

WORLD TRADE ORGANIZATION

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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

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NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

INDONESIA

Supplement

The following communication, dated 22 January 1999, has been received from the Permanent Mission of Indonesia.

In order to implement Article 13 of the Agreement on Implementation of Article VI of the GATT 1994 (Agreement on Anti-Dumping) regarding "Judicial Review", I wish to inform you that based on Law No. 17/1997 dated 23 May 1997 and Presidential Decree No. 41/1997 dated 7 October 1997, Indonesia has established a Tax Dispute Settlement Board as a Judicial Review Body for settlement of tax disputes. Please find, attached, the above-mentioned Law and Presidential Decree.

THE AGENCY FOR THE SETTLEMENT OF TAX DISPUTES
(Law No. 17/1997 dated 23 May 1997)

BY THE GRACE OF GOD THE ALMIGHTY
THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Considering:

- (a) That the State of the Republic of Indonesia is a law-based state based on Pancasila and the Constitution of 1945 which aims to translate into reality the life order of the state and the nation characterized by justice, prosperity, security, peace and order and to guarantee an equal legal position of all citizens;
- (b) that to achieve the said goal, national development implemented sustainably, continuously and equitably across the country requires huge funds which must be obtained particularly from our own sources;
- (c) that in the framework of the said principle of independence, tax receipts as the main financial source for the state and national development requires increased participation of the community in fulfilling their tax obligations as state-related obligations;
- (d) that enhancement of the awareness, understanding and comprehension in taxation has reached all layers of the community in fulfilling their tax obligations pursuant to the tax laws with the result that the number of taxpayers has continued to increase;
- (e) that with the increase in the number of taxpayers and the enhancement of the right and obligation in the enforcement of tax laws, tax disputes shall be unavoidable and they must be settled justly under a speedy, cheap and simple procedure and process;
- (f) that the Tax Advisory Council established on the basis of *Regeling van het Beroep in Belastingzaken* (Statute Book No. 29/1927) as already amended the latest Law No. 5/1959 (Statute Book No. 13/1959, Supplement to Statute Book No. 1748), which serves as an institution for the settlement of appeal cases in taxation, is no longer compatible with the need in the settlement of tax disputes;
- (g) that on the basis of the considerations referred to in letters (a), (b), (c), (d), (e) and (f), it is deemed necessary to set up a tax judicature agency under the name of the Agency for the Settlement of Tax Disputes by virtue of a law.

In view of:

1. Article 5 sub-article (1) and Article 20 sub-article (1) of the Constitution of 1945;
2. Law No. 6/1983 on the general provisions on and the procedure for taxation (Statute Book No. 49/1983, Supplement to Statute Book No. 3282), as already amended by Law No. 9/1994 (Statute Book No. 59/1994, Supplement to Statute Book No. 3566).

With the Approval of
THE HOUSE OF PEOPLE'S REPRESENTATIVES OF
THE REPUBLIC OF INDONESIA

D E C I D E S

To stipulate:

THE LAW ON THE AGENCY FOR THE SETTLEMENT OF TAX DISPUTES

CHAPTER I
GENERAL PROVISIONS

First Part

Definition

Article 1

Referred to in this law as:

1. An authorized official shall be the Director General of Taxation, the Director General of Customs and Excise, the governor/head of a first-level region, a district head or a municipality head/head of a second-level region, or an official appointed to enforce the tax laws;
2. Taxes shall be all kinds of taxes collected by the central government, including import duties and excise, and the taxes collected by regional administrations, pursuant to the prevailing laws;
3. Tax laws shall be all regulations in taxation;
4. A decision shall be written stipulation in taxation issued by an authorized official on the basis of and in the framework of tax laws enforcement;
5. A tax dispute shall be a dispute to which, pursuant to the tax laws concerned, an appeal or a lawsuit may be filed to the Agency for the Settlement of Tax Disputes;
6. An appeal shall be a legal attempt regarding the decision made by an authorized official as far as it is regulated in the tax laws concerned.
7. A lawsuit shall be a legal attempt regarding the implementation of tax collection as regulated in the tax laws concerned;
8. A letter of appeal description shall be a letter by the party to which an appeal is addressed to the Agency for the Settlement of Tax Disputes containing a reply to the reasons of the litigant;
9. A letter of response shall be a letter from a sued party to the Agency for the Settlement of Tax Disputes containing a reply to the reasons of the lawsuit filed by the lawsuit applicant;
10. A letter of denial shall be a letter from an appellant or a litigant to the Agency for the Settlement of Tax Disputes containing a denial of the letter of appeal description or the letter of response;
11. The date of dispatch shall be the post-marked date of dispatch, the facsimile date or, in the event of delivery by hand, the date when a letter of a decision or a ruling is presented by hand;

12. The date of receipt shall be the post-marked date of dispatch, the facsimile date, or in the event of delivery by hand, the date when a letter or a decision or a ruling is received personally;
13. The chairperson, deputy chairperson and members shall be the chairperson, deputy chairperson and members of the Agency for the Settlement of Tax Disputes;
14. A single member shall be a member appointed by the chairperson to examine and make a decision on a tax dispute speedily;
15. A session member shall be a single member or a member in a council, including the chairman of the session;
16. The chairman of a session shall be a member of the session appointed by the chairperson to chair the session;
17. The secretary, the vice secretary and the alternate secretary shall be the secretary, the vice secretary and the alternate secretary in the Agency for the Settlement of Tax Disputes;
18. The secretary of a session shall be the secretary, the vice secretary or the alternate secretary assigned to provide services in the administration of the settlement of a tax dispute in a particular session;
19. The Minister shall be the Minister of Finance of the Republic of Indonesia.

Second Part
Position
Article 2

The Agency for the Settlement of Tax Disputes shall be a tax judicature agency as referred to in Law No. 6/1985 on general provisions on and the procedure for taxation as already amended by Law No. 9/1994

Third Part
Domicile
Article 3

- (1) By virtue of this law, the Agency for the Settlement of Tax Disputes is established with the domicile in the state's capital and if deemed necessary, it is possible to set up the Agency for the Settlement of Tax Disputes of the same level at another place.
- (2) The implementation of the establishment of the Agency for the Settlement of Tax Disputes as referred to in sub-article (1) shall be regulated in a presidential decree.

Article 4

A session of the Agency for the Settlement of Tax Disputes shall be conducted at the domicile of the Agency or at another place within its jurisdiction.

Fourth Part
Fostering
Article 5

- (1) Fostering of the organization, administration and finance of the Agency for the Settlement of Tax Disputes shall be conducted by the Ministry of Finance.
- (2) The fostering as meant in sub-article (1) shall not reduce the freedom of the member in examining and passing a ruling on a tax dispute.

CHAPTER II
THE COMPOSITION OF
THE AGENCY FOR THE SETTLEMENT OF TAX DISPUTES
First Part
General
Article 6

The composition of the Agency for the Settlement of Tax Disputes shall be made up of the leadership, the members and the secretary.

Article 7

The leadership of the Agency for the Settlement of Tax Disputes shall be made up of a chairperson and one or more chairperson deputies.

Article 8

To be able to be appointed as a member, every candidate must fulfill the following requirements:

- (a) an Indonesian citizen aged at least 40 (forty) years;
- (b) having faith in God the Almighty;
- (c) loyal to Pancasila and the Constitution of 1945;
- (d) not being a former member of the banned Indonesian Communist Party, including that of its mass organizations or not being one directly or indirectly involved in the "Counter-Revolutionary Movement of G.30.S/PKI" or other banned organization;
- (e) having expertise in taxation and having a university diploma in law or in other areas;
- (f) commanding respect, honest, fair and having a good conduct;
- (g) never committing a criminal offence in taxation.

Second Part
Chairperson, chairperson deputies and members
Article 9

- (1) Members shall be appointed by the President and selected from a list of candidate names proposed by the Minister.

- (2) The chairperson and chairperson deputies shall be appointed by the President and selected from the members as meant in sub-article (1)

Article 10

The chairperson, chairperson deputies and members shall be appointed from a term of office of 5 (five) years and this appointment can be extended for 1 (one) term of office.

Article 11

- (1) Prior to assuming his position, the chairperson, chairperson deputies and members shall be obligated to say an oath or a pledge in accordance with their religion or belief, reading as follows:

"I earnestly take an oath/make a pledge that I, to assume this position, directly or indirectly, under whatever name or in whatever manner, will not give or promise anything to anybody."

"I take an oath/make a pledge that I, to do or not to do something in this position, will never receive, directly or indirectly, any promise or gift from anybody."

"I take an oath/make a pledge that I will be loyal to and will defend and apply Pancasila as the nation's view of life and the state's foundation and ideology, the Constitution of 1945, and all laws and other regulations prevailing in the State of the Republic of Indonesia."

"I take an oath/make a pledge that I will always do my job in this position honestly, conscientiously and will not discriminate people in performing my obligations and will do my job in the best and most just manner as possible as benefitting a chairperson, chairperson deputies or members of the Agency for the Settlement of Tax Disputes with good character and honesty in enforcing the law and justice."

- (2) The chairperson and chairperson deputies shall take the oath or make the pledge before the chairman of the Supreme Court.
- (3) The members shall take the oath or make the pledge before the chairperson.

Article 12

- (1) The chairperson shall foster the Agency for the Settlement for Tax Disputes and supervise the implementation of the tasks and the conduct of the chairperson deputies, the members and the secretary.
- (2) In addition to the tasks as meant in sub-article (1), the chairperson shall supervise the way a tax dispute is settled and make sure that the implementation of the settlement shall be conscientious and proper.
- (3) In undertaking fostering and supervision as meant in sub-articles (1) and (2), the chairperson can give a directive, a warning and a reminder, if deemed necessary, and present a proposal to the authorities that an action should be taken.

- (4) The fostering and the supervision as meant in sub-articles (1), (2) and (3) shall not reduce the freedom of the members in examining and passing a ruling on a tax dispute.

Article 13

- (1) Members shall not be allowed to concurrently assume the following positions:
- (a) the executor of a ruling of the Agency for the Settlement of Tax Disputes;
 - (b) a guardian, or an official related with a tax dispute which shall be or is being examined by him;
 - (c) a legal counsellor;
 - (d) a tax consultant;
 - (e) a public accountant; or
 - (f) an entrepreneur.
- (2) In addition to the positions as meant in sub-article (1), other positions which a member shall not be allowed to concurrently assume, shall be further regulated in a government regulation

Article 14

- (1) The chairperson, chairperson deputies and members shall be honourably discharged from their positions by the President at the suggestion of the Minister because of:
- (a) their own request;
 - (b) a continuous physical or mental illness;
 - (c) reaching age of 65 (sixty-five) years; or
 - (d) being negligent in or incapable of conducting their tasks.
- (2) The chairperson, chairperson deputies and members whose term of office has expired or who pass away shall be automatically discharged honourably from their positions.

Article 15

The chairperson, chairperson deputies and members shall be discharged with dishonour from their positions by the President at the suggestion of the Minister because of the following reasons:

- (a) committing a shameful act;
- (b) neglecting obligations in performing their tasks;
- (c) violating the official oath or pledge; or
- (d) violating the prohibitions as meant in Article 13.

Article 16

The proposal for honourable discharge as meant in Article 14 sub-article (1) letter (d) and the proposal for discharge with dishonour as meant in Article 15 letters (b), (c), (d) and (e), shall be put forward after the person concerned has allowed enough opportunity to defend himself before the Council of Honour of the Agency for the Settlement of Tax Disputes.

Article 17

The establishment, composition and working system of the Council of Honour of the Agency for the Settlement of Tax Disputes shall be stipulated by the Minister.

Article 18

- (1) Prior to their discharge with dishonour as meant in Article 15, the chairperson, chairperson deputies and members may be relieved of their positions by the Minister at the suggestion of the council of Honour of the Agency for the Settlement of Tax Disputes.
- (2) The proposal for the relief of position as meant in sub-article (1) shall also be subject to the application of the stipulation for the self-defence as meant in Article 16.

Article 19

- (1) If an arrest warrant followed by detention is issued against the chairperson, chairperson deputies or members, the chairperson, chairperson deputies or members concerned shall be relieved from their positions by the Minister.
- (2) If the chairperson, chairperson deputies or members are subject to a lawsuit before a court of law in a criminal case without their being detained, the said chairperson, chairperson deputies or members may be relieved from their positions by the Minister.

Article 20

- (1) If in an examination of the chairperson, chairperson deputies or members who are arrested and detained as meant in Article 19 sub-article (1) proves that they are not guilty of committing a criminal act, the said chairperson, chairperson deputies or members may be reinstated in their former positions
- (2) If the criminal charges against the chairperson- chairperson deputies or members as meant in Article 19 sub-article (2) fail to be proved on the basis of a ruling of a court of law with a permanent legal force, the said chairperson, chairperson deputies or members may be reinstated in their former positions.

Article 21

- (1) The chairperson, chairperson deputies or members may be arrested and or detained only at the instruction of the Attorney General after the approval of the Minister has been obtained, except in the following cases:
 - (a) being caught in the act when committing a criminal offence; or
 - (b) on the basis of a sufficient preliminary evidence, being suspected of committing a criminal offence threatened with a death penalty, or a criminal act against the state's security.
- (2) The implementation of the arrest or detention as meant in sub-article (1) letters (a) and (b) must within 2 (two) times 24 (twenty-four) hours at the latest be reported to the Minister.

Article 22

Further provisions on the procedure for relief from duties, honourable discharge and discharge with dishonour and the rights of the chairperson, chairperson deputies or members who are relieved of their duties or discharged shall be regulated in a government regulation.

Third Part
Secretary
Article 23

- (1) The secretary shall head the secretariat, which is assigned the task of providing services in the administration of the settlement of tax disputes and the general administration, and shall be assisted by a deputy secretary.
- (2) In implementing the task of providing services in the administration of the settlement of tax disputes, the secretary shall be assisted by one or more alternate secretary(ies).

Article 24

Prior to assuming their positions, the secretary, deputy secretary and alternate secretaries shall be obligated to take an oath or make a pledge before the chairman in accordance with their religion or belief, reading as follows:

"I earnestly take an oath/make a pledge that, in assuming this position, directly or indirectly, under whatever name or in whatever manner, will not give or promise anything to anybody."

"I take an oath/make a pledge that I will be loyal to, adhere to and defend and apply Pancasila as the nation's life view and the state's foundation and ideology, the Constitution of 1945, and all other laws and regulations prevailing in the State of the Republic of Indonesia."

"I take an oath/make a pledge that I will comply with all prevailing laws and implement the official assignments entrusted to me with full dedication, awareness and responsibility."

"I take an oath/make a pledge that I will always uphold the honour of the state and the government and the dignity of the secretary or deputy secretary or the alternate secretaries of the Agency for the Settlement of Tax Disputes, and will always prioritize the interest of the state above individual or group interests."

"I take an oath/make a pledge that I, in order to do or not to do something in this position, will never receive, directly or indirectly, receive a promise or a gift from anybody."

"I take an oath/make a pledge that I will keep confidential a secret which by its nature or in accordance with an instruction must be kept confidential."

"I take an oath/make a pledge that I will always do my job in this position honestly and conscientiously and will not discriminate people in performing my obligations and will do everything in the best and most just manner in enforcing the law and justice."

Article 25

- (1) The secretary, deputy secretary, alternate secretaries and employees of the secretariat of the Agency for the Settlement of Tax Disputes shall be civilian civil servants within the Ministry of Finance.

- (2) Other than the requirements as meant in sub-article (1), the secretary, deputy secretary and alternate secretaries must have expertise in taxation and have a university diploma in laws and in other areas.

Article 26

The tasks and the responsibility as well as the organizational structure of the Agency for the settlement of Tax Disputes shall be stipulated in a presidential decree.

Article 27

The working system of the secretariat of the Agency for the Settlement of Tax Disputes shall be stipulated by the chairperson.

CHAPTER III THE POWER OF THE AGENCY FOR THE SETTLEMENT OF TAX DISPUTES Article 28

- (1) The Agency for the Settlement of Tax Disputes shall have the tasks and the authority to examine and pass a ruling on a tax dispute.
- (2) The tasks and the authority of the Agency for the Settlement of Tax Disputes as meant in sub-article (1) shall be beyond the tasks and the authority of a public court and a state's administrative court.

Article 29

In addition to the tasks and the authority as meant in Article 28, the Agency for the Settlement of Tax Disputes shall exercise control over proxies providing legal aid to the disputing parties in the session of the Agency for the Settlement of Tax Disputes.

Article 30

For the purpose of settling a tax dispute the Agency for the Settlement of Tax Disputes may summon a third party or request data and or information related with tax disputes from the third party pursuant to the prevailing laws.

CHAPTER IV PROCEDURAL LAW First Part Legal Proxies Article 31

- (1) The disputing parties can each be accompanied or represented by one or more legal proxies with a written power of attorney.
- (2) To be able to serve as a legal proxy the following requirements must be fulfilled:

- (a) an Indonesian citizen;
 - (b) having expertise in taxation; and
 - (c) other requirements stipulated by the chairperson.
- (3) In the event that the person accompanying or representing an appellant or a litigant is one of the same family line up to the second remove, a member of the executive board, an employee or a guardian, the requirements as meant in sub-article (2) shall not be needed.

Second Part
Appeal
Article 32

- (1) An appeal shall be filed in a letter of appeal in the Indonesian language to the Agency for the Settlement of Tax Disputes whose jurisdiction shall encompass the working area of the official issuing the decision against which an appeal has been filed.
- (2) An appeal shall be filed within the period as regulated in the tax laws concerned and in the event that the said period is not regulated, the appeal shall be filed within a period of 3 (three) months as from the date of receipt of the decision against which an appeal has been filed.
- (3) The period of time as meant in sub-article (1) shall not be binding if according to the Agency for the Settlement of Tax Disputes the said period of time cannot be fulfilled because of circumstances beyond the power of the appellant.

Article 33

- (1) A letter of appeal can be filed to one decision.
- (2) The appeal shall be filed along with its clear reasons and the date of receipt of the decision against which the appeal has been filed must be mentioned.
- (3) A copy of the decision against which an appeal has been made must be attached to the letter of appeal.

Article 34

Other than the requirements as meant in Article 33 and in the event that the appeal is filed against the amount of the outstanding tax the appeal can be filed only if the said amount of outstanding tax has been fully paid.

Article 35

- (1) An appeal shall be filed by the taxpayer himself, his heir, a member of the executive board or his legal proxy.
- (2) If during an appeal process, the appellant dies, the appeal may be continued by his heir, the legal proxy of his heir or his guardian, in the event that the appellant has gone bankrupt.
- (3) If during an appeal process, the appellant undertakes business merger, amalgamation, splitting or diversification, or liquidation, the said application may be continued by the parties receiving the responsibility owing to the said business merger, amalgamation, splitting or diversification, or owing to the said liquidation.

Article 36

An appellant may complete his appeal to fulfil the prevailing provisions as long as this is still within the period of time as meant in Article 32 sub-article (2).

Article 37

- (1) With respect to an appeal, a statement of revocation may be addressed to the Agency for the Settlement of Tax Disputes.
- (2) A revoked appeal as meant in sub-article (1) may be removed from the list of disputes through an examination with a speedy procedure.

Third Part Lawsuits Article 38

- (1) A lawsuit shall be filed in a letter of lawsuit in the Indonesian language to the Agency for the Settlement of Tax Disputes whose jurisdiction encompasses the working area of the official issuing the decision sued within a period of 14 (fourteen) days as from the date of receipt of the decision subjected to the lawsuit.
- (2) The period of time as meant in sub-article (1) shall not be binding if according to the Agency for the Settlement of Tax Disputes the said period of time cannot be fulfilled because of circumstances beyond the power of the litigant.

Article 39

- (1) A lawsuit shall be filed by the litigant himself along with its clear reasons, mentioning the date of the receipt of the decision subjected to the lawsuit and attaching to it a copy of the document the implementation of which is subjected to the lawsuit.
- (2) If during a lawsuit process, the litigant dies, the lawsuit may be continued by his heir, the legal proxy of his heir, or his guardian, in the event that the litigant has become bankrupt.

Article 40

- (1) As for the lawsuit as meant in Article 38 sub-article (1), a statement of revocation may be addressed to the Agency for the Settlement of Tax Disputes.
- (2) A revoked lawsuit as meant in sub-article (1) shall be removed from the list of disputes through an examination with a speedy procedure.

Article 41

- (1) A litigant must pay a registration fee of Rp 1,000,000.00 (one million rupiah).
- (2) Changes in the amount of the registration fee as meant in sub-article (1) shall be stipulated by the Minister.

Article 42

The registration fee as meant in Article 41 sub-article (1) shall be deposited at the state's cash before the lawsuit is filed and the evidence of the deposit must be attached to the letter of lawsuit.

Fourth Part Session Preparation Article 43

- (1) The Agency for the Settlement of Tax Disputes shall ask for a letter of appeal description or a letter of response against a letter of appeal or a letter of lawsuit to the party subjected to an appeal or a sued party within a period of 14 (fourteen) days as from the date of receipt of the letter of appeal or the letter of lawsuit.
- (2) In the event that the appellant sends a supplementary letter of document to the Agency for the Settlement of Tax Disputes as meant in Article 36, the period of 14 (fourteen) days as meant in sub-article (1) shall begin as from the date of receipt of the said supplementary letter or document.

Article 44

- (1) The party subjected to an appeal or the sued party shall present a letter of appeal description or a letter of response to the Agency for the Settlement of Tax Disputes within 3 (three) months as from the date of dispatch of the request for the letter of appeal description or the letter of response as meant in Article 43.
- (2) A copy of the letter of appeal description or the letter of response as meant in sub-article (1) by the Agency for the Settlement of Tax Disputes shall be sent to the appellant or the litigant within a period of 14 (fourteen) days as from the date of receipt.
- (3) The appellant or the litigant may present a letter of denial to the Agency for the Settlement of Tax Disputes within a period of 30 (thirty) days as from the receipt of the letter of appeal description or the letter of response as meant in sub-article (2).
- (4) If the party subjected to an appeal or the sued party, or the appellant or the litigant does not fulfill the provision as meant in sub-article (1) or sub-article (3), the Agency for the Settlement of Tax Disputes shall proceed with the examination of the appeal or the lawsuit.

Article 45

An appellant or a litigant may notify the chairman to be present in a session in order to give information orally.

Article 46

- (1) The chairperson shall appoint a council comprising 3 (three) members, or appoint a single member, to examine and pass a ruling on a tax dispute.
- (2) In the event of the examination being conducted by the council, the chairperson shall appoint one of the members as meant in sub-article (1) to assume the position of the chairperson of the session that shall lead the examination of the tax dispute.

- (3) If there are at least two tax disputes for the same fiscal year filed by the same appellant, the chairperson shall appoint the same council or appoint the same single member to examine and pass a ruling on the said dispute.
- (4) The council or the single member as meant in sub-article (1) shall hold a session on a set date and notify the said session day to the disputing parties.

Article 47

The council as meant in Article 46 shall already begin the session within a period of 6 (six) months as from the date of receipt of the letter of appeal or the letter of lawsuit.

Fifth Part Examination with an Ordinary Procedure Article 48

An examination with an ordinary procedure shall be conducted by a council.

Article 49

- (1) For examination purposes, the chairperson of the session shall convene the session and declare it closed to the public.
- (2) Prior to the commencement of the examination of the core problem of the dispute, the council shall conduct an examination of the completeness and or the clarity of the appeal or the lawsuit.
- (3) If the appeal or the lawsuit fails to meet the requirement for completeness or clarity as meant in sub-article (2), the said completeness or clarity may be provided during the session as long as the requirements as meant in Article 32 sub-article (1), Article 33 sub-article (1), Article 34, Article 38 sub-article (1) or Article 41 sub-article (1) have been fulfilled.

Article 50

- (1) A session member or a session secretary shall be obligated to withdraw from a session if s(he) has a family relationship up to the third remove, or a marital relationship, in spite of a divorce, with one of the members of the session or the secretary of the session in the same council.
- (2) A session member or a session secretary shall be obligated to withdraw from a session if s(he) has a family relationship up to the third remove, or a marital relationship, in spite of a divorce, with an appellant or a litigant or his legal proxy.
- (3) The session member or the session secretary as meant in sub-articles (1) and (2) must be replaced, and if s(he) is not replaced or does not withdraw while a ruling has been passed on the dispute, the said ruling shall be invalid and the chairperson shall instruct that the said dispute should be immediately examined in a session with a council of a different composition or a different session secretary, unless the said ruling has exceeded a period of 1 (one) year.
- (4) In the event that the family relationship, or the marital relationship as meant in sub-articles (1) and (2) becomes known before the passage of a period of 1 (one) year after a ruling has been

passed on the dispute as meant in sub-article (3), the said dispute shall be examined again in another session within a period of 3 (three) months as from the time when the said relationship becomes known.

Article 51

- (1) A session member or a session secretary shall be obligated to withdraw from a session if s(he) has a direct or indirect interest in a dispute s(he) handles.
- (2) The withdrawal as meant in sub-article (1) may be conducted at the request of one or all of the disputing parties.
- (3) The chairperson shall stipulate the withdrawal as meant in sub-article (1) or sub-article (2) if there is a doubt or a difference in opinion.
- (4) The session member or the session secretary as meant in sub-articles (1) and (2) must be replaced and if s(he) is not replaced or does not withdraw while a ruling on the said dispute has been passed, the said ruling shall be invalid and the chairperson shall instruct that the said dispute should immediately be examined in another court with a council of a different composition and a different session secretary, unless the said ruling has exceeded a period of 1 (one) year.
- (5) In the event that the direct or indirect interest as meant in sub-article (1) becomes known before the passage of 1 (one) year after the ruling is passed on the dispute as meant in sub-article (4), the said dispute shall be brought to a session again within 3 (three) months as from the time when the said interest becomes known.

Article 52

- (1) A session chairperson shall summon the party subjected to an appeal or the sued party and may summon the appellant or the litigant to provide oral information.
- (2) In the event that the appellant or the litigant notifies that s(he) shall be present in the session as meant in Article 45, the session chairperson shall notify the date and the day of the session to the appellant or the litigant.

Article 53

- (1) The session chairperson shall explain the problem being disputed.
- (2) The council shall enquire the party subjected to the appeal or the litigant about matters brought forward by the appellant or the litigant in the letter of appeal or the letter of lawsuit and in the letter of denial.
- (3) If the council deems it necessary and if the appellant or the litigant is present in the session, the session chairperson may ask the appellant or the litigant to provide the necessary information in the settlement of the tax dispute.

Article 54

- (1) At the request of one of the disputing parties, or owing to his position, the session chairperson may instruct that a witness should testify in the session.

- (2) The witness so instructed by the session chairperson as meant in sub-article (1) shall be obligated to be present in the session.
- (3) In the event that the witness fails to appear although s(he) has been properly summoned, and that the council may pass a ruling without having to hear the witness's testimony, the session chairperson shall proceed with the session.
- (4) If a witness fails to appear without any accountable reason although s(he) has been properly summoned, and if the council has sufficient reasons to suspect that the witness deliberately fails to appear, and the council cannot pass a ruling without the testimony of the said witness, the session chairperson may ask the police to bring the witness to the session.

Article 55

- (1) Witnesses shall be summoned to the session one after another.
- (2) The session chairperson shall ask a witness questions about his/her full name, place of birth, age and date of birth, sex, nationality, residence, religion, occupation, family relationship and working relationship with the litigant or the sued party.
- (3) Prior to giving his/her testimony a witness shall be obligated to take an oath or make a pledge in accordance with his/her religion or belief.

Article 56

- (1) Those whose testimony as witnesses as meant in Article 54 may not be heard shall be:
 - (a) persons with a linear family relationship above and below up to the third remove with one of the disputing parties;
 - (b) the spouse of the appellant or the litigant in spite of a divorce;
 - (c) children not reaching the age of 17 (seventeen) years; or
 - (d) those with a mental illness.
- (2) If deemed necessary, the session chairperson may request that the testimony of the parties as meant in sub-article (1) letters (a), (b) and (c) should be heard.

Article 57

The parties as meant in Article 56 sub-article (2) may reject the request of the session chairperson that they testify.

Article 58

As for everyone who, owing to their job or position, shall be obligated to keep confidential everything related to their job or position, the said obligation to keep things confidential shall not hold for session purposes.

Article 59

- (1) Questions addressed to a witness by one of the parties shall be conveyed through the session chairperson.

- (2) If in the consideration of the session chairman the said questions are not relevant to the dispute, the questions shall be overruled.

Article 60

- (1) If an appellant or a litigant or a witness does not understand Indonesian, the session chairperson shall appoint an interpreter.
- (2) Before undertaking the job of interpretation from the language understood by the appellant or the litigant or the witness as meant in sub-article (1) into Indonesian or vice versa in the best possible manner, the said interpreter shall take an oath or make a pledge according to his/her religion or belief.
- (3) A person serving as a witness in a dispute may not be appointed as an interpreter in the said dispute.

Article 61

- (1) In the event that an appellant or a litigant or a witness turns out to be dumb and/or deaf but that s(he) cannot write the session chairperson shall appoint as an interpreter a person with an ability to get on with the appellant or the litigant or the witness.
- (2) Prior to undertaking his/her assignment, the interpreter as meant in sub-article (1) shall take an oath or make a pledge according to his/her religion or belief.
- (3) In the event that the appellant or the litigant or the witness turns out to be dumb and/or deaf but that s(he) can write, the session chairperson may instruct the session secretary to write down questions or warnings addressed to the appellant or the litigant or the witness, and instruct that this writing be conveyed to the said appellant or litigant or witness so that s(he) can answer in writing and then all the questions and the answers shall be read out.

Article 62

- (1) A witness shall take an oath or make a pledge and shall testify in a session attended by the party subjected to the appeal or the sued party.
- (2) If the party subjected to the appeal or the sued party has been properly summoned but fails to appear without any accountable reasons, the witness shall take an oath or make a pledge and shall testify in the absence of the party subjected to the appeal or the sued party.
- (3) In the event that the witness to testify cannot be present in the session because of an obstacle which is legally justified, the council may come to the residence of the witness to take his oath or pledge and hear the testimony of the said witness in the absence of the party subjected to the appeal or the sued party.

Article 63

- (1) If a dispute cannot be settled in one session day, the examination shall be continued in the next stipulated session day.

- (2) The next session day shall be notified to the party subjected to the appeal or the sued party and may be notified to the appellant or the litigant.
- (3) In the event that the party subjected to the appeal or the sued party fails to appear in the session without any accountable reasons although s(he) has been properly notified, the session may be continued in the absence of the party subjected to the appeal or the sued party.
- (4) A witness not residing in the jurisdiction of the Agency for the Settlement of Tax Disputes examining and passing a ruling on a tax dispute, may testify through the Agency for the Settlement of Tax Disputes whose jurisdiction encompasses the residence of the witness.

Sixth Part
Examination with a Speedy Procedure
Article 64

An examination with a speedy procedure shall be conducted by the council or a single member

Article 65

- (1) An examination with a speedy procedure shall be conducted with respect to:
 - (a) certain tax disputes;
 - (b) a tax dispute whose decision is not made within a period of 12 (twelve) months as meant in Article 80 sub-article (1);
 - (c) non-fulfilment of one of the provisions as meant in Article 85 sub-article (1) or a writing error and/or a calculation error, in the ruling of the Agency for the Settlement of Tax Disputes;
 - (d) a statement of appeal revocation as meant in Article 37 sub-article (1);
 - (e) a statement of lawsuit revocation as meant in Article 40 sub-article (1);
 - (f) a dispute which on the basis of legal consideration is beyond the authority of the Agency for the Settlement of Tax Disputes.
- (2) Certain tax disputes as meant in sub-article (1) letter (a) shall be:
 - (a) tax disputes the appeals or lawsuits against which do not fulfill the provisions as meant in Article 32 sub-article (1), Article 32 sub-article (2), Article 33 sub-article (1), Article 38 sub-article (1), and/or Article 41 sub-article (1);
 - (b) an appeal regarding a disputed tax amount not exceeding Rp. 1,000,000.00 (one million rupiahs).
- (3) A change in the amount of the disputed tax as meant in sub-article (2) letter (b) shall be stipulated by the Minister.

Article 66

An examination with a speedy procedure of tax disputes as meant in Article 65 sub-article (1) letter (c), letter (d), letter (e) and letter (f) and Article 65 sub-article (2) letter (a) shall be conducted without a letter of appeal or description or a letter of response and without a letter of denial, while that of tax disputes as meant in Article 65 sub-article (2) letter (b) shall be conducted without a letter of denial.

Article 67

All provisions regarding an examination with an ordinary procedure shall also apply to an examination with a speedy procedure.

Seventh Part Establishment of Evidence Article 68

- (1) Means of evidence establishment may take the form of:
 - (a) letters or inscription;
 - (b) confessions made by all parties;
 - (c) a witness's testimony;
 - (d) an expert's testimony;
 - (e) a member's knowledge.
- (2) Evidence need not be established regarding conditions publicly known.

Article 69

Letters or inscription used as means of evidence establishment may be in the form of:

- (a) decrees or letters of decisions issued by authorized officials;
- (b) other letters or inscription related to the appeal or the lawsuit.

Article 70

Confessions made by all parties cannot be retracted unless this is done on the basis of strong reasons acceptable to session members.

Article 71

A witness's testimony shall be considered as a means of evidence establishment if this testimony is connected with things experienced, seen or heard by the witness himself/herself.

Article 72

- (1) The testimony of an expert shall be the opinion given by a person under oath in a session regarding something that he has knowledge of according to his own experience and knowledge.
- (2) Persons not allowed to testify as witnesses as meant in Article 56 sub-article (1) shall not be allowed to provide an expert's testimony.

Article 73

- (1) At the request of both parties or one of the parties or because of his position, the session chairman or a single member may appoint one expert or more.
- (2) In a session an expert must give an oral and written testimony, confirmed with his oath or pledge regarding an actual matter according to his/her experience and knowledge.

Article 74

The knowledge of a session member shall be something that s(he) knows and whose truthfulness s(he) is convinced of.

Article 75

A session member shall determine what shall need evidence establishment, the charges incurred for evidence establishment and the evaluation of evidence establishment and evidence establishment will be valid if there are at least two means of evidence establishment as meant in Article 68 sub-article (1).

Eighth Part Ruling Article 76

The ruling of the Agency for the Settlement of Tax Disputes shall constitute a final and a permanent decision and shall not constitute the decision of a state's administration.

Article 77

The ruling of the Agency for the Settlement of Tax Disputes shall be passed on the basis of the result of an evaluation of evidence establishment, the tax laws concerned and the conviction of session members.

Article 78

In the event that the examination is conducted by a council, the ruling of the Agency for the Settlement of Tax Disputes as meant in Article 77 shall be passed on the basis of deliberation led by the session chairman and if the deliberation fails to reach a consensus the ruling shall be passed through majority votes in voting.

Article 79

- (1) The ruling of the Agency for the Settlement of Tax Disputes may take the form of:
 - (a) a rejection;
 - (b) a partial or total acceptance;
 - (c) an increase in the amount of the tax to be paid;
 - (d) non-acceptance;
 - (e) correction of a written error and/or calculation error.
- (2) The ruling as meant in sub-article (1) can no longer be subject to an appeal or a lawsuit.

Article 80

- (1) The ruling in the case of an examination with an ordinary procedure shall be passed within a period of 12 (twelve) months as from the receipt of the appeal or the lawsuit.
- (2) If a ruling on the appeal or the lawsuit still has not been passed within the period as meant in sub-article (1), the Agency for the Settlement of Tax Disputes shall pass a ruling in the form

of acceptance of the entire appeal or lawsuit through an examination with a speedy procedure, within a period of 30 (thirty) days as from the end of the said period of 12 (twelve) months.

- (3) Session members neglecting the passing of a ruling within the period of time as meant in sub-article (1) so that the appeal or the lawsuit is totally accepted, may be subject to the imposition of sanctions as meant in Article 14 sub-article (1).

Article 81

- (1) The ruling after an examination with a speedy procedure of certain tax disputes as meant in Article 65 sub-article (2) letter (a) in the form of non-acceptance, shall be passed within the following periods of time:
 - (a) 30 (thirty) days as from the time when the time-limit for the filing of an appeal or a lawsuit is exceeded;
 - (b) 30 (thirty) days as from the time when the appeal or the lawsuit is received in the event that it is filed after the time-limit for such filing is exceeded.
- (2) The ruling after an examination with a speedy procedure of the errors as meant in Article 65 sub-article (1) letter (e) in the form of correction of a writing error and/or a calculation error, shall be passed within a period of 30 (thirty) days as from the time when the said error becomes known or as from the time when the application of one of the parties is received.
- (3) The ruling after an examination with a speedy procedure of a revoked appeal as meant in Article 65 sub-article (1) letter (d) and of a revoked lawsuit as meant in Article 85 sub-article (1) letter (e) in the form of non acceptance, shall be passed within a period of 30 (thirty) days as from the receipt of the letter of statement of the revocation of the appeal or the lawsuit.
- (4) The ruling of an examination with a speedy procedure of a dispute which on the basis of legal considerations is beyond the authority of the Agency for the Settlement of Tax Disputes as meant in Article 65 sub-article (1) letter (f) in the form of non-acceptance, shall be passed within a period of 30 (thirty) days as from the receipt of the letter of appeal or the letter of lawsuit.
- (5) In the event that the ruling of the Agency for the Settlement of Tax Disputes is passed regarding tax disputes as meant in sub-article (4), the appellant or the litigant may file a lawsuit to authorized judicature.

Article 82

The ruling after an examination with a speedy procedure of an appeal with the amount of the disputed tax not exceeding Rp 1,000,000.00 (one million rupiahs) as meant in Article 65 sub-article (2) letter (b) shall be passed within a period of 6 (six) months as from the receipt of the letter of appeal.

Article 83

IF after the passage of the period of time as meant in Article 80 sub-article (2) or Article 81, or Article 82, the agency for the Settlement of Tax Disputes has not passed a ruling, the ruling to be passed on the said tax disputes shall be as follows:

- (a) accepting the entire application, regarding the tax disputes as meant in Article 80 sub-article (2) and Article 82;
- (b) unaccepted, regarding the tax disputes as meant in Article 81 sub-article (1), sub-article (3) and sub-article (94);
- (c) correcting a writing error and/or a calculation error, regarding the errors as meant in Article 81 sub-article (2).

Article 84

- (1) The ruling of the Agency for the Settlement of Tax Disputes must be read out in a session open to the public.
- (2) Failure to fulfil the provision as meant in sub-article (1) shall make the ruling of the Agency for the Settlement of Tax Disputes invalid and void of legal power and therefore the said ruling must be read out again in a session open to the public.

Article 85

- (1) The ruling of the Agency for the Settlement of Tax Disputes must contain:
 - (a) the heading of the ruling reading "FOR THE SAKE OF JUSTICE ON THE BASIS OF GOD THE ALMIGHTY";
 - (b) the name, residence or domicile, and/or other items of identity of the appellant or litigant;
 - (c) the job title and address of the party subjected to the appeal or the sued party;
 - (d) the day and date of receipt of the appeal or lawsuit;
 - (e) a clear summary of the appeal or lawsuit, and a clear summary of the letter of appeal description or the letter of response, or the letter of denial;
 - (g) the legal reasons forming the basis of the ruling;
 - (h) the injunction in the ruling on the dispute;
 - (i) the day and date of the ruling, the names of session members passing the ruling, the name of the session secretary and a description of the presence or the absence of the parties.
- (2) The summaries as meant in sub-article (1) letter (e) shall not be needed in the event that the ruling of the Agency for the Settlement of Tax Disputes is passed on tax disputes as meant in Article 65 sub-article (1) letter (b), letter (c), letter (d), letter (e), letter (f) and Article 65 sub-article (2) letter (a).
- (3) The ruling of the Agency for the Settlement of Tax Disputes must be signed by session members passing the ruling and the session secretary.
- (4) If the chairperson of the session or the single member convening the session is prevented from signing the ruling, the ruling shall be signed by the chairperson, who shall state that the chairperson of the session or the sole member is prevented from doing so.
- (5) If session members are prevented from signing the ruling, the ruling shall be signed by the chairperson of the session, who shall state that the said session members are prevented from doing so.

Article 86

- (1) In every examination, the secretary of the session must draw up an official report on the session containing everything happening during a session.
- (2) The official report on the session shall be signed by the chairperson of the session or the single member and the session secretary and if one of them is prevented from doing so, this shall be stated in the official report of the session.
- (3) If the chairperson of the session or the single member and the session secretary are prevented from signing the official report on the session, the official report on the session shall be signed by the chairperson, who shall state that the chairperson of the session or the single member and the session secretary are prevented from doing so.

Ninth Part Ruling Implementation Article 87

A ruling of the Agency for the Settlement of Tax Disputes can be directly implemented and no longer need the decision of an authorized official, unless otherwise stipulated by the laws.

Article 88

If a ruling of the Agency for the Settlement of Tax Disputes accepts part or all of the appeal, the excess amount in tax payment shall be refunded plus a compensation in the form of an interest of 2% (two per cent) a month for a maximum period of 24 (twenty-four) months.

Article 89

- (1) A copy of a ruling of the Agency for the Settlement of Tax Disputes shall be sent to all parties by post by the secretary within a period of 30 (thirty) days as from the date of stipulation of the ruling of the Agency for the Settlement of Tax Disputes.
- (2) A ruling of the Agency for the Settlement of Tax Disputes must be implemented by an authorized official within a period of 30 (thirty) days as from the date of receipt of the ruling.
- (3) An official failing to implement a ruling of the Agency for the Settlement of Tax Disputes within the period of time as meant in sub-article (2) shall be subject to the imposition of a sanction pursuant to the prevailing laws.

CHAPTER V OTHER PROVISION Article 90

The provision on allowances and others for the chairperson, chairperson deputies and members shall be stipulated in a ministerial decree.

CHAPTER VI
TRANSITIONAL PROVISIONS
Article 91

- (1) An appeal which has been filed to the Tax Advisory Council or the Customs and Excise Advisory Institute prior to 1 January 1998 and on which no ruling has been passed shall be treated as an appeal filed on the basis of this law.
- (2) A ruling on the appeal as meant in sub-article (1) must be passed within 36 (thirty-six) months as from the enactment of this law.
- (3) A lawsuit against the implementation of the tax law already filed to the public court or the state's administrative court prior to 1 January 1998 shall continue to be examined and have a ruling passed on it by the said court.

CHAPTER VII
CLOSING PROVISIONS
Article 92

With the enactment of this law, *Regeling van het Beroep in Belastingzaken* (Statute Book No. 29/1927) as already amended and supplemented the latest by Law No. 5/1959 (Statute Book No. 13/1959, Supplement to Statute Book No. 1748) shall be declared null and void.

Article 93

This law is called the Law on the Agency for the Settlement of Tax Disputes.

Article 94

This law shall take effect as from 1 January 1998.

For public cognizance, this law shall be promulgated by publishing it in the Statute Book of the Republic of Indonesia.

Promulgated in Jakarta
On 23 May 1997
THE MINISTER/STATE SECRETARY
sgd.
MOERDIONO

Validated in Jakarta
On 23 May 1997
THE PRESIDENT OF THE REPUBLIC
OF INDONESIA
sgd.
SOEHARTO

STATUTE BOOK OF THE REPUBLIC OF INDONESIA NO. 40/1997

ELUCIDATION
ON
LAW NO. 17/1997
ON
THE AGENCY FOR THE SETTLEMENT OF TAX DISPUTES

GENERAL

The State of the Republic of Indonesia is a law-based state founded on Pancasila and the Constitution of 1945 and upholding the rights and obligations of its citizens, and in the framework of national mutual assistance as the realization of the participation of the community in the financing of the state and the national development it places the tax obligation as one of the obligations to the state.

In its development, the act of financing national development requires increasingly large funds and therefore taxes as the main source of state's receipts must continue to be increased so that national development may be implemented by one's own capacity on the basis of the self-supporting principle.

Improvement of the awareness of the community in the tax area must be supported by the climate in support of increased active role of the community to fulfil their obligations to the state in the tax area pursuant to the tax laws.

In line with the function and the characteristics of tax as the main source of state's receipts and the obligations to the state on the part of taxpayers, and the increase in the number of taxpayers and better understanding of their rights and obligations in the implementation of the tax laws, potential for tax disputes has increased.

The Tax Advisory Council set up on the basis of *Regeling van het Beroep in Belastingzaken Staatsblad* No. 29/1927 as already amended the latest by Law No. 5/1959 is no longer compatible with the need in the settlement of tax disputes. Likewise, the Customs and Excise Advisory Institute as meant in Law No. 10/1995 on customs affairs and Law No. 11/1995 on excise is no longer needed.

In line with the economic development as a result of national development and in order to be able to provide better services to community members as taxpayers, it is necessary to have a more comprehensive judicature institute set up by virtue of the law, which shall guarantee the rights and obligations of taxpayers pursuant to the tax law and can give a legal ruling on a tax dispute in a simple, speedy and cheap process.

The ruling of the said tax judicature institute may serve as a guideline and a reference in the implementation of the tax law so that the tax law may provide legal certainty and justice to all parties.

Law No. 6/1983 on the general provisions and the procedure for taxation as already amended by Law No. 9/1994 contains basic provisions regarding a tax judicature agency and decrees the drawing up of a law which shall contain the structure, power and procedure of a tax judicature agency

With strong compliance with the basic provisions already outlined in the above-mentioned law and with a view to obtaining legal certainty and justice and in order to translate into reality a tax judicature with a simple, speedy and cheap process, the Agency for the Settlement of Tax Disputes is established by virtue of this law and its establishment the following direction and aims:

1. The Agency for the Settlement of Tax Disputes shall be a tax judicature agency assigned to examine and pass a ruling on tax disputes in the form of:

- (a) appeals against the decisions made by authorized officials;
- (b) lawsuits against the implementation of the tax laws in respect of collection.

2. The ruling of the Agency for the Settlement of Tax Disputes shall have an executorial power and an equal legal position to the ruling of a court of law with a permanent legal force, with the heading of the ruling being given the following words: "FOR THE SAKE OF JUSTICE ON THE BASIS OF GOD THE ALMIGHTY".

3. The filing of an appeal or a lawsuit to the Agency for the Settlement of Tax Disputes shall constitute the last legal attempt to a taxpayer and a lawsuit cannot be filed against the ruling it passes in a public court or a state administrative court.

4. By virtue of this law the Agency for the Settlement of Tax Disputes is established for the first time with a domicile in the state's capital, with the power of this law another Agency for the Settlement of Tax Disputes of the same level may be set up in the state's capital and at other places while the implementation of the establishment of the agency shall be regulated in a presidential decree.

5. Organizational, administrative and financial fostering of the Agency for the Settlement of Tax Disputes shall be undertaken by the Ministry of Finance.

6. To provide good services and legal certainty to an appellant or a litigant, the filing of an appeal or a lawsuit and an examination up to the implementation of the ruling of the Agency for the Settlement of Tax Disputes shall have their period of time stipulated.

If a ruling is not passed within a stipulated period, the appeal or lawsuit shall be granted, while if formal requirements for the filing of an appeal or a lawsuit are not fulfilled, the appeal or lawsuit cannot be accepted.

7. One of the formal requirements of the filing of an appeal shall be that the amount of the tax being disputed in the decision to which an appeal has been filed must be fully paid, and if the appeal is granted partly or fully, the appellant shall deserve a compensation in the form of an interest of 2% (two per cent) a month on the excess tax payment for a maximum period of 24 (twenty-four) months.

8. One of the requirements for the filing of a lawsuit shall be that the registration fee should be settled.

9. Members of the Agency for the Settlement of Tax Disputes shall be professionals, namely university graduates with expertise in the tax area and shall be assisted by the session secretary in undertaking a session.

10. An examination with a speedy procedure may be conducted by the council or by a single member.

11. On the basis of the confidential nature of taxation, the examination by the Agency for the Settlement of Tax Disputes shall be conducted in a closed session, while the ruling shall be said in a session open to the public.

12. The ruling of the Agency for the Settlement of Tax Disputes can be implemented directly without having to wait for the decision of an authorized official, unless otherwise stipulated by the law.

The establishment of this law takes into account its relationship with a number of other laws, namely:

1. Law No. 7/1983 on the income tax (Statute Book No. 50/1983) as already amended the latest by Law No. 10/1994 (Statute Book No. 60/1994), Supplement to Statute Book No. 3567);
2. Law No. 8/1983 on the value added tax on goods and services and the sales tax on luxury goods (Statute Book No. 51/1983, Supplement to Statute Book No. 3269), as already amended by Law No. 11/1994 (Statute Book No. 61/1994, Supplement to Statute Book No. 3568);
3. Law No. 12/1985 on the land and building tax (Statute Book No. 68/1985, Supplement to Statute Book No. 3312), as already amended by Law No. 12/1994 (Statute Book No. 62/1994, Supplement to Statute Book No. 3569);
4. Law No. 13/1985 on stamp duties (Statute Book No. 69/1985, Supplement to Statute Book No. 3313);
5. Law No. 10/1995 on customs affairs (Statute Book No. 75/1995, Supplement to Statute Book No. 3612);
6. Law No. 11/1995 on excise (Statute Book No. 76/1995, Supplement to Statute Book No. 3613);

ARTICLE BY ARTICLE

Article 1

Sufficiently clear.

Article 2

Sufficiently clear.

Article 3

Sub-Article (1)

The Agency for the Settlement of Tax Disputes shall be domiciled in the state's capital for the first time it is established by virtue of this law.

Sub-Article (2)

By virtue of the power of this law, the Agency for the Settlement of Tax Disputes of the same level as the Agency for the Settlement of Tax Disputes as meant in sub-article (1) may again be set up in the state's capital and at other places by virtue of a presidential decree.

Article 4

Essentially, the place of a session of the Agency for the Settlement of Tax Disputes shall be the domicile of the agency. However, with a view to expediting and speeding up the handling of appeals or lawsuits, the chairperson may decide other places within his jurisdiction as the site of the session.

Article 5

Sufficiently clear.

Article 6

Sufficiently clear.

Article 7

The need to have at least two chairperson deputies is based on the number of tax disputes to be settled, if the number of tax disputes is already too big to be handled by one chairperson deputy, another chairperson deputy shall be needed. In the event that there are at least two chairperson deputies, the tasks of each chairperson deputy may be adjusted to the types of tax and the number of the tax disputes.

Article 8

The age limit set as a requirement in this article is meant to ensure that the member concerned already has enough experience in the legal, economic, financial, accounting, trade or taxation area.

Article 9

Sufficiently clear.

Article 10

The chairperson and chairperson deputy/deputies shall be selected from among the members so that both the chairperson and the chairperson deputy/deputies and the members shall be assigned at the Agency for the Settlement of Tax Disputes for a period of 5 (five) years and may have their term of office extended for another 5 (five) years. Therefore, all members, assuming the position of a chairperson or a chairperson deputy or being simply members can be assigned at the Agency for the Settlement of Tax Disputes for a maximum period of 10 (ten) years.

Article 11

Sufficiently clear.

Article 12 Sub-Article (1)

Referred to as fostering shall be the improvement of the professionalism of the Agency for the Settlement of Tax Disputes, particularly with respect to the enhancement of knowledge in the tax area.

Sub-Article (2)

Referred to as being conscientious and proper shall be, among other things, that the process of settling a tax dispute must be implemented in accordance with the prevailing provisions and with account being taken of objectiveness.

Sub-Article (3)

Referred to as an authorized person shall be superior who has the authority to impose a sanction.

Sub-Article (4)

Sufficiently clear.

Article 13
Sub-Article (1)

Referred to as the executor of a ruling of the Agency for the Settlement of Tax Disputes as meant in letter (a) shall be an authorized official.

The definition of members shall include the chairperson and chairperson deputy/deputies.

Sub-Article (2)

Sufficiently clear.

Article 14
Sub-Article (1)

Referred to as a continuous physical or mental illness shall be an illness which causes the patient to be no longer able to perform his tasks well.

Referred to as being negligent or incapable shall be, for example, that the person concerned commits a mistake in performing his tasks indeliberately or because of his incapability.

Referred to as tasks shall be all tasks to be assumed by the person concerned.

Sub-Article (2)

Sufficiently clear.

Article 15

Referred to as being penalized shall be being imprisoned for at least 6 (six) months.

Referred to as committing a shameful act shall be the act of downgrading the dignity of the Agency for the Settlement of Tax Disputes as a result of the behaviour, deeds and acts of the person concerned either inside or outside the Agency for the Settlement of Tax Disputes.

Article 16

Sufficiently clear.

Article 17

There shall be only one Council of Honour for the entire Agency for the Settlement of Tax Disputes.

Article 18

Sufficiently clear.

Article 19

Sufficiently clear.

Article 20

Sufficiently clear.

Article 21

Sufficiently clear.

Article 22

Sufficiently clear.

Article 23
Su-Article (1)

Referred to as the administration of the settlement of a tax dispute shall be the administration related to the tax dispute from the time the tax dispute is brought to the Agency for the Settlement of Tax Disputes up to the passing of a ruling.

Referred to as a general administration shall be the administration connected with the daily operation of the office such as personnel matters, financial matters, instruments or equipment.

The secretary of the Agency for the Settlement of Tax Disputes shall perform the task of tax dispute administration and general administration, assisted by one deputy secretary.

Included in the tasks of the secretary or the deputy secretary shall be the recording of the proceedings of the examination of a tax dispute and while doing the said tasks, the secretary or deputy secretary shall be called a session secretary.

Sub-Article (2)

In carrying out the task in the administration of tax dispute settlement, including the recording of the proceedings of the examination of tax disputes, the secretary shall be assisted by one deputy secretary and one alternate secretary or more.

If an alternate secretary is assigned to record the proceedings of the examination of a tax dispute, the said alternate secretary shall be called a session secretary.

Article 24

Sufficiently clear.

Article 25

Sufficiently clear.

Article 26

Sufficiently clear.

Article 27

Sufficiently clear.

Article 28

Sufficiently clear.

Article 29

Referred to as a legal proxy shall be a person or more representing the disputing parties and acting for and on behalf of the disputing parties at the Agency for the Settlement of Tax Disputes.

Article 30

In the event that the bank acts as a third party, the resaid request for information or data shall be made pursuant to the prevailing laws on banking.

Article 31

Sub-Article (1)

Sufficiently clear.

Sub-Article (2)

Attorneys already obtaining a licence from an authorized government agency and fulfilling the requirements set in this sub-article may accompany the parties as legal proxies.

If there is someone already fulfilling the requirement as a legal proxy in accordance with this sub-article, but not as an attorney as meant above, a permission must be obtained by the person concerned from the chairperson before he can act as a legal proxy.

Sub-Article (3)

Sufficiently clear.

Article 32
Sub-Article (1)

Sufficiently clear.

Sub-Article (2)

The period of 3 (three) months shall be calculated from date to date, which means that the calculation shall begin one day after the date of the receipt of the decision up to the date on which the letter of appeal is sent by the appellant.

For example: the decision against which an appeal is filed is received on 10 May 1999, so the latest date for the dispatch of a letter of appeal shall be 9 August 1999.

Sub-Article (3)

The period of time for the filing of an appeal as regulated in the laws is intended to ensure that an appellant shall have sufficient time to prepare the appeal and its reasons.

If it turns out that the said period of time is not fulfilled by the appellant because of circumstances beyond his power (*force majeure*), the said period of time may be considered by the Agency for the Settlement of Tax Disputes.

In the event that there are circumstances beyond the power of the appellant, the said period of 3 (three) months shall be calculated from the time when the circumstances beyond his power come to an end.

Article 33
Sub-Article (1)

Sufficiently clear.

Sub-Article (2)

Sufficiently clear.

Sub-Article (3)

Included in the definition of copies shall be Xerox copies or other sheets.

Article 34

Referred to as the amount of outstanding tax shall be import duty, excise, administrative sanctions and other import levies. In the event that the tariff of the import duty is set at 0 per cent (nil per cent) and the appellant has an objection to the classification of the imported goods, the appellant must settle the payment of other import levies.

If on the decision of the official there is no tax amount which must be paid – for example, if the said decision admits that the taxpayer of an income tax sustains a loss and the loss is in a smaller amount – then there shall not be in this case a tax amount which must be settled.

Article 35

Sufficiently clear.

Article 36

An appeal not fulfilling the requirement as meant in Article 32 sub-article (1), Article 33 sub-article (1) and/or Article 34 and which later within the period of time as meant in Article 32 sub-article (2) is followed with a letter or document so that the said appeal is in agreement with the prevailing provision, the date of receipt of the letter of appeal shall be the date of receipt of the said letter or document that follows.

Article 37
Sub-Article (1)

Sufficiently clear.

Sub-Article (2)

As for the appeal presented to the Agency for the Settlement of Tax Disputes and not yet examined or being examined, an application for revocation may be filed.

The said application for revocation shall be examined with a speedy procedure.

An appeal can no longer be filed against the ruling passed after the said examination with a speedy procedure.

Article 38
Sub-Article (1)

Sufficiently clear.

Sub-Article (2)

In the event that the time-limit cannot be fulfilled by the litigant because of circumstances beyond his power (*force majeure*) the chairperson may consider extending the said period of time.

The extension of the said period of time shall be 14 (fourteen) days as from the time when the circumstances beyond his power come to an end.

Article 39
Sub-Article (1)

Referred as a document the implementation of which is subject to a lawsuit shall be a distress warrant, confiscation or auction.

Sub-Article (2)

Sufficiently clear.

Article 40
Sub-Article (1)

Sufficiently clear.

Sub-Article (2)

An application for revocation can be filed with respect to a lawsuit presented to the Agency for the Settlement of Tax Disputes and not yet examined or being examined.

The said application for revocation may be subject to an examination with a speedy procedure.

No lawsuit can be filed against the ruling passed after an examination with a speedy procedure.

Article 41
Sub-Article (1)

Sufficiently clear.

Sub-Article (2)

The amount of the registration fee may be changed on the basis of economic and monetary considerations.

Article 42

Sufficiently clear.

Article 43

Sufficiently clear.

Article 44

Sufficiently clear.

Article 45

Sufficiently clear.

Article 46

Sufficiently clear.

Article 47

Sufficiently clear.

Article 48

Sufficiently clear.

Article 49
Sub-Article (1)

The session of the Agency for the Settlement of Tax Disputes shall be declared closed to the public with a view to protecting the confidentiality of the appellant or the litigant.

Sub-Article (2)

Sufficiently clear.

Sub-Article (3)

Referred to as completeness in this sub-article shall be among others the xerox copy of the decision which is subject to the appeal or the lawsuit, while referred to as clarity shall be, among other things, the reason for the appeal or the lawsuit.

Article 50
Sub-Article (1)

Sufficiently clear.

Sub-Article (2)

Sufficiently clear.

Sub-Article (3)

Sufficiently clear.

Sub-Article (4)

The period of 3 (three) months shall be needed to allow sufficient time to the Agency for the Settlement of Tax Disputes to pass a ruling.

Article 51
Sub-Article (1)

Referred to as a direct interest shall be, among others, anything directly linked with ownership, for example, a session member having shares numbering over 25% (twenty-five per cent) of the shares of the company filing an appeal or a lawsuit.

Following the example above, what is referred to as an indirect connection shall be that the shares are owned by the child of the said session member

Sub-Article (2)

Sufficiently clear.

Sub-Article (3)

Sufficiently clear.

Sub-Article (4)

If the direct interest or the indirect interest comes to light after the passage of 1 (one) year, the ruling shall remain valid.

Sub-Article (5)

The period of 3 (three) months shall be needed to allow sufficient time to the Agency for the Settlement of Tax Disputes to pass a ruling.

Article 52

Sub-Article (1)

The party subject to an appeal or a lawsuit who is summoned by the chairperson of a session shall be obligated to be present in the session.

An appellant or a litigant may be summoned by the chairman of a session and if summoned, the person concerned shall be obligated to be present in the session.

Sub-Article (2)

Sufficiently clear.

Article 53

Sufficiently clear.

Article 54

Sub-Article (1)

The charges incurred to bring a witness to a session as requested by the disputing parties shall be borne by the requesting party. If a witness is required to come by the chairperson of a session because of his office, the charges incurred to bring the witness shall be borne by the Agency for the Settlement of Tax Disputes.

Sub-Article (2)

Referred to as a witness coming by himself in the session shall be that a witness cannot be represented by another person or ask another person as his proxy.

Sub-Article (3)

Sufficiently clear.

Sub-Article (4)

Sufficiently clear.

Article 55
Sub-Article (1)

Witnesses shall be called into a session one by one in the order deemed the best by the chairperson of the session.

A witness already examined shall remain inside the session room with the exception that at his own request, or at the request of another witness, or at the request of the disputing parties, the person concerned can leave the session room with the permission of the chairperson of the session.

Sub-Article (2)

Sufficiently clear.

Sub-Article (3)

Sufficiently clear.

Article 56
Sub-Article (1)

Sufficiently clear.

Sub-Article (2)

The said information is needed to give more information and greater conviction of the session member concerned, and the parties from whom information is requested need not take an oath or make a pledge.

Article 57

Sufficiently clear.

Article 58

Specially with respect to banks, the obligation to keep things confidential shall be abolished by virtue of a written instruction from the Minister pursuant to the law on banking affairs.

Article 59

Sufficiently clear.

Article 60

Sufficiently clear.

Article 61

Sufficiently clear.

Article 62
Sub-Article (1)

Sufficiently clear.

Sub-Article (2)

Sufficiently clear.

Sub-Article (3)

Referred to as an obstacle which may be justified by the law shall be, for example, that the witness is already at a very advanced age, or is suffering from an illness which shall not enable him to be present in a session.

The council may assign one of the session members to take an oath or make a pledge.

Article 63

Sufficiently clear.

Article 64

The chairperson shall be authorized to decide that the examination with a speedy procedure shall be conducted by a council or a single member.

Article 65
Sub-Article (1)

Referred to as a dispute which is not within the authority of the Agency for the Settlement of Tax Disputes as meant in letter (f), shall be, for example, the lawsuit that a third party files against the implementation of confiscation on the basis of a claim of the right of proprietorship over the goods confiscated.

Sub-Article (2)

Referred to as a dispute on a certain tax shall be a tax dispute which is filed to the Agency for the Settlement of Tax Disputes and whose appeal or lawsuit fails to fulfil formal requirements, or which is linked with a tax dispute with the disputed amount not exceeding Rp 1,000,000.00 (one million rupiahs).

Sub-Article (3)

The amount of the tax being disputed may be changed by the Minister on the basis of economic and monetary considerations.

Article 66

Sufficiently clear.

Article 67

The provision on an examination with an ordinary procedure shall also apply to an examination with a speedy procedure, namely the provisions on the opening of a session and the withdrawal and replacement of session members and the session secretary, the provision on witnesses, confidentiality and interpreters as meant in Articles 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62 and 63.

Article 68 Sub-Article (1)

The Agency for the Settlement of Taxes adheres to the principle of free establishment of evidence. The council or a single member shall do its/his/her best to make available evidence in the form of letters or writing prior to using other means of evidence establishment.

Sub-Article (2)

Conditions known by the public shall be for example:

- (a) an authentic deed is higher in degree than an unauthentic one;
- (b) a residential identity card, a driver's licence or a passport may be used as a means of self-identify.

Article 69

Evidence in the form of a letter or writing is independent of its model. A letter or writing may be in the form of a photocopy, a record, a film, a diskette, a cassette, a facsimile, a telex, a printout, or a receipt.

Article 70

Sufficiently clear.

Article 71

Sufficiently clear.

Article 72

Sufficiently clear.

Article 73

Sufficiently clear.

Article 74

Sufficiently clear.

Article 75

This article contains a provision intended to determine material truth, in accordance with the principle adhered to in the laws on taxation.

Therefore, a session member shall strive to determine what evidence must be established, the charges on evidence establishment, a fair judgement for all parties and the validity as evidence of the facts revealed during the session not being limited to facts and matters presented by the parties.

In the session all parties shall continue to be able to present new things, which have not been revealed in the appeal or the lawsuit, the letter of appeal description or the denial or the response.

Article 76

The ruling passed by the Agency for the Settlement of Tax Disputes shall constitute a final ruling with a permanent legal force.

An appeal or a lawsuit filed to the Agency for the Settlement of Tax Disputes shall constitute a last legal attempt.

The ruling passed by the Agency for the Settlement of Tax Disputes does not constitute the ruling of a state's administration so the said ruling shall not be subject to a lawsuit at the state's administrative court.

Article 77

The conviction of a session member shall be based on an evaluation of evidence establishment and shall be in conformity with the prevailing laws.

Article 78

Sufficiently clear.

Article 79

This article determines the types of rulings passed by the Agency for the Settlement of Tax Disputes and shall not recognize the type of ruling in the form of an interim stipulation or decision.

The ruling of the Agency for the Settlement of Tax Disputes shall not be subject to a lawsuit filed to a public court, a state's administrative court, or another Agency for the Settlement of Tax Disputes, with the exception of a ruling in the form of "non-acceptance" which is concerned with competency.

Article 80 Sub-Article (1)

The calculation of a period of 12 (twelve) months in the ruling passed may be given an example as follows: if the appeal is received on 5 April 1999, the ruling must be passed at the latest on 4 April 2000. If after 4 April 2000 the Agency for the Settlement of Tax Disputes has not passed a ruling, the said dispute shall be examined with a speedy procedure with a ruling saying that the appeal filed shall be totally accepted.

Sub-Article (2)

Sufficiently clear.

Sub-Article (3)

Sufficiently clear.

Article 81
Sub-Article (1)

Sufficiently clear.

Sub-Article (2)

The time-limit allowed for the correction of the said error shall be only 1 (one) year as from the time when the ruling is passed.

Sub-Article (3)

Sufficiently clear.

Sub-Article (4)

Sufficiently clear.

Sub-Article (5)

Sufficiently clear.

Article 82

Sufficiently clear.

Article 83

Sufficiently clear.

Article 84

Sufficiently clear.

Article 85
Sub-Article (1)

Referred to as other forms of identity shall be the taxpayer's code number, the number of taxable company confirmation, a residential identity card, or a passport.

Sub-Article (2)

Sufficiently clear.

Sub-Article (3)

Sufficiently clear.

Sub-Article (4)

Sufficiently clear.

Sub-Article (5)

Sufficiently clear.

Article 86

Sufficiently clear.

Article 87

Basically the ruling of the Agency for the Settlement of Tax Disputes can be implemented directly unless the said ruling shall cause excess tax payment.

For example, if the ruling of the Agency for the Settlement of Tax Disputes shall cause a tax to be overpaid, the head of the tax service shall in this case still have to issue a letter of instruction for the payment of tax overpayment, which a taxpayer shall need to be able to get back the said overpayment.

With account being taken of the provision on the compensation in the form of an interest as stipulated in Law No. 6/1983 on the general provision on and the procedure for taxation as already amended by Law No. 9/1994, the compensation in the form of an interest shall be given for tax overpayment:

- (a) the appeal application of which is filed to the Tax Advisory Council concerning the fiscal year of 1995 and so forth;
- (b) the appeal application of which is filed to the Agency for the Settlement of Tax Disputes.

The procedure for the refunding of tax overpayment along with the interest shall conform to the prevailing provision.

Article 89

Sufficiently clear.

Article 90

Sufficiently clear.

Article 91
Sub-Article (1)

Sufficiently clear.

Sub-Article (2)

With the establishment of the Agency for the Settlement of Tax Disputes for the first time on the date when this law becomes effective, on the basis of this transitional regulation it is stated that an appeal filed by a taxpayer to the Tax Advisory Council or the Customs and Excise Advisory Institute but not yet decided upon up to the date of the enforcement of this law shall be handed over for settlement to the Agency for the Settlement of Tax Disputes with an official report being drawn up in this regard.

Sub-Article (3)

Sufficiently clear.

Article 92

Sufficiently clear.

Article 93

Sufficiently clear.

Article 94

Sufficiently clear.

THE ESTABLISHMENT OF THE TAX DISPUTE SETTLEMENT BOARD
(Presidential Decree No. 41/1997 dated 7 October 1997)

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Considering:

- a. that on the basis of Article 3 paragraph (1) of Law No. 17/1997 on the Tax Dispute Settlement Board, the formation of the tax dispute settlement board has been stipulated, which is domiciled in the capital of the country;
- b. that as the implementation of the stipulation in point a, it is deemed necessary to lay down provisions concerning the establishment of the tax dispute settlement board, in a presidential decree.

In view of:

1. Article 4 paragraph (1) of the Constitution of 1945;
2. Law No. 17/1997 on the tax dispute settlement board (Statute Book of 1997 No. 40, Supplement to Statute Book No. 3684).

DECIDES:

To stipulate:

THE PRESIDENTIAL DECREE CONCERNING THE ESTABLISHMENT OF THE TAX
DISPUTE SETTLEMENT BOARD

Article 1

The Tax Dispute Settlement Board as meant in Article 3 paragraph (1) of Law No. 17/1997 on the tax dispute settlement board, shall be domiciled in the Special Region of the Jakarta Capital City.

Article 2

The jurisdiction of the Tax Dispute Settlement Board as meant in Article 1, hereinafter referred to as the Board, shall cover the entire territory of the Republic of Indonesia.

Article 3

- (1) The Board shall be composed of executives, members, and a secretary.
- (2) The executives as meant in paragraph (1) shall comprise a chairman and 2 (two) deputy chairmen.
- (3) The members, including the executives as meant in paragraph (2), shall total 35 (thirty-five) at the maximum.

Article 4

- (1) The members of the Board shall be appointed by the President from the list of names proposed by the Minister of Finance.
- (2) The chairman and deputy chairmen of the Board shall be appointed by the President from among the members as meant in paragraph (1) on the basis of the proposal of the Minister of Finance.

Article 5

The chairman, deputy chairmen and members of the Board shall be appointed for a term of office of 5 (five) years, which is extendable for another term of office.

Article 6

- (1) The appeals submitted to the Tax Consultative Assembly or the Customs and Excise Consultative Assembly before 1 January 1998 which are not yet examined or decided upon, shall be treated as appeals submitted to the Board and examined pursuant to the provisions in Law No. 17/1997 on the Tax Dispute Settlement Board.
- (2) The appeals as meant in paragraph (1) shall be decided upon within 36 (thirty-six) months starting from the enforcement of Law No. 17/1997 on the Tax Dispute Settlement Board.
- (3) Law suits filed against the implementation of tax laws which have been submitted to public courts or public administration courts before 1 January 1998 shall be examined and decided upon by the said courts.

Article 7

All expenses arising from the establishment of the Board shall be borne by the Budget of the Ministry of Finance.

Article 8

This presidential decree shall come into force as from the date of stipulation.

Stipulated in Jakarta
on 7 October 1997

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

sgd.
S O E H A R T O
