

# ANALYSIS OF TAX DISPUTES ON LOANS FROM SHAREHOLDERS: A CASE STUDY ON TAX COURT DECISIONS FOR THE PERIOD 2018-2022

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**Abstract:** This research aims to analyze the causes of tax disputes over shareholder loans. This research is also intended to provide recommendations for minimizing the occurrence of tax disputes over loans from shareholders. This research is qualitative research with a case study approach and was carried out using content analysis of tax court decisions and analysis of interviews with the Fiscus and Taxpayers. Loan disputes from shareholders consist of formal disputes and material disputes. The results of this research show that legal loan disputes from shareholders occur due to the implementation and application of tax regulations. In Contrast, material disputes relate to loan terms, debt ratios and interest rates. Therefore, this research provides a solution for the Directorate General of Taxes (DGT) and Taxpayers to reduce loan disputes from shareholders occurring again. DGT can make policies and regulations related to cash pooling and loan interest rates. Solutions that can be given to taxpayers are holding training and Focus Group Discussions (FGD) related to taxation, actively consulting with Account Representatives (AR), and paying attention to formal provisions for transactions even though they are carried out between companies of the same group. The limitation of this research is that there was a likelihood that data was not included in this research or cannot be read because the decision results are the results of manual scans downloaded from the Tax Court website.

**Keywords:** tax dispute, loan from shareholder, tax court

## INTRODUCTION

In the modern era, the goal of a company is not only to generate maximum profit, but also to have value that can be a solution for society and the planet (Meilanti, 2023). The more effective the running of a company, the more profit it expects and the greater its contribution to state revenue through tax payments. Business transactions that are increasingly complex and innovative

but still aim to develop value and maximize profits make companies feel the need to carry out Tax Planning, especially between companies with related party (group companies/holdings).

Tax Planning is commonplace for companies to reduce tax bills but still within legally acceptable limits (Cooper & Nguyen, 2020). In the context of tax efficiency, recording loans / debts is a

method that is more often used in conducting tax planning (OECD, 2015). Tax planning can also distort a company's financing structure through financing from debt (Sorbe & Johansson, 2017). Organization for Economic Co-operation and Development (OECD) explained in Action 4: Limitation on Interest Deductions (2015), transactions carried out between affiliated parties in group company can allow these companies to carry out tax planning by carrying out profit-shifting techniques. OECD (2013) also explains the term Base Erosion and Profit Shifting (BEPS), where there must be restrictions for companies in regulating taxes paid. The restriction is carried out by adjusting the amount of debt within its group entities that can incur excessive interest charges or be used to finance production activities that generate deferred income. Funding the production of an enterprise using debt originating from one entity can be a risk that must be mitigated together.

In taxation, the transaction of one entity is known as a special relationship as stipulated in the Income Tax Law Article 18 paragraph 4 and VAT Law Article 2 paragraph 2 and regulations below. Under the Law, special relationships occur due to ownership relationships, power relationships, blood relations or marriage. The complexity of a business activity can be seen in business conglomerate companies / holding companies, where a company can be a controller or have shares in other companies. A parent company usually has made a business plan by creating subsidiary companies to support the main business processes. It is common because a growing organization certainly seeks to expand

the scope of its activities by diversifying into different businesses (Henry, 2018).

The interesting thing about using a group structure approach is that subsidiaries can limit the liability of their parent company or other entities in the group (Petrin & Choudhury, 2018). Forming subsidiaries in one group of companies is often a way for taxpayers to carry out tax planning, whether legally or not. Tax avoidance is carried out by taking advantage of loopholes contained in tax regulations. Meanwhile, tax evasion is carried out using unlawful means. Tax avoidance by a company is much more complicated because it involves the strategic behavior of companies that involve more than one person (Chen & Chu, 2005). Tax avoidance and tax evasion are challenges that DGT always faces. Avoidance is high when the likelihood of detection is low or when penalties are common, and tax rates are multi-interpretive/ambiguous (Alstadsaeter et al., 2017).

OECD Action 4: Limitation on Interest Deductions (2015) states its recommendation that it is important to limit the charge of excessive loan interest, especially in group entities because there are companies financed by loans/debts greater than capital by parties who have special relationships or known as thin capitalization. In lending and borrowing transactions between group companies, the side of the company that provides loans/creditors has an accounting impact where it is possible to receive income on loan interest from borrowers/debtors. In Contrast, on the side of companies that receive loans, it is possible to record interest expenses that can reduce profits and raise the obligation to withhold

taxes. Therefore, the transfer of unregulated domestic debt can be used as a money machine that generates tax arbitrage profits (Ruf & Schindler, 2015).

In Indonesia, lending and borrowing activities have been regulated in the Civil Code. The Civil Code has held general provisions, obligations of related parties, loans with interest, and consequences arising if there is a default in the future. Borrowing and borrowing money in this era is a necessary for business and non-business activities (Pratiwi et al., 2021). Anyone can borrow, but it returns to the party who makes the loan whether the loan wants to be made based on legal basis or not. Lending and borrowing activities based on law must have a letter of agreement that binds the parties to the transaction. Loan agreements/contracts can be a reference in recording the company's financial statements.

Loan agreements between holding/group companies are also often encountered. Subsidiaries can be formed to facilitate financing, establish domestic locations of the company, avoid complications associated with asset purchases, and as a means of tax avoidance (Pettrin & Choudhury, 2018). In taxation, a transaction carried out by affiliated parties, including lending and borrowing transactions, must be based on the fairness of the transaction and the business habit (arm's length principle). Tax provisions related to loans from shareholders are regulated in Government Regulation Number 94 of 2010 related to Calculation of Taxable Income and Repayment of Income Tax in the Current Year as amended by Government Regulation Number 45 of 2019 then amended by Government Regulation Number 9 of 2021 then

partially revoked with Government Regulation Number 55 of 2022 concerning Adjustment of Arrangements in the Field of Income Tax. Government Regulation Number 94 Year 2010 Article 12 regulates loans from shareholders, which can be recorded without interest by taxpayers as long as they meet four criteria related to funding sources, capital deposits, creditor conditions, and debtors' financial conditions. The next provision is Director-General Regulation Number S-165/PJ.312/1992 concerning Interest-Free Loans from Shareholders. Therefore, loans provided between group companies must be tested for fairness. DGT can carry out research on fairness at the supervision stage carried out by the Account Representative, but to be able to test compliance with the fulfillment of tax obligations carried out by the Tax Inspector.

Upon this fairness test, the Tax Inspector can make corrections and prove the loan from the shareholder is indeed carried out, or the transactions can be subject to Income Tax. The tax inspector's correction of shareholder loans can be the subject of dispute between both parties. DGT sometimes looks at the company's business objectives, which are generally profit-seeking, so that if considered ineffective, it will result in different interpretations. Both national and global tax regulations continue to change following the climate/circumstances. The variety of economic and business transactions carried out by taxpayers is also growing and complicated. Tax authorities also always try to follow these developments by issuing related regulations. Not infrequently these rules are sometimes still in the gray area, which causes

multiple interpretations between Taxpayers and Tax Officers. Similarly, in understanding business processes, the taxpayers' perspective as a business person is sometimes interpreted differently by the Tax Officer if only looking at the taxation side (Gunawan & Hapsari, 2018).

After running a series of audit flows where there has been interaction between the Tax Inspector and the Tax Inspector, the Tax Inspector issues a Tax Assessment Letter containing the nominal tax accrued by the Taxpayer. For the issuance of the Tax Assessment Letter, Taxpayers may feel dissatisfied because there may be calculations that do not follow the provisions of tax laws or differences in interpretation /understanding with Tax Inspectors related to tax laws and regulations or records in the Indonesia Financial Accounting Standards. It is called a tax dispute. Tax disputes can include appeal disputes and lawsuit disputes, where appeal disputes are carried out on objection decisions. In contrast, lawsuit disputes arise due to the implementation of tax collection by forced mail.

Tax disputes are certain things not desired by the Tax Officer or Taxpayers. In a tax dispute, the taxpayer can do the following: 1). File an objection to the Director General of Taxes through the Tax Service Office. Suppose the taxpayer still needs to be satisfied with the results of the Objection Decree that has been submitted. In that case, the taxpayer can file a Lawsuit with the Tax Court or appeal to the Tax Court, as taxpayers can also apply for judicial review (Setiawan & Sulistyono, 2016).

For tax disputes that have gone through the objection stage and the

Taxpayer is still not satisfied, then the next step is to appeal to the Tax Court. The Tax Court has a role in realizing justice and providing legal certainty related to tax disputes that must be resolved (Basri & Muhibbin, 2022). The results of the tax court decision are also strengthened by the legal basis as stipulated in Article 77 of the Tax Court Law Number 14 of 2002, which states that the tax court decision is final and has permanent legal force. The Supreme Court is a place for disputing parties to request a review of tax court decisions. This research is expected to get a comprehensive picture of the Tax Court's point of view in overcoming various disputes related to loans from shareholders.

#### **Previous Research**

Several studies have discussed tax disputes, but from different perspectives and research objects according to the objectives and considerations of researchers. No research has been found related to interest-free loans from shareholders. Previous studies were used as references and reviews in this study. Several variables in previous studies were considered, and literature was used in conducting this study.

Research by Kusuma, Setiawan and Sugiharto (2019) was conducted to find the causes of tax disputes and how the quality of examination results so that corrections by inspectors can be maintained. The results showed that other factors could cause taxpayers' disapproval of the examination results and were not always related to the quality of the results. Examples of other factors are differences in perceptions of the application of tax regulations and aspects of the inability of taxpayers to pay taxes owed in the Tax Assessment

Letter. The results also revealed that most taxpayers' victories in tax dispute legal efforts were due to weak examination evidence, both formally and materially.

## RESEARCH METHODS

The method used in this study was qualitative method.

### Data Type

The data used in this study consisted of:

#### 1. Primary Data

The primary data used came from resource persons obtained from interviews with parties related to the process of tax disputes to tax dispute resolution. Primary data is used to complement the analysis performed on secondary data.

#### 2. Secondary Data

Secondary data in this study is the decision issued by the Tax Court on the subject matter of disputes related to loans from shareholders. In this study, secondary data is the main data used in the analysis. In addition, observations were made related to tax regulations about interest-free loans from shareholders and other literature such as journals, books, and articles as a theoretical basis and reference when conducting research analysis.

The two data are combined to be the basis of analysis to answer both research problems but more dominated based on secondary data analysis.

### Data Collection Techniques

#### Primary Data Collection interview

The focus of this research is tax disputes in the tax court related to interest-free loans by shareholders. Therefore, the informants selected were experienced in their fields and understood the topics in this study. The

total number of speakers questioned was five people. The selected speakers are:

#### 1. Tax Inspector

Tax inspectors are officers who have made findings related to loans without interest or loan interest costs so that tax inspectors are considered to understand the problems related to this. The selected tax inspector is a tax inspector who has made corrections to loan interest costs. The number of speakers is two people. The interview was conducted directly with the interviewees.

#### 2. Objection Reviewers

Objection Reviewers are considered to understand the issues and mechanisms related to tax disputes and conduct an analysis before the taxpayers submit an appeal. The Objection Reviewers used as resource persons were Objection Reviewers at DGT. The Objection Reviewers chosen are prioritized by Objection Reviewers who have handled disputes related to the topic in this study. Objection Reviewers contacted as many as one person. Information was obtained through interviews conducted offline.

#### 3. Taxpayer/Tax Consultant

The author tries to contact taxpayers or attorneys who have been supervised or examined related to loans and taxpayers who have appeared in the tax court. Taxpayers contacted as many as one person and one more representative from the

consultant. Information was obtained through interviews conducted offline.

## RESULTS AND DISCUSSION

### Data Analysis

#### Content Analysis

**Table 1. Table Disputes Map**

Jenis Sengketa	Pokok Sengketa		Argumen Pemohon (WP)				Argumen Majelis Hakim				Total
	Sengketa Utama	Jumlah	M1	M2	M3	F1	M1	M2	M3	F1	
Material	Sengketa Pemenuhan Ketentuan Pinjaman dari Pemegang Saham (M1)	34	31	0	1	2	32	1	0	1	50
	Sengketa Rasio Hutang (M2)	8	6	0	0	2	5	2	0	1	
	Sengketa Kewajaran Tarif Bunga (M3)	8	4	0	4	0	5	0	3	0	

The table above shows the tax dispute maps regarding shareholder loans as classified and described in Chapter 3. Material disputes are classified into three types with codes M1, M2, and M3, and one subject matter is formal disputes with code F1. The main dispute as the basis of reference is the subject matter of debate in the appeal decision, a correction made by the DGT as the Appellate. The subject matter of the dispute from the perspective of the Appellant is then juxtaposed with the subject matter of the dispute from the perspective of the Appellant and the Panel of Judges. Based on the Appellant's correction, the entire subject matter of the dispute relating to the loan from shareholders is a material dispute. Therefore, the formal subject matter is only juxtaposed based on the perspective of the Appellant and the Panel of Judges.

The table shows that the most common type of dispute is a material dispute in the form of a dispute over the fulfillment of loan terms from shareholders (M1), with 34 principal disputes or 68.00% of the total material dispute principal amounting to 50 disputes. The subject matter of the dispute includes the terms/conditions of loans from shareholders and the

reclassification of capital deposits into debt. Of the 34 points of dispute that were corrected by the Appellate as stated in the appeal decision, there were 3 points of dispute which, according to the Appellant, were not related to M1 and 2 points of dispute which, according to the Panel of Judges were not related to M1.

Meanwhile, debt ratio (M2) disputes include material disputes due to interest charges due to DER (Debt Equity Ratio) that exceed the provisions and interest charges on Taxpayers subject to Final Income Tax with an amount of 8 principal disputes or 16.00%. Of the 8 points of dispute related to M2 that the Appellant corrected, but according to the Applicant, six disputes associated with M1 and one dispute related to F1. Meanwhile, the panel of judges held that only 2 points of dispute related to M2, 5 points of dispute related to M1, and 1 point of dispute related to F1.

Material disputes about the fairness of interest rates (M3) are disputes over the amount of interest rates on companies' loans with a special relationship. The main number of M3 disputes, according to DGT correction, is 8 or 16.00%. However, only 4 points of dispute are between M3 and four others

related to M1. Meanwhile, according to the Panel of Judges, 5 points of dispute are associated with M1, and three dispute issues are indeed related to M3.

**Analysis of the Causes of Disputes**

The Taxpayer (Appellant) appeals the correction made by the DGT (Appallee). The dispute used as the basis is the correction of DGT as a comparable

and then compared with the arguments of the Taxpayer and the Panel of Judges. The data and information obtained from the appeal decision (content) are then confirmed with interview data as the following analysis:

**Material Dispute Analysis  
Dispute over Fulfillment of Loan Terms from Shareholders (M1)**

**Table 2. Dispute over Fulfillment of Loan Terms from Shareholders**

Jenis Sengketa	Pokok Sengketa		Argumen Pemohon (WP)				Argumen Majelis Hakim			
	Sengketa Utama	Jumlah	M1	M2	M3	F1	M1	M2	M3	F1
Material	Sengketa Pemenuhan Ketentuan Pinjaman dari Pemegang Saham (M1)	34	31	0	1	2	32	1	0	1

Based on content analysis, there are 34 points of dispute related to the fulfillment of loan provisions from shareholders corrected by DGT. For the dispute, there are 31 taxpayers who share the same view that the dispute is indeed related to loan provisions. However, there is 1 Taxpayer who views the dispute from the perspective of a dispute over the fairness of the interest rate (M3) and 2 Taxpayers who dispute the formal dispute over the application of the legal basis (F1).

Several criteria have been determined based on the Letter of the Director General of Taxes Number S-165 / PJ.312 / 1992 concerning Interest-Free Loans from Shareholders and Government Regulation Number 94 of 2010 concerning Calculation of Taxable Income and Repayment of Income Tax in the Current Year Article 12. The provisions, as stated in the regulation, state that interest-free loans from shareholders do not need to be corrected if they meet the cumulative conditions stipulated in Government Regulation Number 94 of 2010. Looking at the problems in this dispute, it can be

explained that the Appellee (DGT) has a different point of view depending on the transactions and business processes of the Taxpayer being examined. The tests carried out by the examiner in decisions related to material disputes depart from the following problems:

**Is the transaction carried out correctly a receivable debt transaction?**

- "The Capital Deposit Advance is a debt to shareholders, which at any time the debt can be paid back if the Appellant already has money and the results of its business activities."
- "The Examiner (DGT) believes that the 2016 Tax Year Sales Discount is substantially economic interest on the long-term debt which the Appellant recognizes as an Advance on Payment"

Based on DGT's explanation in the 2 different decisions above, DGT can have other arguments regarding the essence of recording accounts receivable and interest incurred to shareholders or parties who have special relationships. DGT can test whether the

recording carried out by taxpayers has reflected actual activities.

Related to this, the first source from DGT who had conducted a loan check from shareholders stated:

*"In the interest-free loan transaction, as a fiscus, we look for whether the loan has an interest charge or not. What is corrected is the existence of loan interest that should be subject to article 23 income tax. If taxpayers can prove whether the loan is not subject to loan interest, then the correction of the object of Income Tax Article 23 that we do can be canceled..."*

Similarly, the second interviewee related to the same question states that:

*"... Indeed, the loan needs to be checked for correctness, but what is corrected is not the loan but it is considered the occurrence of loan interest even though there is no interest on the loan. As far as I remember, taxpayers can prove the existence of the loan."*

From the DGT side, the test of the correctness of loan transactions from the most important shareholders lies precisely in the loan interest. Whether from the transaction there is loan interest and whether the loan interest is subject to collection of Article 23 Income Tax Law.

While the opinion of the resource person from the Taxpayer side can be seen from the following statement:

*"... shareholders will basically try to maintain business activities by channeling funding to subsidiaries..."*

Based on taxpayers' statement, basically in business activities, the main

focus of the owner is to carry out his business activities.

### **What is the purpose of the loan?**

Based on the dispute corrected by DGT, DGT feels the need to know whether the loan is intended for activities to bill, earn, and maintain income (3M). Based on data from tax court decisions, taxpayers have different arguments regarding the purpose of making loans. Loans can be made for operational purposes as well as taxpayer investment. Most taxpayers argue that giving/receiving loans is done because they are experiencing financial difficulties. The purpose of making a loan for one case occurs because the borrowing company wants to invest or develop its business. The following is an excerpt of the appellant's opinion in the tax court decision:

- *"... debt and receivables arising due to restructuring in the group company through the takeover of shares of PT. X at PT. Y which was subsequently handed over to the Appellant on an inbreng basis in the absence of cash deposit."*
- *"The loan from Bank Permata and Bank Niaga replaces the position of the Shareholder Loan that was previously used to finance the company's activities in the framework of 3M."*
- *"... The receivables transaction is only temporary and the movement is relatively dynamic, the Appellant considers that the funds provided to the subsidiary are substantially merely temporary bailouts to support the business continuity of the subsidiary and are not loans"*

In this discussion, DGT focuses on the purpose of loan transactions, especially transactions that incur costs and can reduce the tax owed. However, based on the statements of sources, it is difficult for inspectors to trace whether the use of borrowed funds is correct for 3M's activities (bill, earn, and maintain). It can be seen from the following statement from the source from DGT:

*"Of course, exploring specifically whether the money received was used for 3M or not will be difficult to do. What the examiner can do if this is not possible, of course, all costs not related to 3M will still be subject to fiscal corrections, whether the source of funds is from loans or others..."*

#### **Is the related party a shareholder or has an affiliate relationship?**

The context of loans in this study is different because it discusses loans made to shareholders or, in the context of taxation, between companies with an affiliate relationship based on Government Regulation Number 94 of 2010, it is stated that loans can be considered reasonable, not charged interest if they come from their shareholders by considering the conditions as stated in the regulation.

The legal basis used by the Panel of Judges in determining special relationships is Article 18, paragraph 3 of the Income Tax Law. The affiliate relationship is referred to in paragraph (3), and paragraph (3a), paragraph (3b), paragraph (3c), paragraph (3d). Article 8 paragraph (4), Article 9 paragraph (1) letter (t), and Article 10 paragraph (1)

transactions carried out by Taxpayers with parties who have a Special Relationship considered to exist, if:

- a. Taxpayers have direct or indirect capital participation of at least 25% in other taxpayers, or a relationship between taxpayers with participation of at least 25% in two or more taxpayers as well as a relationship between two or more taxpayers of the latter, or
- b. The taxpayer controls another taxpayer, or two or more taxpayers are under the same control either directly or indirectly, or
- c. There are family relationships both incestuous and marital relationship in a straight and/or sideways lineage of one degree,
- d. In the Explanation of Article 18 Paragraph 4, special relationships among taxpayers can occur due to dependence or attachment to one another due to:
  - 1) Capital ownership or participation,
  - 2) There is mastery through management or the use of technology.

#### **Whether the transactions carried out meet the requirements as stipulated in Government Regulation Number 94/2010 or the Letter of the Director General of Taxes Number S-165/PJ.312/1992.**

The regulation expressly explains the conditions under which interest on loans from shareholders is not permitted. The 4 conditions regulated are a reference for DGT and the Panel of Judges in determining the feasibility of transactions, for example: the loan

comes from the shareholders themselves, the capital deposit has been fully deposited, the lender (shareholder) is not at a loss, who receives the loan in a state of financial difficulty.

The regulation explains regarding interest on shareholder which loans is not permitted. The 4 conditions regulated are a reference for DGT and the Panel of Judges in determining the feasibility of transactions. For example, if the loan comes from the shareholders themselves, and the capital deposit has been entirely deposited, the lender (shareholder) is not at a loss, who receives the loan in a state of financial difficulty.

If taxpayers' conditions represent 4 cumulative conditions for interest-free loans from shareholders, the Taxpayer, as the recipient of the loan, is allowed not to be charged interest by the shareholder as the lender. It is reasonable without looking further at the fairness and prevalence of the affiliate transaction. Related to this, one of the speakers gave a statement that:

*"... If the taxpayers can prove whether the loan is not subject to loan interest, then the correction of the object of Income Tax Law 23 carried out can be canceled (referring to the provisions in Government Regulation Number 94/210 jo PP-9/2021)..." (Nugraheni et al., 2021).*

**Debt Ratio Dispute (M2)**

**Tabel 3. Sengketa Rasio Utang**

Jenis Sengketa	Pokok Sengketa		Argumen Pemohon (WP)				Argumen Majelis Hakim			
	Sengketa Utama	Jumlah	M1	M2	M3	F1	M1	M2	M3	F1
Material	Sengketa Rasio Hutang (M2)	8	6	0	0	2	5	2	0	1

Disputes related to the correction of debt ratios amounted to 8 points of dispute. However, 6 Taxpayers viewed this dispute as a dispute over the fulfillment of material provisions (M1) and 2 Taxpayers disputed a formal dispute. DGT tested the Debt to Equity Ratio 4:1 based on the Minister of Finance Regulation (PMK) Number 169/PMK.010/2015 concerning Determination of the Amount of Comparison between Debt and Company Capital for the Purposes of Calculating Income Tax Article 18 paragraph (3) of the Income Tax Law. DGT's correction regarding this dispute can be seen:

- "Positive Correction of Non-Deductible Loan Interest exceeding DER 4:1"

- "The ratio between debt and company capital for income tax calculation purposes, the highest ratio between debt and capital is 4: 1. From the tests conducted by the Examiner, data on the calculation of DER (Debt to Equity Ratio) of 15:1 was obtained, so that the interest expense was corrected positively by the Examiner,"

This dispute over the debt ratio also occurs when the DGT assesses the amount of debt provided by shareholders based on daily receivable debt transactions, which, when added up, will be significant. Meanwhile, taxpayers listed the debt as a "revolving fund", namely working capital loans within a particular dynamic ceiling.

- " *The loan facility is in the form of Current Account Loans to minimize*

bank loan interest. If there are more funds, the loan can be immediately returned at any time so that bank interest decreases, which impacts increasing profits. In Decision Number PUT-103860.15/2013/PP/M.XMA Year 2018, page 37, mentioned that the loan facility can quickly mutate funds back and forth. If the company needs these funds in the morning, the company can withdraw the funds. But if other affiliates need the funds during the day or evening, the company will return the funds immediately. It is called a revolving loan. A revolving loan is a credit for permanent working capital financing, and we can see the amount in the company's cash flow. Withdrawal of funds due to the debtor's needs (using Promissory Note / Able Letter), provided that it does not exceed the ceiling amount agreed between the Bank and the debtor. The portion of the loan repaid can be

withdrawn according to the ceiling, which is still sufficient, and the credit period is still valid (maximum 1 year and not closed to be extended again). The revolving loans repaid can still be withdrawn. The nature of the use of this type of credit funds is "up and down / fluctuating" following the needs of the debtor."

Problems related to loan interest ratios also have formal disputes where related rules have yet to be able to regulate the development of current business activities. One of the taxpayers' explanations in the interview said that: "... taxpayers do not always pay attention to the impact of rules when making a business decision because the main concern is running the business and making the business run well..."

**Interest Rate Fairness Dispute (M3)**

**Table 4. Interest Rate Fairness Dispute**

Jenis Sengketa	Pokok Sengketa		Argumen Pemohon (WP)				Argumen Majelis Hakim			
	Sengketa Utama	Jumlah	M1	M2	M3	F1	M1	M2	M3	F1
Material	Sengketa Kewajaran Tarif Bunga (M3)	8	4	0	4	0	5	0	3	0

The third material dispute is a dispute over the fairness of interest rates. There are differences in determining the fairness of loan interest rates from parties with a special relationship (affiliates). This dispute arises because of differences in finding a comparison to determine a reasonable interest rate. For example, DGT only looks for a comparison of loan interest but does not look for a comparison of hedging costs. In addition, there is also a dispute in determining the fair interest rate when it occurs between domestic companies with no different tax

treatment. At the same time, DGT does not yet have an automatic corresponding adjustment mechanism between Tax Office. This condition makes positive corrections to related parties transactions on taxpayers in one Tax Office and cannot be adjusted automatically on taxpayers' Counterparties in other Tax Offices.

In this case, the source from DGT explained that determining the fairness of interest rates is a challenge for tax examiner.

"... The interest rate of each bank varies depending on many factors such as risk, collateral and others..."

In addition, the second speaker explained that:

"... It is difficult to find reasonable interest rates, because the databases available in Oriana or Osiris are mostly company

listings, so searching for comparisons is very difficult..."

DGT has difficulty in determining the fairness of interest rates because bank interest rates are different, and it is not easy to find the same company in comparison.

**Dispute Analysis of Formal Terms**

**Table 5. Formal Terms Disputes**

Jenis Sengketa	Pokok Sengketa		Argumen Pemohon (WP)				Argumen Majelis Hakim			
	Sengketa Utama	Jumlah	M1	M2	M3	F1	M1	M2	M3	F1
Material	Sengketa Pemenuhan Ketentuan Pinjaman dari Pemegang Saham (M1)	34	31	0	1	2	32	1	0	1
	Sengketa Rasio Hutang (M2)	8	6	0	0	2	5	2	0	1
	Sengketa Kewajaran Tarif Bunga (M3)	8	4	0	4	0	5	0	3	0

In this topic, there are no corrections made by DGT regarding formal disputes so formal dispute was not used as a basis for comparison from the DGT's side. However, there are 4 arguments of taxpayers that dispute the legal basis for making corrections. 2 arguments of the Panel of Judges raising formal provisions.

**Disputes related to Legal Basis**

The formal dispute in question by the Taxpayer as the Appellant is the Letter of the Director General of Taxes Number S-165/PJ.312/1992. Taxpayers consider that the letter is not strong enough to be used as a legal basis for making corrections. In one of the discussions of the Subject of Dispute in the opinion of the Appellant explained that:

"The position of the letter of the Director General of Taxes in the hierarchy of tax legislation has very weak legal force. Can only be applied to a particular case and a particular taxpayer."

"There is no State Gazette that shows the letter is effective for all Indonesians to obey."

**Formal dispute over the application of Article 18 paragraph 3 of the Income Tax Law**

The taxpayer in the decision presented his argument regarding Article 18 paragraph 3 of the Income Tax Law as follows:

"Article 18 paragraph 3 of the Income Tax Law is not appropriate to be applied by the Appellant because in this case the Appellant did not conduct a comparative analysis between debt and capital that is common in similar companies first."

"Based on Article 18 and its explanation Law Number 7 of 1983 concerning Income Tax as last amended by Law Number 17 of 2000 there is no provision regulating receivables to parties who have a special relationship, based on which the correction of the Appellant

*does not have a proper legal basis and therefore cannot be sustained."*

**Formal dispute over the application of the Decree of the Minister of Finance Number 1002/KMK.04/1984 dated October 8, 1984 concerning the Determination of the Comparison Between Debt and Own Capital for the Purposes of Imposing Income Tax.**

Regarding the regulation, the panel of judges gave arguments in the decision by saying that:

*"... which states the highest DER is 3:1 is postponed. Therefore, according to the Tribunal, this provision cannot be used as a basis for determining the fairness of the DER ratio."*

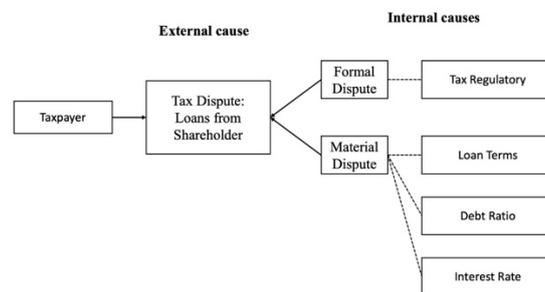
In the formal dispute regarding loans from shareholders from 2018 to 2023, there was no formal correction from DGT as the respondent, but some

taxpayers objected to the application of the regulation as the basis for fiscal correction due to the following:

- Inappropriate regulations are applied to the Taxpayer's business processes.
- Regulations that according to Taxpayers do not have legal force such as the Circular of the Director General of Taxes.
- Regulations that have not been ratified/enforced but have been used to make corrections.

In the interviewee, the Taxpayer stated that:

*"... lack of updates on tax regulation issues because they are related to taxation are very difficult to understand..."*



**Analysis of solutions to resolve recurring disputes**

This analysis was carried out to find solutions in overcoming recurring disputes related to loan interest from shareholders as the analysis has been carried out regarding material disputes and formal disputes above. The analysis was carried out by considering explanations from the side of the Appellant, the Appellant, and the Panel of Judges.

In general, the causes of material disputes over interest costs from shareholders are divided into three, namely:

1. There was a dispute between DGT and taxpayers in the issue of material proof in fulfilling the terms of loans that could be provided without interest and capital deposits that are reclassified into loans (M1).
2. There was a dispute between DGT and taxpayers because taxpayers charged interest over the allowable

ratio between debt and capital. There are corrections made with provisions that have been revoked, and there are differences in calculating the loan value of loans in the form of bailouts (revolving funds) with the code M2.

3. There was a dispute between DGT and taxpayers regarding loan interest rates from parties with a special relationship and proof of a special relationship (M3).

Analysis of solutions to this type of material dispute is carried out by considering three common causes of disputes so that it is not repeated.

It can be seen above that tax dispute cases on shareholders' loans related to material disputes are won mainly by DGT. The Panel of Judges rejected and granted part of the taxpayer's appeal for around 74% of the total decisions. The panel of judges granted all appeals filed by taxpayers as much as 26%.

Most of the judges' decisions favoring the DGT in material disputes were related to the non-fulfillment of the cumulative requirements for taxpayers to apply for loans. Concerning this dispute, DGT is in an easier position to prove that taxpayers do not meet the cumulative requirements as stipulated in Government Regulation Number 94 of 2010. Meanwhile, the fulfillment of this cumulative requirement is quite difficult for taxpayers because they must be able to provide arguments and evidence to convince the panel of judges that the loan transaction carried out has met the cumulative requirements. One example of disputes -regarding taxpayers not being able to show evidence- is that taxpayers still need to meet the cumulative requirements of shareholder loans, especially when their financial

statements show lost and/or still need to meet the paid-up capital.

For disputes related to disputes over debt and capital ratios and the fairness of interest rates in loans between parties who have special relationships, the Panel of Judges ruled more taxpayers in material disputes. This victory of the taxpayers is seen in the judgment accepting in whole or granting in part because the Judges accepted the taxpayers' arguments in the following matters:

- 1) DGT, in determining the fairness of interest, does not carry out activities to find the right comparison but directly uses the provisions of the ratio amount,

- 2) DGT cannot provide strong data and evidence that the loan comes from a party who has a special relationship (affiliate),

- 3) The panel of judges accepted taxpayers' argument that shareholders did not provide loans equal to the value calculated by DGT. Still, the value was as large as the revolving fund was dynamic so that not all transaction mutations could be subject to loan interest.

DGT has considered regulation issues as the legal basis for making fiscal corrections. In this case, the legal basis related to the Letter of the Director General of Taxes Number S-165 / PJ.312 / 1992 dated July 15, 1992, concerning Loans from Shareholders is often included in the argument of the Taxpayer as an appellant. However, after the emergence of Government Regulation Number 94 of 2010 concerning the Calculation of Taxable Income and Repayment of Income Tax in the Current Year, the number of formal disputes related to legal basis has decreased (Pajak, 2015).

In addition, regulations that are not clearly defined have the potential to cause multiple interpretations between DGT and taxpayers. It can be seen from the statement from the source who stated:

*"... taxpayers' disagreements are usually caused by rules that fall into the "grey area" zone, where the interpretation can differ between the reviewer and the taxpayers."*

Based on the analysis of tax decisions, some taxpayers dispute the application of regulations when making corrections. Taxpayers feel that tax examiners need to be more appropriate in implementing regulations in making corrections. It is also supported by a statement from the source who said:

*".. Also sometimes because the rules used by the examiner are not right."* (Yulianto, 2022).

## Conclusion

The purpose of this study is to find out the cause of the loan dispute from shareholders. Disputes in this study are divided into two types:

### Material Disputes

Material disputes are classified into 3 types of disputes, namely:

#### Dispute over Fulfillment of Shareholders loans

The DGT is looking at whether the loan happened or not. The correctness of ordinary loan transactions is seen from collecting taxes on loan interest. However, in Government Regulation Number 94 of 2010, it is possible to make interest-free loans with certain conditions.

DGT also tested the purpose of the loan and whether it was related to 3 M activities because the interest on the loan impacted reducing the amount of

tax owed. However, it is difficult to trace which expenses come from loans or capital for taxpayers and DGT.

Loans from shareholders that are recognized as interest-free are retested whether they meet the cumulative requirements as stipulated in Government Regulation Number 94 of 2010.

### Debt Ratio Dispute

Disputes arise over what debt ratio is allowed. The dispute occurred when the DGT assessed the amount of debt shareholders gave because there were no new regulations that became a reference in making corrections.

### Interest Rate Fairness Dispute

DGT has difficulty in determining the fairness of interest rates. It is because bank interest rates are different or not. It is not easy to find the same company to be used as a comparison.

### Formal Disputes

Formal disputes in this topic include the regulations in question by taxpayers in making corrections, but there is no formal dispute from corrections made by DGT.

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