CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 83/PUU-XXI/2023

Concerning

The Director General of Taxes has the authority to Conduct a Preliminary Investigation before Conducting a Criminal Investigation in the field of Taxation Provided that there is no Coercive Measure

Petitioners	:	**Surianingsih and PT Putra Indah Jaya** represented by **Budiyanto Pranoto as the Director**
Type of Case	:	Material Review of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (Law 7/2021) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Article 43A paragraph (1) and paragraph (4) in Article 2 number 13 of Law 7/2021 are contrary to Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution
Verdict	:	1. To grant the Petitioners' petition in part. 2. To declare that the phrase "a preliminary investigation before conducting a criminal investigation" in Article 43A paragraph (1) in Article 2 number 13 of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (State Gazette of the Republic of Indonesia of 2021 Number 246, Supplement to the State Gazette of the Republic of Indonesia Number 6736) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, to the extent that it is not interpreted that "there is no coercive measure", so that the norms of Article 43A paragraph (1) in Article 2 number 13 of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (State Gazette of the Republic of Indonesia of 2021 Number 246, Supplement to the State Gazette of the Republic of Indonesia Number 6736) fully read "The Director General of Taxes based on information, data, reports and complaints has the authority to conduct a preliminary investigation before conducting a criminal investigation in the field of taxation, provided that there is no coercive measure";

3. To declare that Article 43A paragraph (4) in Article 2 number 13 of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (State Gazette of the Republic of Indonesia of 2021 Number 246, Supplement to the State Gazette of the Republic of Indonesia Number 6736) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, to the extent that it is not interpreted that "does not violate taxpayers' human rights", so that the norms of Article 43A paragraph (4) in Article 2 number 13 of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (State Gazette of the Republic of Indonesia of 2021 Number 246, Supplement to the State Gazette of the Republic of Indonesia Number 6736) fully read "Procedures for preliminary investigation of criminal offenses in the field of taxation as referred to in paragraph (1) and paragraph (2) shall be regulated by or under a Minister of Finance Regulation, provided that it does not regulate matters related to coercive measures and does not violate taxpayers' human rights".
4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate;
5. To dismiss the remainder of the petition of the Petitioners.

Date of Decision : Tuesday, February 13, 2024

Overview of Decision :

Petitioner I is an individual Indonesian citizen and a taxpayer, while Petitioner II is a private legal entity and a taxpayer.

Regarding the Court's authority, because the Petitioners' petition is a judicial review of the constitutionality of norms of law, *in casu* Article 43A paragraph (1) and paragraph (4) in Article 2 number 13 of Law 7/2021 against the 1945 Constitution, the Court has the authority to hear the Petitioners' petition.

Regarding Legal Standing, Petitioner I works as a trader who earns income from trading business activities. Petitioner I is burdened with the obligation to pay taxes to the state, which is highly likely to cause problems in terms of tax reporting and payments. Petitioner I could be alleged to have not reported/paid her actual tax obligations, where this allegation could lead to allegations of a tax crime. Under the provisions in the field of taxation, the Directorate General of Taxes (DGT) may conduct a preliminary investigation as regulated by the Minister of Finance Regulation, which can be carried out with coercive measures to obtain electronic documents/data, information relating to taxes, including sealing and entering/inspecting certain places or rooms (rummage). With these coercive measures, Petitioner I feels that her constitutional rights have been injured because she cannot submit a pretrial motion regarding such coercive measures on the basis that preliminary investigation has the same position as investigation so that Petitioner I does not obtain fair legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. Meanwhile, Petitioner II has previously submitted a pretrial motion regarding the preliminary investigation of criminal offenses in the field of taxation carried out by the Directorate General of Taxes, because there were threats and several coercive measures made against Petitioner II. During the preliminary investigation to obtain evidence, the Civil Servant Criminal Investigators borrowed things, which under Article 44 paragraph (2) letter e in Article 2 number 14 of Law 7/2021 can be interpreted as, in Petitioner II's opinion, a rummage, and confiscation without permission from relevant District Court as regulated in the Criminal Procedure Code. Petitioner II had submitted a pretrial motion to the District Court and knew that other parties had also submitted pretrial motions. Some of these motions were granted, some were dismissed,

and some were inadmissible so that Petitioner II deems that its constitutional rights have been specifically and actually injured due to legal uncertainty regarding pretrial motions as guaranteed in Article 28D paragraph (1) of the 1945 Constitution.

The Court is of the opinion that Petitioner I is truly an individual Indonesian citizen and Petitioner II is a private legal entity, both as taxpayers. Petitioner I and Petitioner II have described the specific and actual injury of their constitutional rights that they suffer as taxpayers because they directly experienced threats and coercive measures resulting from the enactment of the norms petitioned for review, yet they did not obtain legal certainty to submit pretrial motions. In addition, Petitioner I and Petitioner II have been able to describe the causal relationship (*causal verband*) between their presumptions regarding the injury of constitutional rights and the enactment of the norms of Article 43A paragraph (1) and paragraph (4) in Article 2 number 13 of Law 7/2021 petitioned for review. Therefore, if the *a quo* petition is granted by the Court, such presumptions of the injury of constitutional rights will no longer occur. Thus, regardless of whether the unconstitutionality issues of the norms being argued by Petitioner I and Petitioner II are proven or not, the Court is of the opinion that Petitioner I and Petitioner II have the legal standing to act as Petitioners in the *a quo* petition.

Whereas the issues raised by the Petitioners are the constitutionality issues of norms which must be answered by the Court, namely:

1. whether the phrase "a preliminary investigation before conducting a criminal investigation" in the norms of Article 43A paragraph (1) in Article 2 number 13 of Law 7/2021 which is carried out using coercive measures against which cannot always be submitted a pretrial motion, has created legal uncertainty so that it is contrary to the 1945 Constitution;

2. whether the phrase "Procedures for preliminary investigation of criminal offenses in the field of taxation" in Article 43A paragraph (4) in Article 2 number 13 of Law 7/2021 which does not only regulate technical-administrative matters is contrary to the 1945 Constitution.

Whereas in principle, the Petitioners' arguments boil down to coercive measures by investigators in conducting a preliminary investigation against which cannot always be submitted a pretrial motion to district courts, thereby injuring the Petitioners' constitutional rights guaranteed by the 1945 Constitution. The *a quo* Petitioners' arguments correlate with the Elucidation of Article 43A paragraph (1) in Article 2 number 13 of Law 7/2021 which states, "information, data, reports, and complaints received by the Directorate General of Taxes will be developed and analyzed through intelligence activities and/or other activities, the results of which may be followed up with an Audit, Preliminary Investigation, or followed up." Furthermore, it is also stated that "Preliminary Investigations have the same objectives and status as investigations as regulated in the law governing criminal procedure law". This means that a preliminary investigation carried out to obtain preliminary evidence indicating the alleged existence of a criminal offense in the field of taxation is one of a series of investigative actions in carrying out a process of collecting evidence to determine whether a criminal incident has occurred or not. Therefore, the Directorate General of Taxes, before conducting a criminal investigation in the field of taxation, based on information, data, reports, and complaints, has the authority to conduct a preliminary investigation. Concerning the context of the Elucidation of the norms of Article 43A paragraph (1) in Article 2 number 13 of Law 7/2021, it is necessary to first understand the limitations and scope that differentiate between investigation and criminal investigation processes that have been considered in Constitutional Court Decision Number 9/PUU-XVII/2019 which was pronounced in the Plenary Session open to the public on 15 April 2019.

Furthermore, one of the differences between investigation and criminal investigation processes is the coercive measures mechanism. In the investigation process, there is no room for coercive measures because such measures are *pro justitia* actions that have the potential to violate or take away human rights. In connection with these coercive measures, it is also important for the Court to reiterate Constitutional Court Decision Number 9/PUU-XVII/2019, which was reaffirmed in Constitutional Court Decision Number 53/PUU-XIX/2021 which was pronounced in a plenary session open to the public on 15 December 2021, and Constitutional Court Decision Number 4/PUU-XX/2022 which was pronounced in a plenary session open to the public on 20 April 2022. At the investigation stage, the action that can be taken by investigators is initial identification related to events that are suspected to be criminal incidents. If an event pursuant to the investigator's subjective assessment can be declared a criminal incident supported

by the discovery of sufficient evidence, then it must be continued with the next process, namely criminal investigative action. This means that there are limits to the duties and authority of investigators regarding the importance of initial identification related to events that are suspected to be criminal incidents. Having initial identification will help investigators focus on determining suspected criminal incidents that have occurred, thereby providing assurance for criminal investigators to carry out further legal actions under their authority. At the investigation stage, caution is needed in acting so that protection and guarantees for human rights as well as restrictions on the use of coercive measures can be provided.

Whereas furthermore the Elucidation of the norms of Article 43A paragraph (1) in Article 2 number 13 of Law 7/2021 states that preliminary investigations have the same status as investigations and also emphasizes it in the phrase “as regulated in the law governing criminal procedure law”. The criminal procedure law in question is none other than Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). Therefore, pursuant to the Criminal Procedure Code, it is evident that coercive measures cannot be conducted in the investigation process because *pro justitia* actions have not occurred yet in that process. In accordance with the facts of the trial in the *a quo* case, in a series of preliminary investigations that have been determined, it has been found that there have been acts that fall into the category of coercive measures, which in general should not have been part of investigation stages or process as referred to in the Criminal Procedure Code. Thus, the Court needs to reiterate the Court's stance in Constitutional Court Decision Number 9/PUU-XVII/2019, that there must be no coercive measures in investigation. This is in line with the essence of the investigation process itself, which is an activity to determine whether a criminal incident has occurred or not. Therefore, even though the Elucidation of Article 43A paragraph (1) in Article 2 number 13 of Law 7/2021 states that preliminary investigation is intended as part of the investigation process, the limitations of the investigation process in question must still be based on the Criminal Procedure Code. Even though the aim of conducting a preliminary investigation is to "force" taxpayers to pay taxes in accordance with their obligations in order to increase voluntary taxpayer compliance, optimize state revenues, and increase economic growth, the nature of such "coercion" must not have the impact of violating a person's human rights. This is also in line with the principles of the formation of Law 7/2021. Pursuant to the description of such legal considerations, the Court is of the opinion that, because the phrase "a preliminary investigation before a criminal investigation" in the norms of Article 43A paragraph (1) in Article 2 number 13 of Law 7/2021 allows actions as regulated in Article 43A paragraph (4) in Article 2 number 13 of Law 7/2021 which is actually part of coercion measures actions, these actions are clearly contrary to fair legal certainty. Thus, the phrase "a preliminary investigation before a criminal investigation" in Article 43A paragraph (1) in Article 2 number 13 of Law 7/2021 must be declared conditionally unconstitutional to the extent that it is not interpreted that "not including coercive measures", as will be fully stated in the *a quo* verdict.

Pursuant to the entire description of the legal considerations above, although the Court concludes that the phrase "a preliminary investigation before a criminal investigation" in the provisions of the norms of Article 43A paragraph (1) in Article 2 number 13 of Law 7/2021 has been declared conditionally unconstitutional, however, due to the Court’s interpretation is different from what the Petitioners wish, then the arguments of the *a quo* Petitioners' petition is legally justifiable in part.

Regarding the Petitioners' argument which questions the existence of legal uncertainty in terms of differences in the implementation of pretrial motion submission against the preliminary investigation of criminal offenses in the field of taxation on the basis that some district court judges in their decisions granted pretrial motions and some dismissed them, the Court considers that the difference in views regarding the competence of the court in pretrial hearings against preliminary investigation is a problem related to the implementation of norms. However, the Court needs to reiterate in the legal considerations of the *a quo* case decision that this will not happen again, because there has been a stance from the Court that it is not permissible for tax officials in preliminary investigations before criminal investigations in dealing with alleged violations in the field of taxation, to take actions using the authority that contains coercive measures (*pro justitia*). This means that, in principle, there must be no coercive measures in the process of preliminary investigation because this process is part of the investigation process, as has been considered by the Court and reiterated in the *a quo* verdict. Therefore, in accordance with the nature of the investigation process, if there is an act of coercion measure during a preliminary investigation before a criminal investigation, then of course the pretrial institution can carry out a test as to whether the action in question is legal or not. However, regarding the Petitioners' petition to reiterate this matter as a pretrial

object, the Court cannot do such a thing, because pretrial objects have been rigidly regulated in the provisions of the norms of Article 77 of the Criminal Procedure Code as has been interpreted in Constitutional Court Decision Number 21/PUU-XII/2014 which was pronounced in a plenary session open to the public on 28 April 2015. If the Court accommodates what the Petitioners wish, this will actually narrow the pretrial objects themselves. Thus, the Petitioners' argument regarding the legal uncertainty from preliminary investigation not being a pretrial object has automatically been answered in the legal considerations above.

Furthermore, regarding the Petitioners' argument which questions the Minister of Finance Regulation because it regulates not only technical-administrative matters but also restrictions of the rights and/or expansion of the rights and obligations of citizens so that it is not in line with the legal certainty guaranteed in the 1945 Constitution, the Court considers the following:

Concerning the Ministerial Regulation questioned by the Petitioners, it is important for the Court to first consider the position of ministerial regulations in the hierarchy of statutory regulations as determined in Article 7 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations as lastly amended by Law Number 13 of 2022 (Law 12/2011). Ministerial Regulations are not part of the types of statutory regulations contained in the hierarchy of statutory regulations but are referred to as other statutory regulations whose existence is recognized and has binding legal force to the extent that they are ordered by higher statutory regulations or are formed based on authority. Concerning the Petitioners' argument, Article 43A paragraph (4) in Article 2 number 13 of Law 7/2021 has ordered the formation of a Minister of Finance Regulation to further regulate procedures for preliminary investigation. Therefore, Minister of Finance Regulation Number 177/PMK.03/2022 concerning Procedures for Preliminary Investigation of Criminal Offences in the Field of Taxation (MoF Regulation 177/PMK.03/2022) has been issued. Without the Court intending to assess the legality of MoF Regulation 177/PMK.03/2022, the *a quo* MoF Regulation in principle regulates matters relating to aspects of criminal law enforcement in the field of taxation because the norms of Article 43A in Article 2 number 13 of Law 7/2021 are part of the Provisions on Criminal Investigation in the field of taxation. Moreover, it is also confirmed in the Elucidation of the norms of Article 43A paragraph (1) in Article 2 number 13 of Law 7/2021 that the provisions on the preliminary investigation are as regulated in the Criminal Procedure Code. In this regard, the Court needs to emphasize that by referring to Law 12/2011, regulations regarding criminal provisions are only provided in laws, provincial regional regulations, and regency/municipal regional regulations. This is because regulations regarding aspects of criminal law enforcement that provide restrictions on human rights, people/objects, can even have implications for deprivation of liberty, so they must obtain the approval of the people represented by the DPR members together with the President in case of law or by the Regional Legislative Council members together with the head of region in case of regional regulation.

In addition, in formulating criminal provisions it is necessary to pay attention to the general principles of criminal provisions contained in Book One of the Criminal Code because the provisions in book one also apply to acts that can be punished according to other laws and regulations, unless the law stipulates otherwise. In this regard, Article 5 paragraph (1) of the Criminal Procedure Code provides actions that can be carried out by investigators as part of their authority, namely: (a) to receive a report or complaint from a person regarding the existence of criminal act; (b) to seek information and evidence; (c) to order a suspect to stop and ask as well as check personal identification; and (d) take other legally responsible actions.

Thus, because the norms of Article 43A in Article 2 number 13 of Law 7/2021 provide a preliminary investigation before a criminal investigation which is stated to have the same aim and status as an investigation as regulated in the Criminal Procedure Code, matters related to *pro justitia* actions should not be regulated therein. Because this could potentially violate the essence of the investigation itself in investigating preliminary evidence. In addition, actions in the investigation process are not the object of pretrial motion, because basically, the actions have not amounted to coercion measures (*pro justitia*). Therefore, a Minister of Finance Regulation cannot regulate provisions whose substance provides authority for investigations that contain the nature of coercion or coercive measures, which contain norms of criminal procedure law which should be contained in the law, not in a Minister of Finance Regulation.

The Petitioners in their petition also argue that a Minister of Finance Regulation as an implementing regulation is limited to regulating technical-administrative matters, not regulating criminal provisions in the

field of taxation. Regarding the Petitioners' *a quo* arguments, the Court in its legal consideration of Constitutional Court Decision Number 63/PUU-XV/2017 has emphasized that the ministerial regulation as part of other statutory regulations was formed due to the order from the law, *in casu* Article 43A paragraph (1) and paragraph (4) in Article 2 number 13 of Law 7/2021. However, the delegation of regulatory authority in a ministerial regulation is not intended to regulate material that should be regulated in law, but to regulate technical-administrative matters in preliminary investigation. Moreover, this matter has been stated in the Elucidation of Article 43A paragraph (1) in Article 2 number 13 of Law 7/2021, namely it is equated with an investigation in the law which regulates criminal procedure law, *in casu* Criminal Procedure Code. Thus, provisions limiting the rights and obligations of citizens cannot be provided, except in law. Therefore, the phrase “Procedures for preliminary investigation of criminal offenses in the field of taxation” in Article 43A paragraph (4) in Article 2 number 13 of Law 7/2021 which is regulated further in the Minister of Finance Regulation which not only regulates technical-administrative matters but also limits the rights and obligations of citizens, *in casu* taxpayers, is not in line with the essence and scope of the delegation provided by law.

Pursuant to the entire description of legal considerations as outlined above, the Court is of the opinion that the provisions of the norms of Article 43A paragraph (1) and paragraph (4) in Article 2 number 13 of Law 7/2021 are contrary to the principle of the country of law and the principle of fair legal certainty as stipulated in Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution, but not as argued by the Petitioners. Thus, the Court is of the opinion that the Petitioners' petition regarding the norms of Article 43A paragraph (1) and paragraph (4) in Article 2 number 13 of Law 7/2021 is partially legally justifiable.

In accordance with the above examination of the facts and law, the Court passed down a decision in which verdicts were as follows:

1. To grant the Petitioners’ petition partially.

2. To declare that the phrase “a preliminary investigation before conducting a criminal investigation” in Article 43A paragraph (1) in Article 2 number 13 of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (State Gazette of the Republic of Indonesia of 2021 Number 246, Supplement to the State Gazette of the Republic of Indonesia Number 6736) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, to the extent that it is not interpreted that "there is no coercive measure”, so that the norms of Article 43A paragraph (1) in Article 2 number 13 of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (State Gazette of the Republic of Indonesia of 2021 Number 246, Supplement to the State Gazette of the Republic of Indonesia Number 6736) fully read "The Director General of Taxes based on information, data, reports and complaints has the authority to conduct a preliminary investigation before conducting a criminal investigation in the field of taxation, provided that there is no coercive measure”;

3. To declare that Article 43A paragraph (4) in Article 2 number 13 of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (State Gazette of the Republic of Indonesia of 2021 Number 246, Supplement to the State Gazette of the Republic of Indonesia Number 6736) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, to the extent that it is not interpreted that "does not violate taxpayers’ human rights", so that the norms of Article 43A paragraph (4) in Article 2 number 13 of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (State Gazette of the Republic of Indonesia of 2021 Number 246, Supplement to the State Gazette of the Republic of Indonesia Number 6736) fully read “Procedures for preliminary investigation of criminal offences in the field of taxation as referred to in paragraph (1) and paragraph (2) shall be regulated by or under a Minister of Finance Regulation, provided that it does not regulate matters related to coercive measures and does not violate taxpayers’ human rights”.

4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate;

5. To dismiss the remainder of the petition of the Petitioners’ petition.

Dissenting Opinions

Against the Court's *a quo* decision, three Constitutional Justices have dissenting opinions, namely Constitutional Justice Daniel Yusmic P. Foekh, Constitutional Justice M. Guntur Hamzah, and Constitutional Justice Saldi Isra, who stated as follows:

Dissenting Opinion from Constitutional Justice Daniel Yusmic P. Foekh

Whereas because tax law has a distinctive character of *lex specialis systematis*, the delegation of authority to regulate procedures for preliminary investigation of tax crime to the Minister of Finance is in line with the Law on Formation of Laws and Regulations (PPP Law). Although literally the *a quo* petition is not directly related to the existence of the Tax Court, there is a correlation with the Court's order to the legislators that organizational, administrative, and financial oversight of the Tax Court is carried out by the Supreme Court which will be implemented in stages no later than 31 December 2026 (vide Constitutional Court Decision Number 26/PUU-XXI/2023). In connection with that matter, because the Petitioners' petition was submitted while it was still in the transition period of transferring the oversight authority of the Tax Court under the Supreme Court (one roof system), the norms of Article 43A paragraph (1) and paragraph (4) in Article 2 Number 13 of the Law on Harmonization of Tax Regulations are not contrary to the principles of the country of law and the principle of fair legal certainty as argued by the Petitioners. Thus, the Petitioners' petition should be dismissed.

Dissenting Opinion from Constitutional Justice M. Guntur Hamzah and Constitutional Justice Saldi Isra

Whereas Constitutional Justice M. Guntur Hamzah and Constitutional Justice Saldi Isra have a dissenting opinion, as follows:

Although the Court is of the opinion that Article 43A paragraph (1) of the Law on Harmonization of Tax Regulations cannot be separated from Article 43A paragraph (4) of the Law on Harmonization of Tax Regulations, in our opinion, at first glance there is no difference because they are mutually bound and intertwined within the framework of Article 43A of the Law on Harmonization of Tax Regulations. However, upon closer inspection, it turns out that there are differences in the substance contained therein. Article 43A paragraph (1) of the Law on Harmonization of Tax Regulations regulates the authority of the Director General of Taxes to examine preliminary investigation before carrying out a criminal investigation in the field of taxation. Meanwhile, Article 43A paragraph (4) of the Law on Harmonization of Tax Regulations regulates that procedures for preliminary investigation of criminal offenses in the field of taxation as referred to in paragraph (1) and paragraph (2) shall be regulated by or under a Minister of Finance Regulation.

In our opinion, constitutional issues do not appear in Article 43A paragraph (1) of the Law on Harmonization of Tax Regulations, because as we have stated previously the *a quo* provision is valid and constitutional. Moreover, the authority of the Director General of Taxes to conduct a preliminary investigation before conducting a criminal investigation in the field of taxation is granted by law, so that within the limits of reasonable reasoning, even if Article 43A paragraph (1) of the Law on Harmonization of Tax Regulations provides the existence of coercive measures (*subpoena*), *quod non*, this matter is in accordance with the character of tax law as *ius singulare*. If the Court intends to provide a new interpretation, then it should not be aimed at Article 43A paragraph (1) of the Law on Harmonization of Tax Regulations but should be aimed only at Article 43A paragraph (4) of the Law on Harmonization of Tax Regulations. Again, in our opinion, the norms of paragraph (4) in the *a quo* article delegate authority that is too broad and excessive to a ministerial regulation which should only be administrative in nature. In fact, as has been considered and emphasized by the Court in various decisions, technical-administrative regulations may not add coercive authority (*subpoena*). Even if there is coercive authority (*subpoena*), especially such that limits the right to legal proceedings, and limiting the rights and freedoms of citizens, this is only possible if these matters are stipulated by law [vide Article 28J paragraph (2) of the 1945 Constitution]. Thus, the Court should simply provide a conditional interpretation (conditionally unconstitutional), limited to Article 43A paragraph (4) of the Law on Harmonization of Tax Regulations, and not to Article 43A paragraph (1) of the *a quo* Law. Systematically, the norms of Article 43A paragraph (4) of the Law on Harmonization of Tax Regulations are intended to further elaborate or describe the norms in

Article 43A paragraph (1) of the Law on Harmonization of Tax Regulations. This means that, systematically, the norms of Article 43A paragraph (1) of the Law on Harmonization of Tax Regulations must be understood as a general norm relative to other norms in Article 43A of the Law on Harmonization of Tax Regulations. Thus, within the limits of reasonable reasoning, we argue that the norms of Article 43A paragraph (1) of the Law on Harmonization of Tax Regulations are constitutional.

Pursuant to all the explanations above, once again, we are of the opinion that the Petitioners' petition to the extent of reviewing Article 43A paragraph (1) of the Law on Harmonization of Tax Regulations should be dismissed (*wordt ongeground verklaard*).