

## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **A. Tax Consultant in Indonesia**

The tax regulation which began to be complicated and altered throughout the time creates the difficulty for the taxpayers to follow the tax development, which causes the tax consultant service is increased by the taxpayers<sup>9</sup>.

Nowadays the amount of ethics violation upon the tax consultant increased, which could indicate a lack of ethical practice. Some of the tax consultants are neglected the social welfare for the sake of commercial and client interest.

#### A. Tax and Taxation in Indonesia

##### I. Definition of Tax

##### a. According to Prof. Dr. Rachmad Soemitro, S.H.<sup>10</sup>

Tax is a contribution upon the treasury fund based on the regulation, without receiving a reciprocal service (Tegan prestatie) which can be appointed directly and used as general expenditure financing.

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<sup>9</sup> Padma Andriana, Rosidi, and Zaki Baridwan. "Faktor Individu dan Faktor Situasional: Determinan Pembuatan Keputusan Etis Konsultan Pajak". *El Muhasaba Jurnal Akuntansi*. Vol. 4 No. 2 (2014). P. 2

<sup>10</sup> Mirna Tanjung. 2003. *Buku Ajar Perpajakan*. Padang. Universitas Negeri Padang. P. 7

b. DR. Soeparman Soemahami Jaya

Tax is a compulsory contribution in the form of money or goods, which is collected by the ruler based on legal norm, to cover the good and collective services to achieve prosperity.

c. Prof. Sindian Isa Djayadiningrat

Tax is an obligation to collect the wealth to the state caused by a certain conditions, events, or action based on the set regulation by the government, receive the indirect reciprocal service to keep the general welfare.

From the understanding above, the characteristics regarding the definition of tax are as follows:<sup>11</sup>

- a. Tax is a contribution of the citizen to the state
- a. Tax is collected by the state (by the central and regional government) based on the prevailed regulations
- b. There are no direct reciprocal services by the government
- c. The main purpose of tax imposition is as the state income
- d. Tax is imposed because of a certain event, an action which classified based on the individual position in the society.

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<sup>11</sup> Ibid

## II. Function of Tax

There are two functions of tax:<sup>12</sup>

- a. Budgetary, tax as the government funding source, financing the expenditure.
- b. Regulerend, tax as the tool to regulate and run the government policies in social and economic aspects.

## III. Tax Collection System

Some of the tax collection systems are:<sup>13</sup>

### a. Official Assessment System

The system of tax collection is to give the authority to the tax office to determine the amount of tax of the taxpayer which should be paid based on the prevailing tax regulation. The process of tax collection relies on the tax officers.

### b. Self-Assessment System

Under the self-assessment system, the taxpayers are given the authority to determine the tax payable annually based on the prevailed tax regulation. The taxpayers are given the full authority to enumerate and collect the tax itself. Some of the trust given by the state upon the taxpayers are:

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<sup>12</sup> Isroah. 2013. *Perpajakan*. Yogyakarta. Universitas Negeri Yogyakarta. P. 8

<sup>13</sup> Juli Ratnawati and Retno Indah Hernawati. 2015. *Dasar – Dasar Perpajakan*. Yogyakarta. Deepublish. P. 11

- 1) Self-counting the payable tax
- 2) Self-payment of payable tax
- 3) Self-report of payable tax
- 4) Self-responsibility of payable tax

Thus, the taxpayer has a dominant role in the process of tax payment.

c. With Holding System

Under this system, the third-parties are appointed to determine the amount of payable tax based on the prevailed regulation. The appointment is based on the prevailed tax regulation, presidential decree, and another additional regulation.

B. Definition and understanding

A tax consultant is everyone who is freely providing the services to the taxpayers in exercising their rights and duties upon the tax obligations in accordance with the prevailing regulation of tax.<sup>14</sup>

According to Article 1 of Financial Ministry Regulation, a tax consultant is a person who gives the consultant service upon the taxpayers, in order to exercise the rights and duties compliance based on the prevail taxation regulation.

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<sup>14</sup>Kurniawan Ciska and Arja Sadjiarto. "Pemahaman Kode Etik Ikatan Konsultan Pajak Mengenai Hubungan dengan Wajib Pajak oleh Konsultan Pajak di Surabaya". *Tax & Accountiong Review*. Vol.1 No.1 (2013) P.1

C. Working environment

The working environment of the tax consultant profession is followed by the ethics, which is written by the ITCA, such as:<sup>15</sup>

1. Maintain the honor and nobility of Tax Consultant profession
2. Tax Consultant shall follow and obey the code of ethics of the association
3. Supervision upon code of ethics of Tax Consultant run by the supervisor
4. Supervisor examine and adjudicate the violation of the code of ethics association based on the supervisory procedures
5. The supervisory decision does not eliminate criminal liability if violations of the Association Code of Ethics contain criminal elements
6. Changes to the Association Code of Ethics are conducted at Extraordinary Congress / Congress
7. Supervisors make efforts to uphold the Association Code of Ethics
8. The procedure for implementing the Code of Ethics is regulated separately in the Code of Ethics Association.

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<sup>15</sup> ITCA Code of Ethics Art. 19

D. Several Regulations

Several regulations which are a concern and correlate with the tax consultant profession in Indonesia, are:

1. Article 23A of the 1945 Constitution
2. Law Number 74 year 2011 about Implementation Procedures of Tax Compliance Rights and Duties
3. Law Number 16 year 2009 about Decision of Government Lieu of Law Number 5 year 2008 about The Fourth Amendment of Law Number 6 year 1983 about General Requirements and Tax Procedure
4. Minister of Finance Regulation No. 111/PMK.03/2014 about Tax Consultant
5. Minister of Finance Regulation No. 22/PMK.03/2008 about Requirements and Implementations of Rights and Duties of Power of Attorney

**B. The Comparative Study with Australia and The United States Legislation**

a. Australia

To determine the income tax liability, within the last 10 years Australia operates the accountants, the tax agent as a specialized tax

practitioner.<sup>16</sup> The term tax professional includes tax practitioners, tax preparers, tax agents, tax accountants, a tax lawyer.<sup>17</sup> Tax professionals believe that they exist to service the clients and also to act as agents for revenue authority in promoting compliance.

The Australian Taxation Office (ATO) is the office which is responsible for the Australia wide administration of the Commonwealth taxation system, which is located in Canberra, while the operations are supervised by the Commissioners of Taxation. The purpose of ATO is: “ To collect revenue, properly payable, so as to fund services and support for the people of Australia” (Commissioner of Taxation Annual Report, 1993/94).

The self-assessment system is moved by ATO in 1986, In 1986, (similar to that already operating in the USA and Canada) for determining income tax liability.<sup>18</sup> “Self-assessment” can be defined as the administration of the tax regime where the assessment of a taxpayer’s tax liability is based largely on voluntarily information provided by the taxpayer. In other words, the taxpayers are dependent to file annual tax returns and declare income, adjustments, exemptions, deductions honestly

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<sup>16</sup> Rex Marshall, Malcolm Smith, and Robert W. Armstrong. “Self-Assessment and the Tax Audit Lottery: The Australian Experience”. *Managerial Auditing Journal*. Vol. 13 Issue 2 (2010). P.1

<sup>17</sup>Ken Devos. “The impact of tax professionals upon the compliance behavior of Australian individual taxpayers”. *Revenue Law Journal*. Volume 22 Issue 1 (2012). P. 7

<sup>18</sup> Op.Cit. P.1

upon their income tax. This followed system by the ATO is based on the philosophy of the traditional approach to processing tax returns.

The current regime of income tax is predicated on fair, honest, and voluntary in reporting of tax liability.<sup>19</sup> It has the substantive provision of the Income Tax Assessment Act and associated regulations. Under the act, it is stipulated that only registered tax agents which demand or receive a fee for preparing an income tax return or for transacting business on behalf of a taxpayer. In addition, the other requirement is the agents who obtain a license to practice, which takes the form of registration of the agent by a Tax Agent Board.

b. The United States

Self-assessment is also followed in the US, like Australia, and Indonesia. However it has a different opinion and system upon tax compliance and the tax professionals. The other terms of a tax professional are the tax preparer, as what has been regulated under the IRS (Internal Revenue Service) Circular 230. Those tax preparers, are the lawyers and accountants who need to be cognizant of normative positions taken by their professional association.<sup>20</sup>

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<sup>19</sup>Rex Marshall, Malcolm Smith, and Robert W. Armstrong."Self-assessment and The Tax Audit Lottery: The Australian Experience". *Managerial Auditing Journal*. Vol. 13 Issue 2 (2010). P.2

<sup>20</sup> Tim Fogarty and David A. Jones."Between A Rock and A Hard Place How Tax Practitioners Straddle Client Advocacy and Professional Responsibilities". *Qualitative Research in Accounting & Management*. Vol. 11 No. 4 (2014). P.3



According to Jackson and Milliron's review, tax professionals act as the accounting profession which is proactive in defining its role in the tax system and assert itself as part of the solution to tax compliance, not as the agent for the government.<sup>21</sup>

The role of tax professionals in the tax system is necessary. In line with this notion, Luscombe support and indicate that in the US, tax professionals should be expected to provide services beyond compliance. In addition, he points out that tax professional probably welcomes a few fresh rules that assist them in taking a stance against the uncomfortable and endanger transactions. In other words, tax professionals should be creative to help solve the business problem in both individual and business to carry out tax obligations.<sup>22</sup>

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<sup>21</sup> Ken Devos. "The impact of tax professionals upon the compliance behavior of Australian individual taxpayers". *Revenue Law Journal*. Volume 22 Issue 1 (2012). P. 7.

<sup>22</sup> *Ibid*. P.11.