



**LEGAL SETTLEMENT OF TAX AVOIDANCE PRACTICES BY FOREIGN
WORKERS WORKING IN INDONESIA**

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ABSTRACT

The increasing presence of foreign workers in Indonesia as a result of globalization has created challenges in the imposition of Income Tax, particularly related to tax avoidance practices. Although the taxation of foreign workers has been normatively regulated under Indonesian tax laws, in practice there remain legal loopholes and weak supervision that allow tax avoidance to occur. This study aims to analyze the legal framework governing Income Tax on foreign workers, identify common forms of tax avoidance, and examine the available legal mechanisms for their resolution. This research employs a normative legal research method using statutory and comparative law approaches. The findings indicate that tax avoidance by foreign workers commonly occurs through dual payroll schemes, manipulation of reported income, and non-compliance in reporting foreign assets. Furthermore, enforcement through administrative and criminal sanctions has not yet been fully effective. A comparison with Malaysia shows that preventive administrative measures are more effective in reducing tax avoidance by foreign workers.

Keywords: foreign workers, income tax, tax avoidance.

A. INTRODUCTION

The development of globalization has brought significant changes to the dynamics of international employment, including increased mobility of labor across borders. Every individual now has broader opportunities to work not only in their own country but also in various other countries, along with the opening of the global labor market. Indonesia, as a developing country with a relatively stable economic growth rate, has become a destination for the influx of foreign workers (TKA), particularly to fill the need for workers with specific skills that cannot yet be fully met by the domestic workforce. The presence of TKA is principally expected to benefit the national economy through technology transfer, improving the quality of human resources, and contributing to national investment and productivity.



However, despite these benefits, the influx of foreign workers also brings various complex challenges, particularly in terms of legal regulation and administrative oversight. Globalization not only increases competition in the labor market but also requires countries to have adaptive, comprehensive, and equitable regulatory systems to ensure that the presence of foreign workers does not negatively impact the local workforce or the country's fiscal interests. One of the main challenges facing Indonesia is ensuring tax compliance for foreign workers working and earning income within its jurisdiction.

Under the national legal system, foreign workers working in Indonesia are essentially regulated through various laws and regulations in the fields of employment and taxation. From an employment perspective, the government has established strict requirements for the use of foreign workers, including mandatory work permits and the preparation of a Foreign Worker Utilization Plan (RPTKA) by employers. These regulations aim to ensure that the use of foreign workers is truly selective, limited, and does not harm domestic workers.

Meanwhile, from a tax perspective, foreign workers who work and earn income in Indonesia are subject to Income Tax (PPh) obligations according to their taxable status. Determining status as a Domestic Tax Subject or a Foreign Tax Subject is based on certain criteria, such as length of residence and source of income. Normatively, this provision is intended to create fiscal justice and ensure the contribution of every individual who derives economic benefits in Indonesia to state revenues.

However, in practice, the applicable tax system has not fully addressed the complexity of cross-border income transactions involving foreign workers. One crucial issue arose following the enactment of Article 4 paragraph (1a) of the Income Tax Law, which provides an exemption from Income Tax on foreign income for foreign citizens with the status of Domestic Individual Taxpayers. This policy arose from the spirit of regulatory reform through the Job Creation Law and the Law on Harmonization of Tax Regulations, which aims to improve the investment climate and national economic competitiveness.

This exemption essentially serves as a fiscal incentive intended to attract foreign workers with specific skills to work and contribute in Indonesia. However, in practice, this provision creates a legal loophole exploited by some companies and foreign workers to engage in tax avoidance. Income that is substantially directly related to work performed in Indonesia is often presented as foreign income exempt from Income Tax, thereby reducing the tax liability that should be paid to the government.



Tax avoidance practices by foreign workers are carried out through various schemes that are increasingly complex and difficult to detect. One common method is the practice of dual payroll, where part of a foreign worker's salary is paid and reported in Indonesia as the basis for withholding Income Tax Article 21, while the other part is paid through an offshore bank account by an affiliated entity. These offshore salary payments are not included on official pay slips and are not reported on Indonesian tax returns, even though the income is directly related to work performed in Indonesia.

In addition to double payroll, there are also practices of paying income in the form of unofficial allowances, unreasonable reimbursement of operational costs, and the use of overseas business entities as intermediaries for salary payments. These schemes complicate the oversight process by tax authorities, particularly because they involve cross-border transactions and international banking systems that are beyond the direct oversight of the Indonesian government.

The phenomenon of tax evasion by foreign workers has had a significant impact on state revenues. Various data indicate that the practice of manipulating foreign workers' income reports contributes to potentially significant state losses each year. In addition to reducing tax revenues, this practice also creates inequality in the tax system and fosters a sense of injustice, particularly when compared to the tax obligations imposed on Indonesian citizens with the status of Resident Individual Taxpayers under the worldwide income tax system.¹

This situation reflects the gap between normative provisions (*das sollen*) and empirical practice (*das sein*) regarding the taxation of foreign workers in Indonesia. Normatively, the tax system clearly regulates tax obligations, but in fact, weaknesses remain in oversight, law enforcement, and coordination between authorized agencies.²

The complexity of cross-border employment relationships and differences in tax jurisdictions between countries further increase the opportunities for legal evasion in the imposition of Income Tax.

Therefore, the problem of tax evasion by foreign workers cannot be viewed solely as a tax administration issue, but rather as a legal issue that requires a comprehensive solution. Strengthening regulations, harmonizing tax and employment policies, and increasing the

¹ Direktorat Jenderal Pajak, *Laporan Tahunan Pajak 2022* (Jakarta: Kementerian Keuangan, 2023), 45-47.

² B. P. Simanjuntak, *Hukum Pajak Internasional* (Jakarta: Gramedia, 2018), 89.



effectiveness of law enforcement are needed to close legal loopholes exploited to evade tax obligations.

Based on this description, this article focuses on legal solutions to tax evasion practices by foreign workers working in Indonesia. This study is expected to provide academic contributions to the development of national tax law and serve as a consideration for policymakers in formulating regulations that are fairer, more effective, and more responsive to global employment dynamics.

B. METHOD

This study employs a normative legal research method using statutory and comparative law approaches. The statutory approach is applied to examine relevant tax regulations, implementing provisions, and enforcement mechanisms governing foreign workers' tax obligations, including administrative and criminal sanctions. The comparative law approach is used to analyze and compare Indonesia's regulatory framework with Malaysia's tax enforcement system in order to identify differences in preventive administrative measures. The research relies on primary legal materials, such as legislation and official policy documents, as well as secondary legal materials, including legal doctrines, scholarly articles, and commentaries. The collected legal materials are analyzed qualitatively through systematic interpretation to evaluate the effectiveness of existing regulations and to formulate recommendations for strengthening tax compliance among foreign workers.

C. DISCUSSION

C.1. Tax Regulations for Foreign Workers Working in Indonesia

Taxes are the primary instrument by which the state collects revenue to finance governance and national development. As a mandatory contribution levied by law without direct compensation, taxes reflect the contribution of every legal entity that derives economic benefits from a country. In the context of globalization and cross-border labor mobility, the presence of foreign workers (TKA) working in Indonesia should be part of the national tax base, particularly in the form of Income Tax (PPh).

However, as outlined in the background, reality shows that Income Tax revenue from foreign workers still faces various challenges. These issues are not only related to taxpayer compliance but also rooted in the construction of legal regulations that leave room for



interpretation and exploitation of legal loopholes. Therefore, an analysis of the tax regulations for foreign workers is crucial as a basis for understanding existing tax avoidance practices.

c.1.1. Foreign Worker Taxpayers in the Income Tax Law

Based on Article 2 of the Income Tax Law, as most recently amended by Law Number 7 of 2021 concerning the Harmonization of Tax Regulations and reaffirmed in Law Number 6 of 2023 concerning Job Creation, tax payers include individuals, entities, and permanent establishments. Within the individual category, Indonesian tax law distinguishes between Resident Taxpayers and Foreign Taxpayers.

Foreign workers who work and/or earn income in Indonesia can qualify as Resident Taxpayers if they meet the criteria of residing in Indonesia, being present in Indonesia for more than 183 days within a 12-month period, or intending to reside in Indonesia. Conversely, foreign workers who do not meet these criteria are categorized as Foreign Taxpayers.

This qualification has significant legal implications, as it determines the scope of Income Tax. Domestic Taxpayers are, in principle, taxed on income received or earned, while Foreign Taxpayers are taxed on income sourced from Indonesia. Thus, since the beginning, Indonesian tax law has placed foreign workers as legal subjects who have tax obligations.

However, problems arise when these regulations are linked to changes in tax policy that provide certain exemptions for foreign nationals with domestic individual taxpayer status. These exemptions lead to differential treatment between Indonesian citizens and foreign nationals with the same domestic taxpayer status, ultimately triggering fiscal equity issues and opening up opportunities for tax evasion.

c.1.2. Income Tax Objects and Their Implications for Foreign Workers

Article 4 paragraph (1) of the Income Tax Law stipulates that the object of taxation is any additional economic capacity received or obtained by a taxpayer, whether originating in Indonesia or outside Indonesia, that can be used for consumption or to increase wealth. This provision covers various forms of income, including compensation or remuneration related to employment, such as salaries, wages, allowances, honorariums, bonuses, and other forms of compensation.

For foreign workers, this provision should provide a strong legal basis for imposing Income Tax on all compensation received as a consequence of employment in Indonesia. This income is not limited to payments in cash, but also includes benefits in kind and benefits of economic value.



However, the exceptions stipulated in Article 4 paragraph (1a) of the Income Tax Law for foreign nationals who are domestic individual taxpayers shift the taxation principle from the concept of worldwide income to territorial income. This change was intended as an incentive to attract foreign investment and labor, but in practice, it has been exploited to construct some income as foreign income that is exempt from taxation.

As a result, income substantially directly related to work performed in Indonesia is not entirely subject to Income Tax. This situation indicates that although the taxable object has been broadly defined, its application to foreign workers still faces normative and practical obstacles.

c.1.3. Article 21 and Article 26 Income Tax Withholding Mechanism

Technical regulations regarding the withholding, remittance, and reporting of Income Tax related to employment are stipulated in Director General of Taxes Regulation Number PER-16/PJ/2016. This regulation confirms that Article 21 Income Tax is imposed on income received by Individual Taxpayers who are Domestic Taxpayers, while Article 26 Income Tax is imposed on income received by Foreign Taxpayers.

In the context of foreign workers, employers are obligated to withhold Income Tax on all payments made to foreign workers in accordance with their taxable status. Income subject to withholding includes not only salaries and wages but also various other forms of compensation, including benefits in kind.

However, in practice, this withholding mechanism often does not operate optimally. Cross-border payment schemes, double payroll, and the provision of compensation in the form of unofficial allowances result in some foreign workers' income not being recorded in the Article 21 and Article 26 Income Tax withholding systems. This shows that administrative arrangements alone are not effective enough without being supported by integrated supervision.

c.1.4. Relevance of Employment Law to the Imposition of Income Tax on Foreign Workers

Tax regulations for foreign workers cannot be separated from the employment regulations that form the basis of the employment relationship. The Employment Law, as amended by the Job Creation Law, stipulates that foreign workers may only work in Indonesia under a legal employment relationship that meets administrative requirements.

This employment relationship creates an obligation for employers to pay wages and benefits to foreign workers. Legally, every payment arising from the employment relationship



is subject to Income Tax. Therefore, the practice of dual payroll, which separates income payments into domestic and foreign schemes, contradicts the substance of employment law.

Employment contracts play a crucial role in this context. Employment contracts that do not transparently list all income components create room for inconsistencies between employment law and tax law. This weakens oversight and complicates the tax authorities' efforts to ensure foreign workers' tax compliance.

C.2. Tax Avoidance Practices for Foreign Workers in Indonesia

Normally, Indonesian tax regulations have regulated the tax obligations of foreign workers (TKA) in considerable detail, both through the Income Tax Law and its implementing regulations. However, empirical reality shows that tax evasion by foreign workers continues to occur massively and systematically. This indicates a serious gap between legal norms (*das sollen*) and actual practice (*das sein*).

One of the main causes of the weak effectiveness of taxation on foreign workers is the limited ability of tax authorities to verify the accuracy of income data reported by companies and foreign workers. In practice, tax authorities rely heavily on data submitted by taxpayers through self-reporting mechanisms. This reliance becomes a major weakness when taxpayers knowingly present data that does not reflect the true economic conditions.

Indonesia adopts a self-assessment system for Income Tax collection, which places taxpayers as active participants in calculating, paying, and reporting their tax obligations. This system is principally designed to encourage voluntary compliance and efficient tax administration. However, in the context of foreign workers and multinational companies, the self-assessment system actually opens up room for manipulation that is difficult to detect due to the complexity of cross-border transactions.

The self-assessment system becomes particularly problematic when associated with the characteristics of foreign workers' employment relationships, which involve international income structures, secondment agreements, and payments by affiliated entities abroad. In these circumstances, tax authorities often lack direct access to global employment contract documents, foreign bank accounts, and the internal remuneration policies of multinational companies.



Empirical findings indicate that tax evasion practices against foreign workers in Indonesia generally occur through three main patterns: dual payroll, non-compliance with reporting of foreign assets and income, and manipulation of reported income.

c.2.1. Dual Payroll Practices

Dual payroll practices are one of the most systematic forms of tax avoidance and have a significant impact on state revenue. In this practice, companies divide the income of foreign workers into two components: salaries paid and reported in Indonesia, and salaries paid abroad by the parent company or affiliate.

The case of a Korean company employing foreign workers in Indonesia demonstrates that this scheme is deliberately designed to reduce the tax burden. Indonesian salaries are used as the basis for withholding Income Tax Article 21, while foreign salaries are not included on official pay slips and are not reported in Indonesian Annual Tax Returns. In fact, in substance, the entire income represents compensation for work performed in Indonesia.

This practice clearly violates the principle of substance over form in tax law, which emphasizes that the determination of taxable income must be based on economic substance, not solely on the formal form of payment. By shifting some payments abroad, companies attempt to obscure the source of income to make it appear as if it does not originate in Indonesia.

The dual payroll case also demonstrates that tax avoidance is not solely the fault of individual foreign workers but is the result of structured corporate policies. Therefore, a law enforcement approach that only targets individual foreign workers without taking action against the companies as the primary actors will consistently fail to curb this practice.

c.2.2. Non-Compliance with Reporting of Foreign Assets and Income

In addition to double payroll, tax evasion practices also occur in the form of non-compliance with reporting foreign assets and income by foreign workers with the status of Domestic Individual Taxpayers. Although Article 4 paragraph (1a) of the Income Tax Law provides an exemption for foreign income for foreign nationals who are Domestic Taxpayers, this provision does not eliminate the obligation to report assets. This non-compliance demonstrates the low level of understanding and fiscal compliance of foreign workers, as well as weak education and oversight mechanisms by the tax authorities.

This case also reveals a fundamental issue regarding the distinction between foreign income that is truly independent of work activities in Indonesia and income that is still



economically related to work in Indonesia. This unclear distinction is often exploited to evade tax obligations.

c.2.3. Manipulation of Reported Income

Manipulation of pay slips is the most obvious form of tax evasion, yet remains difficult to prove without an in-depth audit. In the case of PT X, the discrepancy between actual and reported income indicates that the practice was systematic and involved more than one foreign worker.

This manipulation occurs because the business owner has complete control over the payroll and tax reporting systems. By reporting lower salaries, the income tax burden can be significantly reduced. In a self-assessment system, such practices can only be uncovered through a comprehensive tax audit, which in practice requires significant time and resources. This phenomenon demonstrates that a self-assessment system without strong oversight has the potential to create moral hazard, where taxpayers perceive they have ample opportunity to deviate without the risk of significant sanctions.

C.3. Addressing Tax Avoidance Practices by Foreign Workers

Conceptually, addressing tax avoidance practices in the Indonesian legal system is carried out through two main channels: administrative sanctions and criminal sanctions, supported by audit mechanisms and cross-agency cooperation.

c.3.1. Effectiveness of Administrative Sanctions

Administrative sanctions are the primary instrument for enforcing tax law in Indonesia. Through the Tax Regulation Harmonization Law, the government implemented significant reforms by replacing the fixed penalty system with an interest system plus an uplift factor. This reform aims to create legal certainty and encourage voluntary compliance.

In the context of foreign workers, administrative sanctions can be imposed both on employers who fail to withhold Income Tax Article 21/26 and on foreign workers who fail to report their income correctly. However, in practice, the effectiveness of administrative sanctions remains questionable.

An overly lenient approach has the potential to reduce deterrence, particularly for multinational companies that can calculate administrative sanctions as part of their business costs. Without a real criminal risk, administrative sanctions are often insufficient to curb systematic tax avoidance practices. The effectiveness of administrative sanctions also depends



heavily on the audit and oversight capacity of the Directorate General of Taxes. Without cross-agency data integration and access to international information, administrative sanctions will only be applied to cases that are easily detected.

c.3.2. The Role of Criminal Sanctions as Ultimum Remedium

Criminal sanctions in the tax sector serve as a repressive instrument for serious, willful violations. The General Taxation Law, as amended by the HPP Law, has provided a strong legal basis for prosecuting tax evasion by foreign workers and their employers.

However, the application of the ultimum remedium principle often results in the infrequent use of criminal sanctions, even in cases of significant tax evasion. Many cases are resolved administratively, creating the perception that tax violations by foreign parties are treated more leniently than by domestic taxpayers.

In the context of foreign workers, criminal sanctions should be applied selectively but firmly, particularly against double payroll practices and structured income manipulation involving multinational companies. Without consistent criminal enforcement, the tax law system loses its legitimacy and deterrent effect.

C.4. Comparison with Malaysian Tax Practices

The problem of tax evasion on foreign workers' income is not unique to Indonesia but is also a common phenomenon in various developing countries. The high mobility of labor across borders, the complexity of multinational corporate structures, and differences in tax regimes and jurisdictions across countries create opportunities for income shifting and tax reporting manipulation.³ In this context, Indonesia and Malaysia face relatively comparable challenges, although they adopt different approaches to tax administration and enforcement practices.

Malaysia, like Indonesia, implements a taxation system based on the source principle, which imposes tax on income derived from work activities conducted within the country. Foreign workers working in Malaysia are taxed on income sourced from Malaysia, with tax residency status determined based on the duration of physical presence in the country. If a foreign worker meets the criteria for tax residents, they are taxed under the same provisions as

³ Sol Picciotto, *International Business Taxation: A Study in the Internationalization of Business Regulation* (London: Weidenfeld & Nicolson, 1992), 3–7.



Malaysian citizens. Conversely, foreign workers who do not meet residency requirements are taxed as non-residents at different rates.⁴

While the regulatory framework is clearly defined, in practice, Malaysia faces similar tax avoidance issues to Indonesia. One common example is underreporting of income that does not fully reflect the actual income of foreign workers, particularly when part of the compensation is paid outside Malaysia by the parent company or an affiliated entity. Furthermore, ownership of financial assets abroad by foreign workers can potentially be used as a means of tax avoidance if not properly reported to the tax authorities.

The fundamental difference between Indonesia and Malaysia lies in the mechanisms for controlling compliance and settling tax obligations for foreign workers. Malaysia adopts a stricter administrative approach, placing responsibility not only on foreign workers as taxpayers but also on employers as the parties facilitating their presence and work activities. In practice, Malaysia requires settlement of all tax obligations before foreign workers terminate their employment or leave the country. This obligation is recognized through the tax clearance mechanism, which serves as an administrative control tool to ensure that all taxes owed have been paid.

This approach differs from the practice in Indonesia, which still relies heavily on a self-assessment system. In this system, fulfillment of tax obligations depends heavily on taxpayer honesty and company compliance in reporting the income of foreign workers. Tax authorities generally only make corrections after an inspection or audit, which in practice often faces obstacles such as limited data, cross-border transactions, and a lack of information integration between agencies.⁵

In cross-border tax relations, Indonesia and Malaysia already have a strong legal basis through the Agreement between the Governments of the Republic of Indonesia and the Government of Malaysia concerning the Avoidance of Double Taxation and Prevention of Tax Evasion on Income. This agreement clearly regulates the distribution of taxation rights for various types of income, including income from employment, interest, and other sources of income potentially taxable in both countries. Furthermore, the agreement also contains

⁴ Klaus Vogel, *Double Taxation Conventions*, 3rd ed. (London: Kluwer Law International, 1997), 27–30.

⁵ Reuven S. Avi-Yonah, *International Tax as International Law* (Cambridge: Cambridge University Press, 2007), 62–66



provisions for the exchange of information and a dispute resolution mechanism through a mutual agreement procedure.

However, the effectiveness of this bilateral agreement is largely determined by administrative implementation in each country. Malaysia tends to utilize the agreement as a supporting instrument to strengthen domestic tax enforcement, particularly in obtaining information on the income and assets of foreign workers. Conversely, in Indonesia, limited data exchange and weak oversight mechanisms at the initial stage mean that the agreement is often used reactively, i.e., after indications of violations emerge, rather than as a means of early prevention.

Based on this comparison, it is clear that the main problem in taxing foreign workers in developing countries lies not in the absence of legal norms, but rather in differences in enforcement strategies and the imposition of legal responsibility.⁶ Malaysia places companies and state administrative mechanisms at the forefront of ensuring tax compliance for foreign workers, while Indonesia still places greater emphasis on individual taxpayer compliance through a self-reporting system.

Thus, Malaysian practices demonstrate that strengthening corporate accountability and utilizing preventative administrative instruments can be a more effective alternative solution to curb tax evasion by foreign workers. This comparison holds strong relevance for Indonesia, particularly in addressing the practice of double payroll and cross-border income payments, which have been difficult to address through conventional oversight mechanisms.

D. CONCLUSION

Based on the analysis in the previous chapter, the author draws the following conclusions:

- a. The provisions regarding the imposition of Income Tax on foreign workers in Indonesia are quite clearly regulated, both regarding the status of the tax subject, the object of taxation, and the withholding mechanism. However, the policy of exempting foreign income from taxation for foreign nationals with domestic taxpayer status creates fiscal injustice and opens up legal loopholes that could potentially be exploited for tax avoidance.

⁶ Michael Lang et al., *Introduction to the Law of Double Taxation Conventions*, 2nd ed. (Vienna: Linde, 2013), 211–214.



- Furthermore, the weak synchronization between tax and employment laws and oversight of wage structures means that the implementation of these regulations is less than optimal.
- b. Furthermore, tax evasion practices by foreign workers in Indonesia continue to occur systematically, particularly through double payroll, non-compliance with reporting of foreign assets and income, and manipulation of reported income. This situation is driven by the implementation of a self-assessment system that relies heavily on taxpayer honesty and limited oversight of cross-border transactions, creating a gap between normative regulations and actual practice.
 - c. Legally, Indonesia has established settlement instruments through administrative and criminal sanctions. However, their effectiveness remains limited because administrative sanctions tend not to deter systematic tax evasion, while criminal sanctions are rarely applied even in cases of significant violations. As a result, tax law enforcement against foreign workers does not fully guarantee fiscal justice and optimal tax compliance.
 - d. A comparison with Malaysia shows that the main problem with taxing foreign workers lies in law enforcement strategies, not the lack of regulations. A preventative administrative approach through tax clearance mechanisms and strengthening employer accountability has proven more effective in suppressing tax evasion. This practice is relevant for adoption in Indonesia to strengthen oversight and close loopholes for foreign worker tax evasion.



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