aspect of Equalization Levy. India: Ernst and Young.

11 Cited from Denny Vissaro's interview with Stig Sollund, the member of the United Nations of Expert on Interim Report Tax Challenges Arising from Digitalization, retrieved from <https://News.Ddtc.Co.Id/Tantangan-Pajak-Digital-Perlu-Solusi-Jangka-Panjang-12347>, Accessed On January 20, 2019.

12 Cited from Denny Vissaro's interview with Stig Sollund, the member of the United Nations of Expert on Interim Report Tax Challenges Arising from Digitalization.

for a comprehensive regulation related to rights and obligations fulfilment similar to other business entities. The release of Presidential Regulation No. 74/2017 indicates the government's attention to support acceleration and development of national trade on electronic basis (e-commerce), start-up, and logistic acceleration by creating an integrated e-commerce Road Map that is called as Sistem Perdagangan Nasional Berbasis Elektronik 2017-2019 (SPNBE). The road map covers several aspects, such as budgeting, taxation, consumer protection, education and human resource, infrastructure, communication, logistics and cyber security.

It is also emphasized that SPNBE 2017-2019 as the foundation for the central and regional governments to set the sectoral regulation and plan for acceleration of national e-commerce system. Moreover, this document also becomes the foundation for stakeholders to run the e-commerce system. Before the released of this guideline, the Ministry of Communication and Informatics (2016) classifies e-commerce activities into 3 categories for easier monitoring activities, i.e. (i) start-up or infant business, (ii) small and medium enterprises (UKM) and (iii) established.

Previously, the Ministry of Trade also regulated the trade activities, including e-commerce under Law No. 7/2014 on Commerce. The regulation was aimed to educate people to understand the same trading concept by using electronic system (PMSE)¹³, to protect and provide insurance for merchants, PMSE administrators and consumer. Law on Commerce (UU Perdagangan) defined PMSE as commerce where the transaction is made through a set of hardware and electronic procedures. The types of PMSE businessmen include merchant, e-commerce operator (PPSE) such

as communication provider, electronic publications, electronic offers, electronic transaction application provider, service and payment application system provider, and service and shipping application system provider (pajak.go.id, 2014).

Furthermore, related to the compliance of the tax regulation, it is also described that transaction by using e-commerce will be taxed according to the applicable law. In the tax context, the Indonesian tax authority explains that tax imposition on e-commerce transactions is more likely common procedural taxing activities rather than imposing a new type of tax. Therefore, the taxation treatment of the e-commerce will be the same as for other trading activities, without any special tax regulation for e-commerce. In addition, Indonesian Value Added Tax regulation also classifies e-commerce activities into 4 categories despite the rapid development of the e-commerce. This classification into only 4 categories is made for easier choices on classifying types of business and simplicity for the purpose of their tax obligation fulfilment, although it signifies a over-simplification.

Since the release of this regulation (SE-62) in 2013, there is no revision or addition category into that current 4 types of digital economy classification (Table 1).

4. TAX POLICY CHALLENGES ON DIGITAL ECONOMY IN INDONESIA

The Government of Indonesia's aim to impose tax on e-commerce actors, including those who own the application, does not necessarily mean to define a new tax object as a new base to levy tax, since only the way of doing the transaction is different from conventional to electronic means. For the government, the content of current tax policy (material tax regulation) seem has sufficient, the shifting of economic vehicle mode from conventional into

13 PSME stands for Perdagangan Melalui Sistem Elektronik, translated into English as Trading by Using Electronic System, is mentioned in Indonesia e-commerce Road Map

Table 1: Digital economy classification in Indonesia

S. No	Digital economic activities	Notes	Tax aspect
1	Mal Internet	Internet-based shopping consists of several online stores operated by Online Marketplace Provider Actors involved: online marketplace provider, online marketplace merchants, buyers	Income Tax and Value Added Tax are imposed on the business process of providing place and/or time, selling goods and/or services, and delivering the business revenue from provider to the merchants
2	Classified Ads	Providing place and/or time to display content (text, graphics, video describing something, information, etc.) goods and/or services for publisher to display through websites provided by Classified Ads Provider to display advertisement to the advertisement users through the website provided by classified Ads provider Actors involved: classified ads provider, advertiser, and the users	Income tax and Value Added on the business process of providing place and/or time to display content of goods and/or services
3	Daily Deals	Providing place for business in Daily Deals website as a place for Daily Deals merchant to sell goods and/or services to the Buyers by using Voucher as a mean of payment Actors involved: daily deals provider, daily deals merchant and buyers	Income tax and Value Added Tax on the business process of providing place and/or time, selling goods and/or services, as well as delivering the business revenue from provider to merchants
4	Online Retail	Selling goods and/or services by Online Retail Provider to the buyers on Online Retail website Actors involved are online retail provider, merchants and buyers	Income tax and Value Added Tax obligations on business process of selling goods and/or services

Source: Directorate General of Taxes Circular Letter No. SE-62/PJ/2013 (SE-62) on confirmation of taxation regulation on e-commerce transactions

digital ones has made the tax administration works becoming far more complicated to find the appropriate balance between treat the firm on the similar tax burden among modes of business and keep the them grow on digital environment, as following Sollund's (2018) thought the tax regulation should avoid any action that will wipe out the digital business entities.

In 2018, Minister of Finance released Ministry of Finance Regulation No. 210/PMK.010/2018 (PMK-210) concerning Tax Treatment of e-Commerce. In this regulation, the marketplace platform has to fulfil their obligation as taxable enterprise, it means it has to withhold and collect the tax from the users of their services following the tax provision. The marketplace platform also has to report the recapitulation of transaction performed by the buyers and sellers through their platform and report them periodically to the tax authority. Besides those administrative works, the government also engaged the marketplace to withhold the tax of transaction (between the merchants and buyers) undertaken on their space by using gross basis then remit the collected tax to the government account. In addition, for merchants who use the services of marketplace platform has to registered as taxpayer and was obliged to submit their personal identification number to marketplace.

Following the PMK-210 initiative, the government also released the regulation mentioned that tax imposition on e-commerce is subject to 0.5 % Final Income Tax (PPh) of the business circulation for merchant with less than IDR 4.8 billion turnover per year regardless the mode of business effective from July 1, 2018 through the stipulation of Government Regulation No. 23 year 2018. It seems, even though the regulation mentioned "regardless the mode of business," the lucrative rate is intended to tax start-up merchants taking place in market place platform¹⁴, since this tax rate is lower to the tax imposed on conventional business before. The issue of taxing digital economy raised with former taxing rate 1% final on gross basis as stated on Government Regulation No. 46 year 2013.

By releasing these regulation simultaneously, it is expected that tax collecting will be a lot easier for the government and the decrease in tax rate will also boost competitiveness in the business. Based on documentation study and interview with the relevant stakeholders, various responses and arguments to this put forward by the business actors specifically on the plan of engaging online marketplace as withholder, are as follows¹⁵:

1. Basically, the collection by withholding is already popular in Indonesia. However, marketplaces as the withholder who merely provide media for business are not included in the withholder category. This new proposed role is not formally categorized as the withholder on prevailing law and similarly has violate the ideal withholding tax concept.
2. A marketplace media, if they are obliged to collect taxes from a great number of sellers where a marketplace could have 2.6 millions sellers, will impose a high cost for collection. This

additional task to collect tax is also risky, particularly for the marketplace as the withholder who could make an error during the tax collection, thus leading to various sanctions for them. This will lead to the high compliance cost for collecting Final Tax.

3. Marketplace will have to pay more for human resources for tax collection activities, which is not their main core business. Meanwhile, most of the marketplaces in Indonesia are start-up companies with limited capital and relatively small profit.
4. From the fairness perspective, the online marketplace businessmen stated that the government is too partial in imposing tax to the online marketplace. A survey conducted by IdEA to 1.800 respondents from 11 cities, reveals that 46% business actors choose Facebook as the place for their online trading. There is also 5% who prefers Instagram to trade. Around 11% respondents use both Facebook and Instagram simultaneously to trade online. Only 16% sellers use online marketplace platform, which means the non-online marketplace are still large and the sellers who choose these social media are still not subject to tax as the government has not yet provided the instrument to alleviate the issues. E-commerce marketplace model is only one of many transaction means. The regulation should be applicable to all transaction means available in the market at the moment, without differing one way to another to ensure better and more progressive e-commerce industry growth.
5. In reality, a merchant is often registered in several online marketplaces.
6. There is possibility that if the government imposes tax through online marketplace, the sellers will move out from the media and shift to the social media while the online marketplace businessman has put a large investment to build and maintain their business. This will probably happen despite the fact that there are facilities and simplicity received by sellers if they do their business in online marketplace, where up to 79% of total sellers in online marketplace platform are new business actors.

Others also stated that the imposition of Value Added Tax could be done based on payment gateway where the price paid already includes the consumer's Value Added Tax obligation. Moreover, other opinion also states that the shipping service business actors could take the role as collector. However, there is a concern that this also will create a new problem if the delivery is made by cash on delivery transaction. Furthermore, the administration cost will also be too high for the courier due to their new responsibility as collector.

On the other hand, DJP also faces various obstacles. Indonesian taxation system which implement self-assessment, instructed that tax reporting should be considered valid, the assessment of any mistakes could be performed if new information or data is found. Moreover, DJP also requires valid comparison data from business actors for consideration in decision making or setting updated tax regulation. The last argument related to the regulation on confidentiality of consumers data and customers becomes another challenge in making the regulation. To this moment, discussion on e-commerce taxation is still growing and the government has not made decision on the issue.

14 <https://investor.id/archive/ekonomi-digital-masa-depan-ekonomi-dan-pajak>

15 This information was based on discussion with Ministerial Expert Staf to Coordinating Ministry of Economic Indonesia in Depok, May 2018

Until the end of 2018, this policy was seen against by interest party and digital related-business. In the beginning of 2019, Indonesia Service Dialogue (ISD) arranged the discussion between online marketplace business, merchants and tax authority to find the balance on the existing withholding policy. Several notes gathered from that discussion¹⁶:

1. Online marketplace business noticed after the arranged dialogue that the imposition of tax on merchant is not a new tax object. The protests proposed by the online marketplaces business were due to unclear mechanism of fulfilment of tax obligation about to what extent they have to take a part on collecting tax on each transaction between merchants and buyers. In addition, there was not sufficient dialogue between related party before the release of PMK-210.
2. Online marketplace stated that before the release of regulation, the socialization of policy has not publicly known. The SMEs were obliged to registered as taxpayer and got taxpayer identification number without sufficient information the benefit of becoming taxpayer. If the government was able to explain the current benefit of having tax identification numbers such as; eligible to involve on exhibitions organized by the government, eligible to apply for grant from state owned enterprises bank, the merchants would tend to have voluntary willingness register as taxpayer.
3. Knowing clearly that the tax rate imposed on their annual turnover was only 0.5%, the merchants would not object that tax obligation, since the tax rate has been quite moderate and it would not significantly disturb their business. However, the merchant proposed that the government has to establish clear mechanism on how to fulfil the obligation with minimum administrative cost.

As the result of the dialogue, for the short term solution, the tax authority postpone the withholding mechanism undertaken by online marketplace. For the next short period of time, the government would have socialized the mechanism of tax liability fulfilment for the merchants, but the decision of paying tax liability 0.5% on final basis has been decisive.

5. CONCLUSION

Looking back at the recommendation of international institutions, the choices to impose final tax could be considered as the solution. For developing countries, this sector is a part of hard-to-tax

¹⁶ This information is based on indept interview with Indonesia Service Dialogue (ISD). Thanks to Anika Widiana, Trade Analyst and Government Relations in Indonesia Services Dialogue (ISD) Council.

object which taxation is different to other common object. Taxing business by using the hard-to-tax system with a new adjusted rate, provides government with new additional revenue from the potential tax objects without incurring large cost of collection. The benefit also received by the business actors who are facilitated to fulfil their obligations without being imposed by high compliance cost. For the current short-term solution, what the government made seems follow the global consensus proposal, regardless the heat debates come from the actors. At the moment, if the government still plan to engage the marketplace as withholder for the online merchants, the government tasks could be diverted to the level on how to compensate the marketplace businessmen who have been appointed to collect and remit the tax. Other additional task is how to tax the business actors outside the marketplaces who have the same amount of turnover with the business actors in the marketplace.

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