Tax and Law Studies

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**9/18/2016**

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List of Questions :

1. Which is the best option to send money to Indonesia?
   1. Is there some restriction or declaration to do when we send money in Indonesia?
   2. Should we have to pay any tax with this new asset value in our account?
2. What is the tax this business has to pay in Indonesia for this business?
3. If the business as individual or company is owned by the wife with Indonesia citizenship. In case of owner death, what will happen with the asset if the daughter and the husband are not Indonesia citizen?
4. The land or the land with the building could be owned by individual or company by the wife or other wife family member and make an HGB to the husband for the 30 years, renewable once?
   1. In this case, if the husband die, that HGB contact could come back to the wife or to the daughter?
5. What would be the tax incidence with profit in case of selling the land with building (as individual) or to sell the company (as incorporated business)?

List of Goals :

1. How to send money
2. How to declare cash in account, asset and income
3. How to set-up a business and maintain it as individual or as incorporated
4. How to buy and sell the properties and related tax

**Disclaimer : The answers and suggestions of this studies will be provided in table form.**

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| Question Number | Answer and Suggestion | Reference Number | Goals Number | Notes |
| 1 | There are many ways to send money to Indonesia. Of course each of ways has it own lackness and benefit. But in my opinion when it comes to money safe factor is the priority. According to my experience i like to recommend transfering money with international bank that has establishment in Indonesia such as HSBC Bank, Panin Bank, or Maybank(CIMB Indonesia) and the country you transfer from as well, moreover you should check currency rate at the time you send money to Indonesia so, you could optimize the transfer. There are two kind of transfers first you could transfer in foreign currency and the recipient will receive in Rupiah or you transfer in foreign currency and the recipient will receive in same currency. Each bank has it own procedures. You could ask the bank dirrectly to know about the procedures. | No reference | 1 |  |
| 1.a | Well, i am really sure there is no restriction in sending money to Indonesia. But according to “PPATK” law **the financial institute has to report** the amount and source of money to PPATK in issue of money laundring, so the impact is the bank will be asking the recipient about the money source and usefulness. In my opinion do not said it is for business just said it is for saving from relatives. Anyway, with 2 or 3 billion rupiah would not be concern of the bank. | Pasal 23 ayat 1 UU no.8 tahun 2010 ( Article 23 act 1 Law Number 8 year 2010 ) | 2 |  |
| 1.b | There is no tax object in money transfer. So, the conclusion is there will be no tax has to be paid. | No reference | 2 |  |
| 2 | This rental room business has several taxes to comply, let me divided in 3 big group of tax.  1. Income Tax (Corporation **or** Individual)  2. Withholding Tax  3. Local Tax  1.a) Individual Income Tax, In this concept all of the income of this business will be recorded as someone’s income and will be count in Individual Tax Rate which is Progressive rate : 5% - 15% - 25% - 30%  The bigger your income the bigger tax you pay. For instance : you run this business under your wife name so, this business become one entity with your wife it does mean your wife “Tax ID Number (NPWP)” is this business NPWP, let say this business has total revenue of 5 billion with taxable income(pendapatan kena pajak/PKP) during a year is Rp 300 Million. So, the tax calculation will be :   * 5% X 50 Juta = Rp 2.500.000 * 15% X 200 Juta = Rp 30.000.000 * 20% X 50 Juta = Rp 10.000.000 * Total tax has to be paid in a year = Rp 42.500.000,-   1.b) Corporate Income Tax (as Perseroan Terbatas/PT), In this concept you establish an entity that act separately from your individual right and obligation of law. The rate is 25% but there is facilty 50% discount for the first 4,8 Billion Revenue. Let say this business has same condition as above. So, the tax calculation will be :   * Revenue that has facility = 4,8Billion : 5 Billion X 300Million = Rp 288.000.000 * Revenue that has no facility = 300Million – 288 Million = Rp 12.000.000 * Income Tax that has facility = 288jt X 25% X 50% = Rp 36.000.000 * Income Tax that has no facility = 12jt X 25% = Rp 3.000.000 * Total tax has to be paid in a year = Rp 39.000.000,-   **Of course all the calculation above only apply if your total revenue in a year above Rp 4.800.000.000,- .If no, you only pay 1% of your revenue every month.**  2) Withholding tax, withholding tax is a complience of a business to cut of collect amount of money either you run this business as individual or as company. The possibilities of kind of withholding tax are :   * PPh 21, means you have to collect your employee income tax, **IF their Taxable Income above Rp 4.500.000,-** * PPh 23, if your business rent something, for instance rent a car so you need to collect the PPh 23.   3) Local Tax, is the tax that reported to local government (Dinas Pendapatan Daerah/DISPENDA) of Depok City   * Pajak Hotel / Pajak Kos-kosan. This tax will apply **if your business has 10 or more rooms,** the rate is 10% of your total revenue. So, if you have 15 rooms and total revenue of those rooms are Rp 15.000.000 per month so you have to paid Rp 1.500.000 per month to DISPENDA Depok. * Pajak Bumi dan Bangunan. This is a official assesment tax it means you don’t have to calculate and report the tax you will be charged every one year by local government. The amount is around 0,5% times NJOP(Value of your building and land based on government assesment) * BPHTB. This tax only apply once when you purchase the land. The rate is 0,5% X NPOPKP(NPOP-NPOPTKP). NPOP is the purchase amount, the NPOPTKP is the discount which has 2 value, if the buyer and seller are not related so the NPOPTKP is 60jt, If the buyer and seller has blood related such as mother and daughter then NPOPTKP is 300jt. NPOPKP is NPOP-NPOPTKP. Usually, the notary will take care of this condition when you buy the land. * PPN- Kegiatan Membangun Sendiri. This tax only appy **if the building you build has more than 200Meter2 (200 meter square).** This tax object is the building activities it self. So, let say you build a building that has 250M2 large, and for that you bought material to build for Rp 50Jt exclude Value added tax for the first month and Rp 30jt for the second month. So, the calculation for the first month = Rp 50JT x 20% x 10 % = 1jt then you paid and report. Calculation for the second month = Rp 30 Jy x 20% x 10% = Rp 600.000,- and so on until you finished. | * Law of Income tax no.36 year 2008 at article 25,21,23,4, and 29 * Law of Ground rules of taxation no.28 year 2007 * Law of Local Tax no.28 year 2009 * PP 46 year 2013 ( President rule no.46 year of 2013) | 4 |  |
| 3 | According to inheritance law(Hukum waris) even your daughter is not Indonesian citizen she will have her mother legacy as well. If your wife is Moeslem the court will decided the legacy based on ISLAM Law, which is your daughter will have portion of the legacy and the family of your wife will have right to have portion of the legacy as well but if only the family of your wife ask it. If your wife is not a moeslem then your only daughter will have all the legacy including the rent room business based on positive law. This concept not only apply if the business run individually but also apply if the business run as company and your wife as commissioner of that company so your daughter automaticly become the commissoner of that company, if this happen when your daughter still underage the court will decide who will control her asset until she has legal right/in adult age. | * Law of Legacy no.7 year 1989 * Article 852 Law of Ground rule of civil (KUHPerdata pasal 852) | 3 |  |
| 4 | According to Agrarian Law, a foreigner i mean non Indonesian citizen has no right to ownership property, Including HGB. According to Agrarian Basic Ground Rules Law only Indonesian citizen or Legal entity that established in Indonesia allowed to have HGB. So, if you want to have HGB under your name in Indonesia it is impossible. But there is “Hak Pakai” which is can be owned by foreigner with couple of terms one of them is you have to stay in Indonesia and if you leave Indonesia more than 1 year you will loose your right to have that property, “Hak Pakai” is for 30 years and can be renewable two times, first you can renew it for 20 years and then you can renew it for 30 years after that you have to dispose the property. The only reasonable way to have HGB under your name is by establishing a company and register it in BKPMA(Foreign Investment of Indonesia) and with it you can be a registered foreign investor, but please trust me this procedure is for people who will invested like trilion rupiah in Indonesia. | Pasal 36 ayat 1 uu 5 tahun 1960 (Article 36 act 1 law no.5 year 1960) | 3 |  |
| 4.a | If the owner of HGB(Your Indonesian Citizen wife) die, the HGB ownership will go to your only daughter, if this happen when your daughter already choose not to be an Indonesian citizen the court will do auction to liquid the property and give the money to your daughter. | * Law of Legacy no.7 year 1989 * Article 852 Law of Ground rule of civil (KUHPerdata pasal 852) | 3 |  |
| 5 | The treatment between individual or as company are same. When both individual or company has business that the business is selling property and the total revenue is above 4,8 million he has to be Taxable Entrepreneur(Pengusaha kena pajak/PKP) which mean he has to do Value Added Tax mechanism. So, every time he/the company want to sell property he/the company has to collect “PPN Keluaran”. But as I illustrated in question number 2, you will have less income tax expense if you run this business as company.  The Tax when as a property seller is :   * PPh Final, This is the tax of income from selling activities. The rate is 5% from the selling amount, for example you sell a property for Rp 300Juta then the PPh Final is = Rp 300jt x 5% = Rp 15.000.000, **If the activity of your business ONLY selling property then you have no obligation to pay the corporate or individual income tax because your income already taxed in PPh Final, thats why they called it final.** * BPHTB, as i explained in qustion number 2, the buyer is the one who has obligation to pay this kind of tax. * PPN(VAT)of selling house, as i explained above this kind of tax **Only apply if your total revenue above 4,8million, and there is a mechanism in VAT called Input and Output VAT. But, the point is the amount that you paid for VAT is the difference between VAT that you collect from customer(output) and Vat that is collected from you(input).** For example, you paid material to build a house for Rp 165.000.000 which included Rp 15.000.000 of Input VAT, then you sell this house for Rp 250.000.000 and has to collect Rp 25.000.000 of Output VAT from customer. When you do VAT calculation each month ,the amount of vat you have to pay is Rp 25.000.000 – 15.000.000 = Rp 10.000.000,- . | * Law of Income tax no.36 year 2008 at article 25,21,23,4, and 29 * Law of VAT no.42 year 2009 | 4 |  |