

QUASI JUSTICE IN ADMINISTRATIVE COURT ON TAX OBJECTIONS

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ABSTRACT

*The legal product of the tax assessment in form of a Tax Assessment Letter issued by Directorate General of Taxation may be filed an objection by the Taxpayer, if the Taxpayer disagrees or rejects the assessment letter. Filing objections to taxes established by the tax office is guaranteed and mandated by Indonesian tax laws. According to Law Number 6 Year 1983 on General Provisions and Tax Procedures as amended several times and the latest by Law Number 16 Year 2009, the objection can only be submitted to the Directorate General of Taxation. In the tax-objection process in Indonesia it is a "quasi-court" or "pseudo-court" because the judge is part of the disputing party. At the level of Objection which is supposed to constitute a "judicial" to "judge" the result of tax audit, the Taxpayer is essentially weak in its position so that the Objection Ruling generally does not satisfy the Taxpayer. The Law gives a maximum of 12 (twelve) months to the Directorate General of Taxation to issue an Objection Decision and an Objection Decision issued over that time period shall be deemed the objection petition is granted. Against the Decision of Objection may be filed Appeal to the Tax Court by the Taxpayer. From the result of the discussion of a paper entitled "**Quasi Justice in Administrative Court on Tax Objections**", it is concluded that the tax-objection process is not efficient in terms of time, effort and cost, since the objection review process at the Directorate General of Taxation requires a long duration. Preferably after the Discussion Concerning Tax Calculations shall be filed by the Tax Auditor, an objection may be raised by the Taxpayer prior to the issuance of the Tax Assessment Letter. Bureaucracy cuts on Section Objections in the process of pseudo-court can give justice for the Taxpayer because upon the issuance of Tax Assessment Letter can be directly appealed in Tax Court, so that there can be efficiency of time, cost and energy for Taxpayers and Directorate General of Taxation.*

Keywords: quasi-court, tax objections, bureaucracy cuts

BACKGROUND

According to the general definition, the tax is a compulsory levy imposed by the state on the people without any direct reward granted by the state. Funds that collected from tax collection are used by the Government to finance state expenditure as stipulated in the State Budget. In government spending in it includes expenditures for the benefit and welfare of the people.

On the outline, tax consists of two types, the first is direct tax, which is directly collected by the state from carrying the tax burden known as Income Tax. This type of tax is theoretically levied by the state in proportion to the amount of income of each Taxpayer. Secondly, the type of indirect tax, which is collected by the state through producers and or sellers attached to the price of goods or services, with the intention of being charged to the buyer of goods or services, such as Value Added Tax added 10% to the sale price of goods or services. Type of indirect tax ignores the ability of the income of each Taxpayer.

In addition to direct and indirect taxes, there are also other state levies such as user charges, a fee based on remuneration or facilities provided by the state to the Taxpayer. An example is parking charges, ie Taxpayers utilizing land or roads (state property) to put or park their vehicles by paying to the state in the form of parking charges.

Indirect taxes or levies, Taxpayers are not much in dispute with the state because the Tax Payer has the freedom to buy or not to buy the goods, have the freedom to use or not to use the services, because the taxes levied by the state attach to the price of goods or service prices. Indirect taxes or levies attached to the "object", then sought the subject of the tax who is using and who should pay the tax.

Tax disputes over indirect taxes generally occur between Manufacturers or Sellers as Tax Collectors with the state because the Manufacturer or Seller is designated as Tax Collector to be deposited into the country. Often there is a negligence or misuse of taxes by the tax collector so that there is a tax dispute.

In contrast to indirect taxes or user charges, the type of direct tax known as Income Tax, has caused many disputes between the Taxpayer and the state as tax collectors. Income Tax is levied on the basis of the ability or amount of income of each Taxpayer as a Tax Subject and it is not easy to calculate the amount of income of each Taxpayer, since the Taxpayer has his own perception of the ability to pay the Income Tax. Tax disputes that often occur is about determining the amount of income, income objects, tax calculations, resulting in tax disputes.

According to Indonesian tax legislation, the term taxpayer is used for an individual or entity, including Taxpayers, Withholding Taxes, and Tax Collectors, which have taxation rights and obligations in accordance with the provisions of the taxation legislation.¹

According to Law No. 6 of 1983 on General Provisions and Tax Procedures as amended several times, the latest by Law Number 16 Year 2009, concerning the tax dispute settled through the "administrative court" at the first level known as the Objection Tax.² Further Taxpayers if not satisfied with the Decision of the Objection may file a legal action on a "second-level court" known as the Tax Court.³ The decision of the Tax Court is final and has permanent legal force. However, to the Tax Court Decisions of the parties to the dispute may file a judicial review to the Supreme Court.⁴

Tax disputes that occur in the "administrative court", from the level of Objection to the Tax Court level, originally derived from the Inspection Result by a Tax Officer who is not approved or rejected by the Taxpayer. The disputed product is a Tax Assessment Letter or Tax Collection Letter issued by the Directorate General of Taxation (DGT) through the local Tax Office.

At the inspection level, the Tax Officer has six months to test records, bookkeeping, supporting evidence and other data with the final product is to issue a Tax Assessment Letter.⁵

A Taxpayer may file an Objection within three months from the date of receipt of the Tax Assessment Letter. The objection is submitted to the DGT through the local Tax Office and the DGT has twelve months to issue a Decision Letter. If a period of twelve months is exceeded and the DGT has not issued an Appeal Decision then the Objection Application shall be deemed approved.⁶ During the objection process within twelve months the DGT conducts auditing and retesting test before issuing the Decision Letter.

At both the Audit level and the Objection level, all are done by the Tax Officer in the DGT area. At the level of Objection which should constitute a "judicial" to "judge" the result of tax audit with the objection of the Taxpayer, the Taxpayer is essentially weak in its position so that the Objection Ruling generally does not satisfy the Taxpayer, since the party "adjudicate" is part of the disputing party, the existence of a conflict of interest in the Audience of Objection who is also an employee in the DGT area cannot be avoided.

Although the Tax Court on the side of organizational, administrative and financial guidance is carried out by the Ministry of Finance (only judicial technical guidance is done by the Supreme Court),⁷ the last hope for the Taxpayer to obtain justice for his tax dispute is at the level of the Tax Court. The Taxpayer has a grace period of three months from the receipt of the Appeal Decision to file an Appeal to the Tax Court. The Panel of Judges shall be granted a maximum of twelve months from the date of receipt of the appeal letter to settle the tax dispute hearing, and this period may be extended for a maximum of three months.⁸ It's just that the reading of the verdict by the Panel of Judges is not regulated by the law so often the reading of the Tax Court Decision passes over a period of twelve months.

In practice during the hearings at the Tax Court level, often the Panel of Judges asks parties to conduct the Evidence Test on a day outside of the court proceedings witnessed by the Registrar. At this point the Taxpayer must re-prove the data, display the documents and tax calculations to the Representative of the DGT assigned in the implementation of the Evidence Test. Evidence Test Result shall be set forth in an Evidence Test Report only signed by the DGT Representative and Taxpayer. At this point it is for the third time that the Taxpayer is required to prove the disputed evidence (the first proof of the second level of Examination and verification at the Objection level).

From the above descriptions, it is seen that the weak position is in the Tax Payer because since the Examination level, the level of objection and the level of appeal, it is always required to present the evidence. Taxpayers feel that they should be at the Appeal level in the Tax Court for the burden of proof by the DGT for the DGT issuing the Tax Assessment Letter, not the Taxpayer who must prove back to the DGT Representative in the Evidence Test Event.

STATEMENT OF THE PROBLEM

Does the bureaucratic reform at the Tax Objection level need to be done so that the "administrative justice" process under Indonesian tax law can fulfil justice for the Taxpayer, including efficient in terms of time and cost?

DISCUSSION

¹ Law Number 16 of 2009 about General Provisions and Procedures of Taxation, Article 1 Paragraph (2).

² Ibid, Article 25.

³ Law Number 16 of 2009 about General Provisions and Procedures of Taxation, Article 28

⁴ Law Number 14 of 2002 about Tax Court, Article 77 Paragraph (1) and (3).

⁵ Regulation of the Minister of Finance of the Republic of Indonesia Number 184/PMK.03/2015 on September 30th 2015, Article 15 Paragraph (2)

⁶ Law Number 16 of 2009 about General Provisions and Procedures of Taxation, Article 26 Paragraph (1) and (5)

⁷ Law Number 14 of 2002 about Tax Court Article 5

⁸ Ibid Article 81 Paragraph (1) and (4)

The definition of justice is a very relative understanding and depends on the place, time, and ideology underlying it. What is considered fair at this time, it is not necessarily fair in the past or future. In making general binding laws and regulations, efforts should be made to ensure that the provisions contained in the law are clear, explicit and non-dual meaning or provide opportunities for other interpretations.⁹

Public policy is the result of intensive interaction between the actors of policy makers based on the phenomenon that must be solved. Public policy often involves community participation in making the best decisions. However, not infrequently the policy is the work of a closed nature. In a word, policy takes place in an undemocratic political context so decisions are very top down.¹⁰

Public policy on taxation legislation is often top down in the form of Minister of Finance Regulation. Taxation Law in Indonesia many articles provide an opportunity for the Minister of Finance to further regulate tax regulations. From the government side these articles give flexibility to the government to regulate and use its authority in planning the target of state revenues, but on the Tax Payer side is often detrimental because disturbing economic activities that require legal certainty.

Indonesia's current tax regulation emphasizes on how to collect tax money as much as possible. If the official explanation stated that the tax rules are simple and easy to understand is viewed from the point of supervision, so from the point of assignment of the tax apparatus and not from the point of Taxpayers who must familiarize themselves with new meanings as interpreted and explained by the tax apparatus.¹¹

In general, Taxpayers do not want a dispute, always consider what the profit is, if you want to dispute. Compared with the government, the position of the Taxpayer is weak. First, the dispute does not delay the payment of taxes; and secondly, the judge tends to accept the information of the tax apparatus as expert information, which is more acceptable than the taxpayers' statements.¹²

On the Objection process as the Tax Administration's first "administrative judiciary" has been overshadowed by the threat of a 50% financial penalty if the tax objections are refused.¹³ As an illustration if the Taxpayer Assessment Letter amounts to Rp 100 million, then the Appeal Decision gives additional 50% sanction so that the amount of the Objection Decision becomes Rp 150 million, if the Taxpayer objection is rejected.

The tax dispute filed at the Objection level is a Tax Assessment Letter which is a legal product of the tax audit result. During the tax audit process, the Taxpayer has the obligation to show and submit all records, data and bookkeeping either in the form of hardcopy or softcopy data. Thus at the level of examination has been done Test Evidence. At the level of examination was often the case of "distortion" or different perceptions regarding the interpretation of tax laws and tax calculations different between the Taxpayer with the Tax Inspector Officer.

The results of tax calculations by tax inspectors are set forth in the Notification of Tax Audit Findings for requested response or refutation from the Taxpayer within seven days from the date of receipt of Notification of Tax Audit Findings.¹⁴ Taxpayer Response to Notification of Tax Audit Findings is set forth in the Discussion Paper, which contains the Taxpayer's response or tax calculation according to the Taxpayer and the tax calculation according to the examiner in accordance Notification of Tax Audit Findings or even the Notification of Tax Audit Findings calculation. Minutes of Discussion are signed by the Tax Inspection Team and Taxpayer.

During the discussion process either before or after it has been included in the Discussion Paper, the Taxpayer is given the opportunity to request a "mediator" called a Quality Assurance (QA) Team. But the opportunity to apply for discussions with the QA Team was only given three days.¹⁵ The QA team that was formed came from the ranks of tax officers within the DGT and its independence is much doubtful by the taxpayer so that not many Taxpayers ask for discussion with the QA Team.

Calculation of Tax Inspection Officer in the Discussion Paper becomes the basis for issuance of Tax Assessment. If the tax calculation by the tax officer in the Discussion is different from the Taxpayer's calculation, the Tax Assessment shall remain published according to the calculation of Tax Inspection Officer as stated in the Discussion Paper.

⁹ Rochmat Soemitro, Dewi Kania Sugiharti, , (2010). *Asas dan Dasar Perpajakan 1*, Bandung, Publisher PT. Refika Aditama, Ed.2, Print.2, page 20-21.

¹⁰ Leo Agustino, *Dasar-Dasar Kebijakan Publik*, (2010). Bandung, Publisher: Alfabeta, Print.6, page 1.

¹¹ Soerjono Sastrohadikoemo,(2004). *Beberapa Catatan Pajak-Pajak Di Indonesia*, Jakarta, Pulisher Toko Gunung Agung Tbk,, page 9.

¹² Ibid, page 60

¹³ Law Number 16 of 2009 about General Provisions and Procedures of Taxation, Article 25 Paragraph (9)

¹⁴ Regulation of the Minister of Finance of the Republic of Indonesia Number 184/PMK.03/2015 on September 30th 2015, Article 42

¹⁵ Ibid, Article 47

It is the human right of everyone to file an objection or claim against the acting party and harming him or her.¹⁶ Filing objections to taxes levied by the tax office, being deemed too high, guaranteed and mandated by tax laws.¹⁷

Tax Assessment, which is a legal product in the tax laws and regulations filed by the Taxpayer objection, is expected to be re-examined or sought "justice" from another party who is not a Tax Examining Team examining the tax, so expect no conflict of interest and may apply independent or impartial.

Independence and conflict of interest expected by the Taxpayer in the tax objection process against the tax laws and regulations that require the Taxpayer to object only to the tax authorities issuing Tax Assessment. Law Number 16 Year 2009 regarding General Provisions and Tax Procedures Article 25 Paragraph (1) regarding the objection of the Taxpayer reads as follows:

The Taxpayer may file an objection only to the Director General of Taxation on a:

- a. Tax Underpayment Assessment Letter;
- b. Additional Tax Underpayment Assessment Letter;
- c. Nil Tax Assessment Letter;
- d. Tax Overpayment Assessment Letter; or
- e. Cutting or tax collection by a third party under the terms of the taxation legislation.

The handling of the tax-objection process by the DGT in practice is authorized by the local DGT Regional Office in charge of the Tax Office which issued the Tax Assessment. The Review Team on the Regional Office of the DGT is not a Tax Examiner Team conducting tax audit on the Taxpayer, but the conflict of interest and the absence of independence are very strong and can be felt by almost all Taxpayers applying for tax objections.

Disputes, including tax disputes, are at least two parties to the dispute so that the tax dispute is a dispute between the Taxpayer and the DGT representing the state as a tax collector. A dispute should be resolved by deliberation of consensus in line with the philosophy of the nation and the state of Indonesia, namely the fourth principle of *Pancasila* (Indonesian philosophical foundation and state ideology), which reads "Democracy, led by the wisdom of the representatives of the People".

Tax disputes that are deadlocked and cannot be discussed between the Taxpayer and the DGT, should there be a third party who becomes the "judge" to decide the case. According to Rochmat Soemitro,¹⁸ the elements necessary to be able to say the existence of a judiciary are:

- a. The existence of an abstract rule of law which is publicly binding, which can be applied to a problem,
- b. The existence of a concrete legal dispute,
- c. There are at least two parties,
- d. The existence of a judicial apparatus authorized to decide disputes.

In the process of tax objection in Indonesia is a "quasi-court" or "quasi judicial". In quasi judiciary, according to Rochmat Soemitro,¹⁹ in addition to elements of administrative court found the following elements:

- a. There is a dispute (*geschil*) between the taxpayer and the administration, filed by the interested parties,
- b. The competent body or official deciding disputes to be part of or included in the administration,
- c. There is an obligation to make decisions,
- d. Decisions are influenced by views (*inzicht*) rather than administration but are not dependent on "freies ermesen".

The term requirement to file tax objections in the DGT is an objection must be filed within 3 (three) months from the date of the Tax Assessment Letter, unless the Taxpayer may indicate that the period may not be fulfilled due to circumstances beyond his or her authority, and the DGT within a period of time no later than 12 (twelve) months from the date of receipt of the objection must make a decision on the objection filed. If the time period is exceeded and the DGT does not give a decision, the objection filed is considered granted.²⁰

¹⁶ Soerjono Sastrohadikoesoemo, (2004). *Beberapa Catatan Pajak-Pajak Di Indonesia*, Jakarta, Publisher: PT Gunung Agung Tbk., page 57

¹⁷ Law Number 16 of 2009 about General Provisions and Procedures of Taxation, Article 25 Paragraph (1)

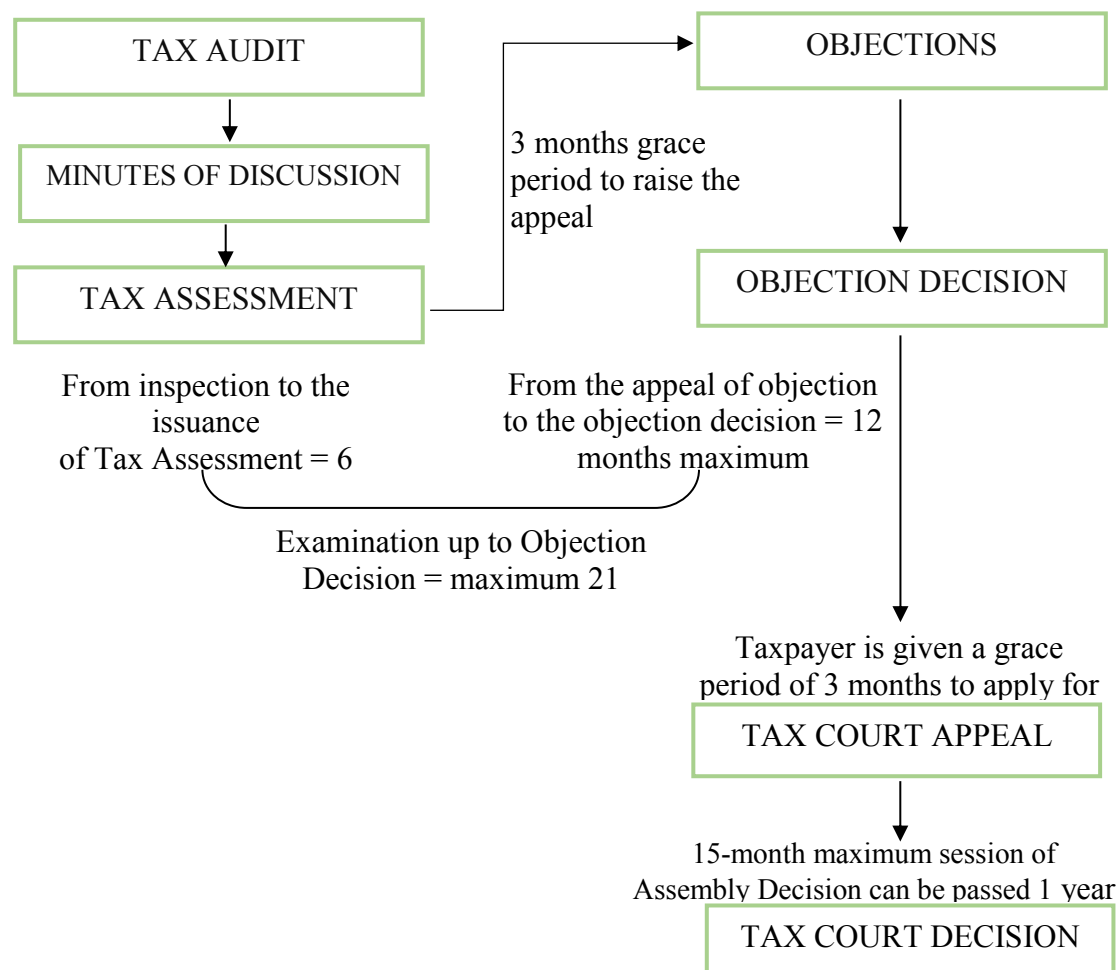
¹⁸ Rochmat Soemitro, (1976). *Masalah Peradilan Administrasi Dalam Hukum Pajak di Indonesia*, Bandung, Publisher PT Eresco, 1, page 7

¹⁹ Ibid, page 55

²⁰ Law Number 16 of 2009 about General Provisions and Procedures of Taxation, Article 25 Paragraph (3), Article 26 Paragraph (1) and (5)

During the period of 12 (twelve) months before the Objection Ruling is received by the Taxpayer, there is a kind of process of re-examination and test of evidence against data, documents and taxpayer's bookkeeping. Therefore, if calculated from the period of the tax audit (maximum of 6 months), the deadline filed an objection (maximum of 3 months) plus the duration of the objection process (maximum 12 months), a period of 21 (twenty one) from the beginning of the tax audit to the issuance of the Objection Decision, so it is inefficient for both parties in terms of manpower, cost and time.

Scheme Of Time Of Tax Audit, Objection Decision And Tax Court Session



Notes:

Calculated from the start of the tax audit until the issuance of SKP = 6 months maximum, the time limit filed objections = 3 months maximum, the issuance of Decision of Objection = 12 months maximum, total time required from the start of inspection until the maximum Objection Decision = 21 months. Furthermore, the grace period of appeal up to 3 months, so that the duration of time since the start of the examination up to appeal = 24 months maximum

CONCLUSION

Tax objections that are "tried" by the Objection Section of the Regional Office of the DGT are not pure courts, but pseudo-judiciary because the judicial institution is part of the disputing party, so the twelve month period given by law to resolve the tax objections is a waste of time, most of the results of the Objection Decision did not satisfy the Taxpayer.

According to the author's opinion, tax objections of Taxpayers should be filed after the Signatory of the Minutes of Discussion and before the Tax Assessment Letter is issued. After the Minutes of Discussion, Taxpayers may be granted a period of 1 (one) month to file an objection. The objection process continues to be made by the Objection Reviewer whose members are not from the Tax Auditor Team. The period of review of the Objection to decide to accept all objections, to refuse entirely, to refuse a part, or to add the tax due, shall be given a maximum of 5 (five) months. Therefore, there is no need for issuance of Decision of Objection, but it is directly issued the Tax Assessment Letter.

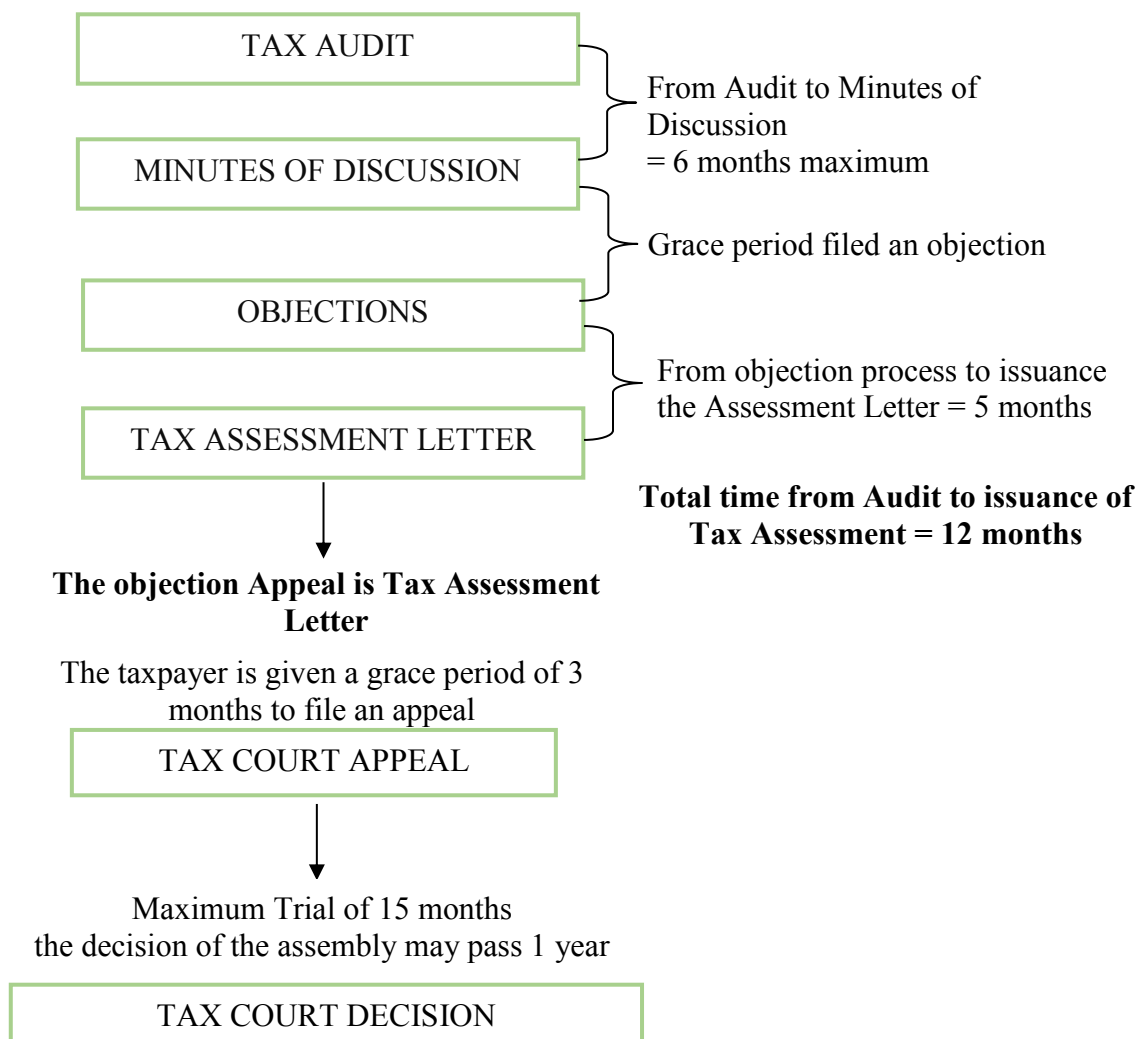
In essence the DGT Objection Section is incompetent to act as a "judge" to adjudicate a dispute between the Taxpayer and the Tax Auditor because the Complainant is part of the DGT. Prior to the issuance of Tax Assessment Letter, it should have been through the process of resolving the dispute between the tax assessments calculated by the Tax Auditor with the Taxpayer's

rebuttal. The process of dispute resolution of tax calculations in the Minutes of Discussion may be made by the Objection Section. Subsequently issued Tax Assessment Letter, so the Objection Section is part of the process of tax audit up to the issuance of Tax Assessment Letter.

Therefore there is no need for an Appeal Decision, but the issuance of Tax Assessment Letter which is a legal product and ready to be retested by the Tax Court, if the Tax Payer appeals the Tax Assessment Letter not approved or rejected by the Taxpayer.

Bureaucratic reform in the process of tax audit up to the issuance of Tax Assessment Letter can be cut in a shorter time as the following scheme:

Scheme Of Time From Tax Inspection To Decision Of Objection



Notes:

Calculated from the start of the tax audit until the issuance of Tax Assessment Letter= 12 months, the grace period of appeal = 3 months, the total required duration of time from the examination up to the maximum appeal = 15 months.

From the scheme that the Author recommends above, the duration of time from the start of the tax audit to the issuance of Tax Assessment Letter is 12 (twelve) months, and the Direct Tax Assessment Letter can be appealed to the Tax Court within 3 (three) months, so that the duration of time since the start of the tax audit until the appeal is 15 (fifteen) months.

The current regulation of the duration of time from the commencement of the tax audit to the issuance of Tax Assessment Letter is 6 (six) months, the deadline for appeal is 3 (three) months and the Decision of the Objection is 12 (twelve) months, the time period of appeal on the Decision of the Objection is 3 (three) months, so that the duration of time from the start of tax audit to the issuance of Objection Decisions is 24 (twenty four) months.

The scheme of time duration from the time of the tax audit to the appeal to the Tax Court, the current regulation is maximum of 24 (twenty four) months, any of the author's proposal scheme of maximum duration is only 15 (fifteen) months, there is a time

savings of 9 (nine) months. In terms of state revenues, the faster tax-free time savings of 9 (nine) months are significant for the state's finances in maintaining the country's financial liquidity.

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