

# Proving Intent: A Composite Approach to Aggressive Tax Avoidance Schemes

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## ABSTRACT

This literature study aims to critically analyze the construction and methods of proving the element of intent (*mens rea*) in cases of aggressive tax avoidance. Using a normative juridical approach with qualitative descriptive analysis, this research examines the transposition of the *mens rea* concept from general criminal law into the framework of Indonesian tax criminal law, as primarily regulated in the General Provisions and Tax Procedures Law as amended by the Tax Regulations Harmonization Law. The findings indicate that proving intent in aggressive tax avoidance schemes requires a composite approach that relies on objective indicators and circumstantial evidence. Key parameters include the absence of economic substance and business purpose, systematic patterns of transactions violating the arm's length principle, internal corporate documents revealing tax-driven policies, and data from international automatic exchange of information. The evolution of domestic jurisprudence and the adoption of global standards, particularly the OECD's Base Erosion and Profit Shifting (BEPS) project, have significantly shaped this proofing approach, shifting it from a formalistic to a substantive assessment. This study concludes that the effectiveness of law enforcement in tackling sophisticated tax avoidance depends on the convergence of precise regulations, advanced investigative capabilities, and consistent judicial interpretation that collectively uncover the deliberate intent behind formally legal transactions.

## INTRODUCTION

The national tax legal framework in Indonesia, as mandated by Article 23A of the 1945 Constitution of the Republic of Indonesia, asserts that taxes and other compulsory levies for state purposes shall be regulated by law. This principle underpins the entire national tax system, which aims to ensure legal certainty and fairness in the fulfillment of tax rights and obligations. In the dynamics of modern tax law, the dividing line between legitimate tax planning and illegal tax avoidance is often blurred. The fundamental difference lies in the presence of good faith and compliance with both the spirit and the letter of the law (Refalia et al., 2024). Activities that technically utilize legal loopholes without violating formal provisions, but are contrary to the substantive objectives of tax laws, can be classified as aggressive tax avoidance. Braithwaite (2005) outlines how corporate behavior regarding tax obligations is often influenced by incentive structures and risk perception. Furthermore, an understanding of cost behavior and cash flow management is essential to

assess the impact of tax policies on company operations (Sinambela & Djaelani, 2022).

The concept of aggressive tax avoidance is not a terminology explicitly defined in the Law on General Provisions and Tax Procedures. However, its essence can be traced from the provisions of Article 18 paragraph (1) of the Law on General Provisions and Tax Procedures, which authorizes the Director General of Taxes to perform corrections or adjustments to the calculation of income and tax deductions for taxpayers who have a special relationship, if the transaction is not conducted in accordance with the arm's length principle. This arm's length principle is the key to testing the economic substance behind a transaction. Cooper (2006) argues that aggressive tax avoidance is fundamentally a form of exploitation of legal rules to achieve results not intended by the legislature, thereby undermining the state's fiscal authority and the principle of vertical equity among taxpayers. The implementation of Value Added Tax is also relevant to reduce the gap in treatment

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between conventional business actors and digital platforms (Wibowo et al., 2023).

From the perspective of tax criminal law, Articles 38 and 39 of the Law on General Provisions and Tax Procedures regulate criminal sanctions related to actions that reduce tax payments. The element of *mens rea* (guilty mind) is a fundamental component that must be proven to impose criminal sanctions. In general criminal law doctrine, *mens rea* encompasses the perpetrator's psychological state, such as intent (*dolus*) or negligence (*culpa*). Proving the element of intent in tax crimes, particularly those related to aggressive tax avoidance schemes, faces complex challenges (Soewarsono, 2024). These challenges arise because such schemes are often designed by legal advisors or tax consultants using structures and instruments that are formally legal. Dyreng et al. (2010) indicate that management's ability to consistently reduce tax burdens through operational activities and planning often indicates a specific pattern and knowledge. Additionally, the effectiveness of the self-assessment system and the use of tax technology are important factors to prevent avoidance and increase compliance (Sinambela & Putra, 2021; Lestari & Sinambela, 2022).

Efforts to prove intent cannot rely solely on formal transaction documents but must explore the motive, purpose, and the perpetrator's understanding of the legal consequences of their actions. The development of the "business purpose test" and "substance over form" concepts in tax jurisprudence across various jurisdictions, including Indonesia, reflects the authorities' efforts to look behind the formal structure of transactions. Sikka and Willmott (2010) emphasize that a tax legal system focusing solely on formal compliance can actually facilitate aggressive avoidance practices, thus requiring an approach capable of capturing the true intent and economic purpose. This makes the analysis of the element of intent a crucial aspect in determining whether an action can be qualified as a tax crime. Understanding cost patterns and break-even point analysis is also important for companies in planning tax strategies and ensuring stable cash flow (Sinambela et al., 2022).

Therefore, this literature study focuses on a critical examination of the concepts, methods, and approaches to proving the element of intent in aggressive tax avoidance schemes. This research seeks to investigate how criminal law theory, specifically regarding *mens rea*, is applied in the realm of tax law, which is fraught with technical and economic complexity. By studying academic literature, court decisions, and regulatory

developments, this study aims to unravel the complexity of such proof and identify parameters that can serve as indicators of intent. This analysis is important to provide intellectual contribution toward the development of more equitable and effective tax law enforcement, as well as to provide clarity on the boundaries between legitimate tax strategies and those that violate the law. Empirical studies related to taxpayer compliance show that tax awareness, the quality of tax services, and fiscal sanctions significantly influence individual and corporate compliance (Masithoh & Mardikaningsih, 2022; Lestari et al., 2021).

The first problem lies in the conceptual and operational ambiguity between illegal aggressive tax avoidance and legitimate tax planning. The boundary between these two practices is often blurred, depending on the interpretation of the principle of economic substance and genuine business purpose. Tax authorities, in this case, the Directorate General of Taxes, are faced with the difficulty of distinguishing between schemes genuinely designed for legitimate business purposes and schemes deliberately created solely to artificially save taxes. This ambiguity directly impacts the stage of proving the element of intent. While a transaction may appear anomalous from a fiscal standpoint, building a strong legal argument to prove bad faith or an intent to deceive tax authorities requires a high standard of proof and internal evidence, which is often difficult to obtain. Freedman (2004) suggests that the complexity of tax rules itself creates a fertile environment for creativity in designing avoidance schemes, while simultaneously complicating the proof of intent to violate the law. The business's ability to survive in an increasingly complex tax environment is also a concern, making management competence and cost planning key factors (Mardikaningsih et al., 2022).

Second, the application of general criminal law doctrines regarding *mens rea* (guilty mind) within the realm of tax law encounters significant friction. Conventional criminal law often discusses intent in actions that are physically and directly observable. Meanwhile, in aggressive tax avoidance, the "actions" taken may be a series of inter-company transactions within a group, the use of entities in certain jurisdictions, or complex financial instruments, each of which individually may appear legitimate. Proving that the perpetrator—often a legal entity represented by its management—possesses the knowledge and will to achieve the legal consequence of unlawfully reducing tax obligations becomes very complex.

Weisbach (2002) demonstrates that many tax avoidance schemes are intentionally designed to create legal uncertainty, allowing perpetrators to argue that they have a "reasonable belief" that the scheme is legal. This argument directly touches the core of proving the element of intent, namely the perpetrator's knowledge and awareness of the unlawful nature of their actions.

Third, there are limitations in evidence and investigative methodologies capable of uncovering the element of intent in aggressive tax avoidance practices. Primary evidence often consists of written documents such as contracts, legal opinions, and accounting records, which can easily be arranged to provide a narrative that conforms to the formal legal structure. Tax authorities need to look beyond these documents and seek supporting evidence such as internal emails, meeting minutes, or testimony from related parties that can reveal the true motivation behind a transaction. However, access to such evidence is often hampered by business confidentiality, attorney-client privilege, and differing legal jurisdictions. Braithwaite (2005) notes that the effectiveness of law enforcement against white-collar crime depends heavily on the regulator's ability to "read the mind" of the corporation through document trails and behavior patterns. Without sophisticated investigative methodologies and a legal framework that provides adequate examination authority, proving *mens rea* will remain a major challenge. Furthermore, the application of the principle of good faith in contract execution can also serve as an additional indicator for officials in assessing the perpetrator's intent (Irfansyah et al., 2024).

Global developments in combating harmful tax avoidance practices, spearheaded by the Organisation for Economic Co-operation and Development (OECD) through the Base Erosion and Profit Shifting (BEPS) project, have encouraged many countries, including Indonesia, to reform their legal frameworks and tax policies. Indonesia has adopted a number of BEPS actions, which are reflected in amendments to tax laws and regulations. This reform concerns not only the substantive aspects of tax rules but also aspects of law enforcement, including evidence. In a global environment that is increasingly transparent with the automatic exchange of tax information, pressure to crack down on aggressive tax avoidance practices is becoming stronger. However, increased law enforcement efforts must be balanced with clarity and legal certainty for taxpayers. Studies that specifically examine the

element of intent become relevant to ensure that law enforcement is carried out proportionately and does not ensnare taxpayers engaged in reasonable business transactions. Sikka and Willmott (2010) emphasize that the legal response to tax avoidance must be targeted and based on an accurate understanding of the mechanisms and motivations behind it. Cost analysis and the categorization of cost behavior can support tax auditors in assessing the effectiveness of a company's tax avoidance or tax planning strategies (Sinambela & Djaelani, 2022).

At the domestic level, the Indonesian government's efforts to increase tax revenue to fund national development make the issue of tax compliance and law enforcement against tax violations a priority. Tax court and tax crime rulings in recent years indicate an increase in the complexity of cases involving aggressive tax avoidance schemes that involve cross-border transactions and derivative financial instruments. Analysis of this jurisprudence provides rich empirical study material to evaluate how law enforcement officials from tax investigators and public prosecutors to judges understand and apply the concept of intent within the technical context of taxation. Systematic literature research can help identify consistent patterns of legal interpretation and application, as well as gaps that still need to be addressed. Prebble and Prebble (2010) argue that the legitimacy of tax law depends heavily on the perception of its fairness, and fair law enforcement requires strong and clear proof of guilt. The implementation of electronic filing-based taxation and information technology readiness further improve taxpayer accuracy and compliance (Mardikaningsih et al., 2022).

Furthermore, developments in the realm of general criminal procedural law, including the deliberation of the Draft Criminal Code, also carry implications for tax criminal law. The debates regarding the forms of guilt, standards of proof, and corporate liability in the Draft Criminal Code will certainly influence the interpretation and application of criminal provisions in the Law on General Provisions and Tax Procedures. Therefore, an in-depth academic study regarding the element of intent in aggressive tax avoidance is currently necessary to provide inputs based on theoretical and comparative analysis. This input can be useful for legislators, regulators, and legal practitioners in drafting and applying clearer rules, thereby preventing arbitrariness on one side and providing an effective deterrent effect on the other, as reviewed by Dyreng et al. (2010) regarding the

importance of understanding the boundaries of legality in tax planning. Taxpayer awareness and the influence of tax sanctions also become important indicators for personal and corporate tax compliance (Anjanarko, 2022).

The purpose of this research is to analyze and critique the legal construction and the mechanisms for proving the element of intent (*mens rea*) in aggressive tax avoidance crimes. Specifically, the research seeks to trace the transformation of the concept of intent from general criminal law into the tax criminal law framework, to identify and evaluate the relevant and effective parameters and types of evidence in proving the perpetrator's intent or purpose within complex schemes, and to analyze the influence of jurisprudential and regulatory developments, both national and international, on such evidentiary approaches. The theoretical contribution of this research is expected to enrich academic discourse in the field of tax criminal law, particularly regarding the theory of guilt and evidence. Meanwhile, in practical terms, the results of this study can provide a reference for policymakers, law enforcement officials, and tax practitioners in understanding and applying tax criminal provisions more proportionately and accurately, thereby supporting the attainment of legal certainty and justice.

## RESEARCH METHOD

This research is a qualitative normative legal literature study. Normative research focuses on examining legal principles, norms contained in legislation, and court decisions to resolve the legal issues presented (Marzuki, 2005). The qualitative approach was chosen because it aligns with the research's exploratory and interpretative goals to understand the complexity of the concept of intent within the realm of tax crimes. The nature of this research is descriptive-analytical, which seeks to describe systematically and analytically the legal construction of *mens rea*, its evidentiary parameters, and the dynamics of the jurisprudence surrounding it, and subsequently to analyze the implications and logical relationships between these elements to answer the research questions.

The data used consists solely of secondary data, classified into three main groups. The first group is primary legal material, which includes legislation such as the 1945 Constitution of the Republic of Indonesia, the Criminal Code, the Law on General Provisions and Tax Procedures and its amendments, the Law on Tax Courts, and their implementing regulations. The second group is secondary legal

material, consisting of textbooks, scientific journal articles, scholarly works, commentary by legal scholars, and legal dictionaries that provide explanations and interpretations of the primary legal material. The third group is tertiary legal material, which includes materials that support the research process, such as cumulative journal indexes and online legal portals that facilitate literature searches.

The analytical technique applied is content analysis and legal narrative analysis. Content analysis is used to systematically examine written materials such as legislative texts and court decisions by identifying patterns, key concepts, and the argumentative frameworks employed (Krippendorff, 2004). The stages include material collection, data reduction by coding text based on research themes, data presentation in the form of structured narrative descriptions, and drawing verificative conclusions. Meanwhile, legal narrative analysis is applied to understand the logical flow and construction of reasoning in court decisions related to tax avoidance cases, particularly regarding the proof of the element of intent. This approach allows the researcher to interpret how judges connect proven facts with existing legal norms to reach a conclusion regarding the presence or absence of intent. The entire analysis process is conducted while maintaining legal interpretation rules, such as grammatical, systematic, teleological, and historical interpretation, to achieve a comprehensive and substantive understanding of the subject under study.

## RESULT AND DISCUSSION

### The Conceptual Adaptation and Operationalisation of Mens Rea in Tax Criminal Law

Mens rea (guilty mind) serves as the primary foundation for criminal liability in the context of taxation. The concept of intent or mens rea in Indonesian general criminal law, which originates from the Criminal Code, is the main prerequisite for criminal liability, referring to the perpetrator's mental state. This condition encompasses knowledge, will, and awareness of the unlawful nature of the act committed. The complexity of handling tax evasion in Indonesia cannot be separated from the monistic criminal law system adhered to by Indonesia, which is synonymous with the maxim "actus non facit reum nisi mens sit rea" (Situmorang, 2023). In conventional criminal law, this concept was developed for actions that can be physically observed and assessed. However, transferring this concept into the realm of tax criminal law, particularly to reach aggressive tax

avoidance actions, requires a significant transformation. Tax law deals with financial obligations arising from legal relationships between the state and the taxpayer, where violations are often abstract, manifested in complex documents, reports, and economic transactions. Therefore, the operationalization of mens rea here is no longer merely proving the intent to commit a forbidden physical act, but proving the intent to achieve a legal consequence, namely the unlawful reduction of tax obligations. The Law on General Provisions and Tax Procedures, as amended several times, most recently by the Law on Harmonization of Tax Regulations, serves as the main normative framework that adopts and adapts this principle of intent into the tax criminal sanction system. The transformation of mens rea ensures that tax sanctions remain based on the principle of justice. Furthermore, the application of professional integrity and ethical principles in legal practice also influences how authorities assess taxpayer behavior fairly and proportionally (Saktiawan et al., 2021).

Intent in tax law focuses on formal actions that disadvantage the state. The fundamental difference lies in the object of that intent. If in the Criminal Code intent can be directed at material actions such as theft or assault, in the Law on General Provisions and Tax Procedures, intent is directed at formal and administrative actions or omissions that result in state losses. Articles 38 and 39 of the Law on General Provisions and Tax Procedures are primary examples, which state criminal threats for those who "intentionally" fail to submit a Tax Return, submit a Tax Return that is incorrect or incomplete in content, or fail to deposit taxes that have been withheld or collected. The word "intentionally" in these articles is the gateway to the mens rea concept. Proving it requires an interpretation that goes deeper than merely observing whether or not a Tax Return exists. Law enforcement officials must demonstrate that the taxpayer has full awareness of their obligations and has the will not to fulfill them, or intentionally provides misleading information. In cases of aggressive tax avoidance, this intent is not always explicit, but implied in the designed structure of the transaction. Intent implied in the transaction structure becomes a tax evidentiary challenge. On the other hand, the principle of preventive and repressive law enforcement also shapes taxpayer compliance behavior in building social order (Suwito et al., 2023).

The concept of dolus (intent) in criminal law finds a unique application in taxation. Tax avoidance

or tax resistance is an obstacle occurring in tax collection that results in a reduction of state treasury revenue (Patel, 2023). Aggressive tax avoidance often involves a series of transactions that, while appearing legitimate individually, are collectively intended to achieve an artificial fiscal result. This is where forms of intent in general criminal law, such as dolus directus (direct intent) and dolus eventualis (conditional intent), find their unique application. Dolus directus can be applied when evidence is found that a tax planning scheme was designed with the primary objective of avoiding tax, where the consequence of tax reduction is the directly desired goal. For example, the creation of fictitious transaction contracts between companies within the same group that exist only on paper. Meanwhile, dolus eventualis can arise in situations where a taxpayer knows that the scheme they are using carries a high risk of being rejected by tax authorities and considered unlawful, but they proceed anyway while accepting that risk. The application of dolus eventualis in taxation is complex because it concerns legal interpretation and is often a subject of debate in court. The debate over dolus directus and dolus eventualis reveals the complexity of tax mens rea. Additionally, tax amnesty and sanction relief programs receive positive responses from taxpayers and can be indicators of their compliance behavior (Sudja'i & Darmawan, 2021).

The Law on Harmonization of Tax Regulations strengthens the proof of intent through substantive principles. The latest regulation strengthens the framework for proving this intent by introducing or reinforcing substantive analytical tools. The Law on Harmonization of Tax Regulations reinforces the application of the substance over form principle and the business purpose test. Operationally, this principle becomes the manifestation of efforts to uncover mens rea. When tax authorities perform a correction because a transaction with a related party does not meet the arm's length principle, the correction action itself already contains an initial suspicion that there was intent to structure the transaction in such a way that it is unreasonable. Further proof is required to transform this administrative suspicion into an element of criminal intent. In other words, the unreasonableness of a transaction becomes an indicator (clue) that can lead to the conclusion of the existence of mens rea, although it is not absolute proof. This substantive principle makes the unreasonableness of a transaction an indicator of mens rea.

Corporate intent becomes an important dimension in modern tax law. The operationalization

of the concept of intent is also expanded to reach legal entities or corporations. While laws outside the Criminal Code have accommodated that corporations are also subjects of criminal law, such that if a corporation commits a criminal act, it can be held accountable (Prakasa et al., 2023). This is an important development because aggressive tax avoidance is largely carried out by corporate entities. Corporate criminal liability, or liability incurred by a body, can be attributed to its management or to the body itself. Corporate intent is a legal construct that is fictitious; it must be proven through the attitudes and actions of individuals acting for and on behalf of the corporation. Proving corporate *mens rea* (guilty mind) requires an examination of internal policies, minutes of board meetings, management instructions, and the systematic behavioral patterns of the corporation. If it can be proven that the decision to execute an aggressive tax avoidance scheme was a corporate decision made by its valid organs or representatives, then that intent can be attributed to the corporation. Corporate *mens rea* is proven through the policies and internal decisions of the legal entity. Transparency in financial reporting and compliance with tax reporting obligations serve as essential foundations for the analysis of corporate intent (Parji et al., 2024; Kusen et al., 2023).

The doctrine of *willful blindness* expands the scope of intent in criminal tax law. Furthermore, the doctrine of *willful blindness* or intent through omission is also beginning to find a place in criminal tax law reasoning. The doctrine of *willful blindness* bridges the gap between negligence and knowledge by treating subcategories of negligence cases as cases of knowledge (Simons, 2021). This doctrine applies when a taxpayer or corporate officer consciously avoids knowledge regarding facts that should have been known, or deliberately chooses to remain ignorant (*turning a blind eye*) toward the fiscal implications of a transaction arranged by their advisors. Although not explicitly mentioned in the Law on General Provisions and Tax Procedures, this doctrine can be used by public prosecutors and judges to infer the existence of intent. For instance, when the director of a company merely signs financial reports and highly complex tax planning schemes without asking or attempting to understand their economic substance even when there are clear signs that the scheme is intended to avoid taxes their passive attitude can be interpreted as a form of intent. The application of this doctrine bridges the evidentiary gap between negligence (*culpa*) and full intent (*dolus*). *Willful blindness* bridges the gap between

*culpa* and *dolus* in criminal tax law. In practice, the effectiveness of law enforcement and oversight is also influenced by the taxpayer's response to and awareness of applicable tax regulations (Rimadhani et al., 2024; Sudja'i & Darmawan, 2021).

International indicators help identify intent in tax avoidance. Parameters for identifying intent in aggressive tax avoidance are also developed through specific indicators. These indicators, which often originate from international practices such as those identified by the Organisation for Economic Co-operation and Development (OECD), include the existence of artificial and complex transactions without clear commercial purposes, the use of entities in low-tax jurisdictions without economic substance, the improper application of tax treaty provisions, and drastic inconsistencies between accounting treatment and tax treatment. When several of these indicators appear simultaneously, they form a pattern that points to the conclusion of the existence of a planned intent or motive. The Indonesian tax authorities, through various Director General of Taxes Regulations and audit guidelines, have adopted such indicators as working tools to direct audits toward transactions potentially containing the intent to avoid taxes. OECD indicators provide direction for tax authorities in proving *mens rea*.

Court decisions serve as vital precedents in the operationalization of *mens rea* (guilty mind). The role of Tax Court and general criminal court rulings is crucial in establishing precedents regarding the operationalization of *mens rea*. In their decisions, judges interpret proven facts to conclude the presence or absence of the "intentionally" element. From several available rulings, it is evident that courts tend to examine the entire sequence of the taxpayer's actions. Inconsistencies in bookkeeping, the destruction of supporting documents, the use of shell companies, and unusual transaction engineering are cited as factors supporting the conclusion of intent. Courts look not only at a single action but at the overall pattern or scheme. This approach aligns with the systematic nature of aggressive tax avoidance. Thus, jurisprudence functions as a medium that translates the abstract concept of *mens rea* into more concrete parameters applicable to specific cases. Jurisprudence makes *mens rea* more concrete and applicable in tax cases. Principles of justice and professional ethics also serve as essential guidance for judges and law enforcement officials in assessing intent and the fairness of legal decisions (Saktiawan et al., 2021).

The integration of general criminal law and tax law demands high standards of proof. The

integration between general criminal law and tax law regarding the proof of intent also requires attention. The investigation and prosecution process for tax crimes, although regulated in the Law on General Provisions and Tax Procedures, substantially refers to the Criminal Procedure Code. This means that the standard of proof for "intentionally" in tax crimes must ultimately meet the standard of proof in general criminal procedure law, which is proof "beyond reasonable doubt." It is this high standard that presents the greatest challenge. To satisfy it, the evidence submitted must be strong and comprehensive, not only consisting of technical tax documents but potentially requiring expert testimony, information from foreign state authorities, and forensic accounting analysis that can reveal the intent behind the figures. The "beyond reasonable doubt" standard demands comprehensive and convincing tax evidence.

The operationalization of tax *mens rea* is a constantly evolving legal construction. Overall, the transfer and operationalization of the concept of intent from general criminal law into criminal tax law to reach aggressive tax avoidance is a dynamic and evolving process of legal construction. Core regulations such as the Law on General Provisions and Tax Procedures and the Law on Harmonization of Tax Regulations provide a normative basis by including the "intention" element in their offense formulations. However, their effectiveness depends heavily on the ability of law enforcement to prove this element through approaches that examine economic substance, behavioral patterns, and the internal attitude of the perpetrator both individual and corporate. The development of doctrines such as *substance over form*, corporate liability, and *willful blindness*, alongside administrative guidelines and jurisprudence, has enriched the tools available to operationalize *mens rea* in a realm filled with technical complexity. Consequently, criminal tax law can function as an effective *ultimum remedium* (last resort) against aggressive tax avoidance practices that harm the public interest. Tax *mens rea* functions as an *ultimum remedium* against aggressive avoidance.

### Parameters and Evidence for Proving the Element of Intent

Proving intent in aggressive tax avoidance schemes requires an unconventional evidentiary approach, given that prohibited material acts are often veiled within a series of transactions that formally meet legal requirements. Parameters and evidence must be designed to capture the "state of mind" and planned intent behind such complex structures. The

primary regulatory reliance rests on the Law on General Provisions and Tax Procedures as most recently amended by the Law on Harmonization of Tax Regulations, particularly Articles 38, 39, and 43A, which govern tax crimes. The threshold for distinguishing administrative tax violations by a taxpayer from a tax crime is based on whether the elements of the crime stipulated in Articles 38, 39, and 39A are met (Putra et al., 2022). The key differentiator lies in the phrase "intentionally," which serves as the starting point for law enforcement officials to build a proof construction from circumstantial evidence toward a direct conclusion of *mens rea*. Proof is no longer fixed on a single defective document, but on a mosaic of facts that collectively depict a pattern of intent. A mosaic of facts is the key to proving intent in aggressive tax avoidance.

Economic substance analysis is a fundamental parameter for proving intent. The first and most fundamental parameter is a detailed analysis of the economic substance of a transaction or series of transactions. Transactions that are formally legal but lack real economic substance are strong indicators of an intent to avoid tax. The primary evidence here comprises all transaction documents, contracts, and accounting records that can be compared with normal business practices. Minister of Finance Regulation Number 213/PMK.03/2016 on Transfer Pricing and its amendments, which adopts the arm's length principle, serves as an essential operational guideline. If the transfer pricing analysis results show significant deviations from conditions applicable between independent parties, this is not merely a basis for fiscal correction, but can constitute preliminary evidence (*aanwijzing*) that there was intent to manipulate profit. In the context of modern business, the use of integrated accounting information systems helps ensure transparency and data consistency (Nuraini et al., 2024). Systematic deviations that benefit affiliates in low-tax jurisdictions strengthen such suspicions. Deviating economic substance becomes initial proof of intent.

Internal company documents are important parameters for proving intent. The second parameter is the existence and content of internal company documents that reflect policies, instructions, or discussions regarding tax strategy. This evidence is highly crucial as it directly touches the decision-making process. Board meeting minutes or audit committee records, internal memoranda, the company's written tax policy, and electronic communication (email) between management can reveal whether a scheme was planned with full awareness of its risks. The Law on General

Provisions and Tax Procedures, through Articles 35 and 44A, grants tax auditors broad authority to request and examine all books, records, and other documents related to the taxpayer's business or free practice. Reluctance or refusal to submit such documents, as regulated in Article 35A, can be used as additional guidance that something is being hidden, which in turn supports the construction of intent. Ethical principles in business decision-making also influence how internal documents are produced and stored, which ultimately impacts the ability of officials to assess intent (Mardikaningsih & Darmawan, 2022). Hidden internal documents strengthen indications of intentionality.

Taxpayer patterns of conduct serve as the third parameter for proving intent. The third parameter involves examining the consistency and pattern of conduct exhibited by the taxpayer over a certain period. A single error might indicate negligence, but the same repeated pattern in reporting certain transactions, claiming unusual deductions, or consistently using intermediary entities in certain regions, demonstrates a planned method. Evidence for this parameter includes the Annual Tax Return for several years, audited financial statements for the current period, and historical transaction data with affiliated parties. This pattern becomes stronger if linked to the first parameter, namely the recurring absence of economic substance. Forensic accounting analysis is often required to uncover hidden patterns behind financial statement figures that appear normal. Cross-company transactions that follow the arm's length principle are also used as a parameter to distinguish legitimate intent from avoidance intent (Triyono et al., 2024). Repeated patterns strengthen indications of intent in tax avoidance.

Differences between commercial and fiscal reports are the fourth parameter of intent. The fourth parameter is the existence of material differences that cannot be logically explained by business reasons between commercial financial reports (for shareholders and the public) and fiscal bookkeeping or financial reports submitted to tax authorities. Reasonable differences are common due to differences in accounting standards and fiscal provisions. However, highly significant differences in key items such as revenue, expenses, or profit especially if they always point toward reducing taxable profit can be evidence of deliberate engineering. The evidence consists of both sets of reports. The Law on Harmonization of Tax Regulations further strengthens the position of tax authorities with an emphasis on the principle of substance over form and fairness, such that

differences that do not reflect economic reality can be considered as deliberate attempts to mislead. These report discrepancies are often studied in the context of corporate compliance and integrity, allowing internal and external auditors to assess potential fiscal manipulation (Yuristiawan et al., 2024). Material discrepancies between commercial and fiscal reports indicate tax engineering.

The role of external advisors serves as the fifth parameter in proving intent. The fifth parameter focuses on the role of and communication with external advisors, such as tax consultants, lawyers, or banks. Legal opinion letters, tax planning proposals, cooperation contracts, and correspondence with such advisors can serve as very strong evidence. These documents may explicitly discuss the goal of reducing tax, evaluate the success risk of a scheme, or even refer to specific legal loopholes to be exploited. Obtaining this evidence is often difficult due to client-advisor privilege, but in a criminal investigation process with a valid warrant, such documents can be requested. The existence of aggressive tax planning documents designed by a third party for the taxpayer directly points to the taxpayer's knowledge and acceptance of the scheme. Analysis of cooperation and coordination with external advisors helps uncover complex decision-making structures (Indarto et al., 2023). External advisor documents can directly reveal taxpayer intent.

Unreasonable financial gain serves as the sixth parameter for proving intent. The sixth parameter is the unreasonable or highly significant financial gain derived from the scheme. Economic motive is the primary driver of aggressive tax avoidance. Therefore, proving the magnitude of tax savings achieved compared to a situation where transactions were conducted reasonably can be used as supporting evidence of motive and intent. The evidence takes the form of a reconstruction calculation made by tax auditors or investigators, showing the difference between tax obligations under real conditions and tax obligations based on the taxpayer's report. This calculation must be supported by robust data and methods, as it will be subject to debate in court. The magnitude of state losses resulting from the scheme, as calculated in the Investigation Report, also constitutes a separate assessment in proving the seriousness and impact of the intent. A clear economic motive strengthens the construction of intent in aggressive tax avoidance.

*Willful blindness* serves as the seventh parameter, highlighting an attitude of willful ignorance. The seventh parameter relates to the

application of the doctrine of *willful blindness* or intent through omission. This parameter is used when a taxpayer, particularly a corporate officer, deliberately shuts their eyes or avoids acquiring knowledge regarding material facts that should have been known. The evidence is more interpretative; it may consist of proof that management received warnings from internal auditors or regulators but ignored them, or that the complexity of the scheme was designed to be difficult to understand so that management could claim ignorance. In legal proceedings, judges can infer *willful blindness* from an attitude of indifference or the failure to implement adequate internal control systems in the taxation sector, even though the company operates in a high-risk field. *Willful blindness* affirms intent through a deliberate passive attitude.

International cooperation and technology serve as the eighth parameter for proving intent. The eighth parameter utilizes technological advancements and international cooperation. Data from the Automatic Exchange of Information (AEOI) under Tax Information Exchange Agreements (TIEA) or articles within Double Taxation Agreements (DTA) can serve as objective evidence. Data on offshore financial accounts, foreign entity ownership, or unreported payment flows in Indonesia can uncover tax avoidance schemes involving other jurisdictions. This electronic data, obtained through legitimate legal channels, provides factual, incontrovertible evidence regarding the existence of hidden assets or transactions, and indirectly proves the intent not to report them. Legitimate international data strengthens factual evidence of tax intent.

Expert testimony serves as the ninth parameter, explaining the complexity of tax schemes. The ninth parameter is the result of expert testimony. Testimony from forensic accounting experts, tax law experts, or valuation experts can help the court understand the complexity of a scheme and why it is considered deliberate aggressive tax avoidance. Experts can explain how a transaction deviates from business norms, outline its artificial mechanisms, and link specific actions to the intent to reduce tax. Expert reports and testimony function as evidence that explains (*expert evidence*), translating complex technical facts into legal conclusions that the panel of judges can understand, particularly in establishing the causal link between the taxpayer's actions and the element of intent. Expert testimony bridges technical facts with legal conclusions regarding intent.

Proving tax intent is the art of assembling a mosaic of evidence. Overall, proving the element of intent in aggressive tax avoidance is the art of assembling a mosaic from various interrelated parameters and pieces of evidence. There is no single certain and conclusive piece of evidence. The strength of the proof lies precisely in the convergence of several mutually supportive parameters. An unreasonable transfer pricing scheme (parameter 1), supported by an internal memo discussing tax savings (parameter 2), carried out consistently over five years (parameter 3), and resulting in billions of rupiah in savings (parameter 6), will form a much stronger construction of proof than each parameter taken separately. Indonesia's continuously updated tax regulations, such as the Law on Harmonization of Tax Regulations and its implementing regulations, provide the legal basis and procedural instruments for authorities to collect and analyze this evidence. The greatest challenge remains the technical capacity of officials and the judicial system to understand and assess such complex mosaics of evidence, as well as the ability of taxpayer defenses to propose other legitimate interpretations. This process determines whether aggressive tax avoidance is successfully proven as a deliberate criminal act or not. The convergence of parameters forms a strong construction of tax intent proof.

### **The Dynamics of Case Law and Regulation in the Development of the Approach to the Admissibility of Evidence**

Jurisprudence and tax regulations form an adaptive framework for proving intent. The development of tax jurisprudence and regulations, both in Indonesia and at the international level, has acted as a dynamic force that progressively shapes and sharpens the evidentiary approach to the element of intent in aggressive tax avoidance cases. The interaction between court rulings that set precedents and regulatory changes responding to global business practices creates an increasingly adaptive legal framework. In Indonesia, the primary pillar remains the Law on General Provisions and Tax Procedures, which has undergone significant reform through the Law on Harmonization of Tax Regulations. These changes did not occur in a vacuum; they were heavily inspired by global pressures and standards, while filtered through the law enforcement experience reflected in the jurisprudence of the Tax Court and general courts. This evolution signals a shift from rigid formalistic approaches toward substantive approaches that seek to capture the economic

essence and the perpetrator's intent behind technically legal transactions. Tax law evolution confirms a shift toward substantive approaches.

National jurisprudence serves as a laboratory for interpreting the element of intent. National jurisprudence, particularly from the Tax Court, has become a living laboratory for the interpretation and application of the "intentionally" element. Important rulings, while not explicitly citing *dolus directus* or *eventualis*, have built a pattern of reasoning that links objective facts to conclusions about a taxpayer's state of mind. For example, in transfer pricing cases, courts often test whether the difference between an affiliate transaction price and the fair market price is significantly large and leads to material tax reduction. If this pattern is accompanied by the absence of adequate business supporting documents or sudden price policy changes without strong commercial reasons, courts tend to conclude that intent exists. Tax rulings affirm intent through patterns and objective evidence.

The OECD BEPS Project forms a global framework for proving intent. The most tangible and structured international influence comes from the Base Erosion and Profit Shifting (BEPS) project initiated by the OECD. Indonesia, as part of the Inclusive Framework, has adopted various BEPS action plans into domestic regulations. This adoption fundamentally shapes the evidentiary approach to intent. For example, BEPS Action 5 on Harmful Tax Practices and Action 6 on Treaty Abuse encourage the implementation of the Principal Purpose Test (PPT) rule in Double Taxation Agreements. Regulations in Indonesia, through Minister of Finance Regulations and Director General of Taxes Regulations, have internalized this principle. The PPT states that a tax treaty benefit may be denied if it is obtained from a transaction or arrangement, and one of its main purposes is to obtain that benefit. The application of the PPT by tax authorities directly relates to proving intent, as it requires an analysis of the perpetrator's "main purpose," which is the core of *mens rea* examination. The application of the PPT confirms main purpose analysis as proof of intent.

International jurisprudence reinforces substantive doctrines in proving intent. In the realm of international jurisprudence, landmark rulings from various jurisdictions have provided reference and legitimacy for substantive approaches. Cases such as *Gregg v. Commissioner* in the United States or *WT Ramsay Ltd v. IRC* in the United Kingdom reinforce the *substance over form* doctrine and the *step transaction doctrine*, which allow courts to disregard

the individual legal form of a series of transactions and view them as a single integrated whole for tax avoidance purposes. These principles have been absorbed into judicial reasoning in Indonesia, even if not always explicitly cited. This absorption enriches the treasury of legal arguments for tax authorities and prosecutors in building a construction that a scheme consisting of many steps each valid individually, but collectively lacking commercial substance is evidence of a premeditated plan to avoid tax. International doctrines confirm artificial schemes as proof of intent.

Domestic documentation regulations serve as technical instruments for proving intent. Domestic technical regulations also continue to evolve to keep pace with the complexity of aggressive tax avoidance schemes. The Minister of Finance Regulation on the Documentation of Transactions with Related Parties, which governs the obligation to provide a Local File and Master File, has major implications for proof. This documentation obligation places a burden on taxpayers to record and be able to justify the economic rationale of their affiliate transactions. The inability to produce adequate documents, or the existence of inconsistencies and contradictions in the documents presented, does not merely result in administrative sanctions. In criminal proceedings, this can be used as evidence supporting the conclusion that the taxpayer cannot prove a genuine business purpose, thus leading to the suspicion that the transaction was indeed deliberately designed solely for fiscal purposes. Thus, documentation regulations create a mechanism where the burden of persuasion regarding business purpose shifts, making it easier for authorities to build an initial suspicion of intent. Documentation obligations shift the burden of proof toward the suspicion of intent.

Investigative authority and the Automatic Exchange of Information strengthen cross-border evidence of intent. Developments in procedural law and investigative powers also shape the evidentiary approach. The Law on Harmonization of Tax Regulations strengthens the authority of the Directorate General of Taxes, including accessing data and information from third parties, sealing premises, and cooperating with Police and Prosecution investigators. More importantly, the adoption of the Automatic Exchange of Information standard based on the Common Reporting Standard has revolutionized the availability of evidence. Cross-border financial data obtained through the Automatic Exchange of Information, such as bank accounts, entity ownership, and investment income,

provides objective factual evidence regarding unreported assets or economic activities. In the context of proving intent, the existence of hidden offshore assets not reported in the Tax Return constitutes very strong evidence of the intent to conceal wealth from tax authorities, which in itself reflects *dolus directus* in the breach of reporting obligations. The Automatic Exchange of Information provides objective evidence that confirms a taxpayer's *dolus directus*.

Fiscal jurisprudence now pierces the global corporate veil. Jurisprudence is also beginning to accommodate the complexity of global corporate structures in the analysis of intent. Recent rulings show a tendency to "pierce the corporate veil," not in the sense of classic corporate law, but in a fiscal sense, to view the economic unity of a multinational corporate group. If it can be proven that an entity in a certain jurisdiction was established without employees, real operations, or significant economic functions (a shell company), and its existence is solely to serve as a place for profit shifting, then the intent of the parent company or affiliate company in Indonesia to use that entity can be concluded. This approach aligns with the Organisation for Economic Co-operation and Development BEPS Action 6 on Preventing the Granting of Treaty Benefits in Inappropriate Circumstances and anti-abuse rules that are increasingly strengthened in domestic regulations. This fiscal approach confirms intent through the use of shell companies.

The *ultimum remedium* principle sets a high standard for proving intent. The *ultimum remedium* (last resort) principle in criminal tax law, which continues to be affirmed in jurisprudence, actually shapes the special character of the evidentiary approach to intent. This principle requires that criminal sanctions be used only when administrative efforts and sanctions are no longer sufficient to address serious violations. Its implication for proof is that the "intentionally" element must be proven with a very high quality of evidence and must demonstrate a certain level of seriousness. This is not merely "intentional" in the sense of knowing the rule and violating it, but is often interpreted as intentionality that is planned, systematic, and causes material state losses. Thus, the evidentiary approach is required to not only show formal violations but also to show the scale, pattern, and impact of the scheme, all of which are circumstantial evidence pointing toward serious intent. *Ultimum remedium* demands serious and planned evidence of intent.

Interaction between regulators, law

enforcement, and the judiciary strengthens the construction of intent. The interaction between regulators, law enforcement, and the judiciary has given birth to an increasingly mature collective understanding. This understanding is reflected in the increasingly complex and technical legal considerations in rulings, as well as the increasing specificity of issued regulations. Regulations on Controlled Foreign Companies and Thin Capitalization, governed by the Law on Harmonization of Tax Regulations, are concrete examples. Controlled Foreign Company rules, for instance, prevent tax deferral by treating certain income from offshore subsidiaries as direct income of the taxpayer in Indonesia. Violations of these rules, if accompanied by evidence that the Controlled Foreign Company structure was intentionally created to accumulate profit in low-tax jurisdictions without business reinvestment, provide a very strong footing for authorities to prove intent in eroding Indonesia's tax base. Controlled Foreign Company and Thin Capitalization rules confirm intent in tax avoidance.

Global, national, and technical convergence forms the system of proving intent. Overall, the evidentiary approach to the element of intent in aggressive tax avoidance is currently the result of a convergence between lessons from court rulings (*case law*), the adoption of global standards (especially BEPS/OECD), and the refinement of domestic technical regulations. This framework has moved from simple binary logic to probabilistic and composite logic, where intent is inferred from the convergence of various factors: the absence of economic substance, repeated patterns, document inconsistencies, the use of entities without substance, the existence of unreported offshore assets, and violations of specific anti-abuse rules. Jurisprudence functions as a living interpreter that connects these complex facts to the "intentionally" norm in the Law on General Provisions and Tax Procedures, while continuously updated regulations provide increasingly complete tools and parameters to uncover such facts. This dynamic forms an evidentiary system that is increasingly capable of reaching the sophistication of modern aggressive tax avoidance schemes, even though challenges regarding capacity and legal certainty in its practical application remain a continuous task. The convergence of factors forms an adaptive system for proving intent.

## CONCLUSION

Based on the analysis conducted, it can be

concluded that proving the element of intent (*mens rea*) in aggressive tax avoidance is a complex legal construction, formed from the integration of criminal law, tax regulations, and jurisprudence. The concept of "intentionally" in tax offenses is operationalized through an objective analysis of economic substance, transaction patterns, and supporting documents. Parameters such as the lack of a *business purpose*, violations of the *arm's length* principle, consistent avoidance patterns, as well as the strengthening of regulations and international standards, reinforce the proof of unlawful intent in veiled tax schemes.

The findings of this study have significant implications for three stakeholders. For tax authorities and law enforcement, capacity building is required, encompassing mastery of tax law, forensic accounting, business analysis, and criminal law, along with the development of structured audit guidelines to build a strong construction of *mens rea*. For taxpayers and corporations, strengthening *tax governance* and adequate documentation of every transaction, particularly with affiliated parties, is crucial to ensure that every decision has a clear business rationale. Meanwhile, for policymakers, the effectiveness of law enforcement demands regulations that are harmonized, adaptive to global standards, and capable of closing loopholes that could potentially be exploited.

Based on these conclusions and implications, several strategic recommendations are proposed. First, the Directorate General of Taxes and law enforcement agencies need to form a multidisciplinary special task force with big data analysis capacity, including access to the Automatic Exchange of Information, to handle complex tax avoidance schemes. Second, a comprehensive Technical Guideline for Proving the Element of Intent needs to be drafted as a uniform guide for auditors and investigators. Third, academics and professional associations need to strengthen education regarding the boundary between legitimate tax planning and aggressive tax avoidance, with an emphasis on economic substance and the principle of prudence. Fourth, the effectiveness of proof in court demands the enhancement of judges' and legal advisors' competencies through continuous training and knowledge exchange in the field of international taxation.

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