



DOI: <https://doi.org/10.38035/jgsp.v3i4>
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A New Paradigm for Judicial Scrutiny of Tax Discretion in Indonesia: Re-evaluating the 'Element of Justice' through the Substance Over Form Doctrine Following SEMA 02/2024

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Abstract: This study undertakes a comprehensive examination of the judicial review framework governing the discretionary authority of Indonesia's Director General of Taxes (DGT), as conferred by Article 36(1)(b) of the General Tax Provisions and Procedures Law (UU KUP), particularly in the wake of Supreme Court Circular No. 02 of 2024 (SEMA 02/2024). A central legal inquiry is addressed: does the issuance of SEMA 02/2024 insulate this discretionary power from judicial oversight, effectively rendering it an absolute authority? Employing a normative legal research methodology, this paper contends that the General Principles of Good Governance (AUPB) are an unsuitable standard for evaluating such discretion due to their inherent abstraction when applied to concrete tax disputes. In their place, this analysis posits that a foundational doctrine of tax law—substance over form—offers the most pertinent and effective test for the "element of justice" mandated by the statute. The core argument advanced is that Article 36(1)(b) does not grant unfettered discretion but rather a bound authority (*gebonden discretie*), intended to uphold material truth in circumstances where formal procedural avenues, such as time-barred objections, are no longer available. Consequently, SEMA 02/2024 does not abolish judicial review but fundamentally transforms it. The Tax Court's role shifts from adjudicating the substance of a tax assessment to scrutinizing the legality and reasonableness of the DGT's application of the substance over form principle in its decision-making process. This thesis is corroborated by empirical data from post-SEMA judicial rulings, which reveal continued and active judicial oversight concerning the legality of discretionary applications. The paper concludes with a recommendation for the DGT to formulate internal guidelines predicated on the substance over form principle to bolster legal certainty and administrative accountability.

Keyword: Tax Discretion, Judicial Review, SEMA 02/2024, Substance Over Form Doctrine, Article 36(1)(b) UU KUP.

INTRODUCTION

The Dialectic of Certainty and Justice in Tax Administration

The administration of modern tax systems is characterized by a persistent dialectic between two foundational pillars of the rule of law: legal certainty (*rechtssicherheit*) and justice (*gerechtigkei*t). Legal certainty, which necessitates unwavering adherence to formal procedures and statutory requirements, is indispensable for fostering a predictable and stable economic environment, thereby ensuring uniformity in the application of law. Conversely, the principle of justice demands that the ultimate resolution of any legal process aligns with material truth and substantive fairness, preventing the law from devolving into a rigid and potentially oppressive instrument. In Indonesia, this tension is particularly salient within its self-assessment tax system. This system places the onus on taxpayers to calculate, remit, and report their tax liabilities, a responsibility that is counterbalanced by the extensive supervisory and audit authority vested in the Directorate General of Taxes (DGT), which may culminate in the issuance of a Tax Assessment Letter (SKP). This framework inherently creates potential for conflict between a taxpayer's formal compliance and the DGT's substantive evaluation of their tax position.

Within this formalistic procedural landscape, the Law on General Tax Provisions and Procedures (UU KUP) provides a distinctive legislative instrument designed to mediate this conflict: Article 36(1)(b). This provision empowers the DGT with the discretionary authority to "reduce or cancel an incorrect tax assessment," predicated explicitly on an "element of justice". The official elucidation of the UU KUP clarifies that the legislative intent behind this article is to create an avenue for achieving substantive justice when formal recourse—such as filing an objection beyond the statutory deadline—is procedurally foreclosed. Article 36(1)(b) thus functions as a legally sanctioned "justification space," enabling the DGT to transcend procedural impediments in favor of upholding material truth. Its role as an extraordinary legal remedy (*extra ordinary clause*) for taxpayers cements its status as a critical component of the Indonesian tax law architecture.

The terrain of tax dispute resolution was significantly altered by the promulgation of Supreme Court Circular No. 02 of 2024 (SEMA 02/2024). This circular, aimed at promoting the uniform application of law and ensuring consistency in judicial rulings, effectively purified the jurisdictional demarcation between appeals and lawsuits within the Tax Court. The Formulation of the State Administrative Chamber contained within SEMA 02/2024 mandates that disputes pertaining to the substance or content of a tax assessment must be channeled through the objection and appeal mechanisms. Lawsuits, in contrast, are strictly reserved for reviewing the authority, procedure, and/or implementation of a tax decision. Historically, judicial practice revealed that taxpayers frequently utilized lawsuits against the rejection of an Article 36(1)(b) application as a "backdoor" to re-litigate substantive tax issues, especially when the formal objection-appeal pathway was procedurally unavailable. SEMA 02/2024 serves as a judicial corrective, designed to eliminate this ambiguity and fortify the integrity of the dispute resolution system.

This jurisdictional realignment, however, gives rise to a profound legal question that constitutes the central focus of this research: by foreclosing the Tax Court's ability to re-examine the material basis of the "element of justice" through a lawsuit, does SEMA 02/2024 inadvertently transform the DGT's discretionary power under Article 36(1)(b) into an absolute authority, shielded from meaningful judicial review? Such an outcome would risk establishing arbitrary power, fundamentally at odds with the principles of a state governed by the rule of law. This circular represents an act of judicial self-regulation, an internal measure by the Supreme Court to manage its docket and enforce jurisdictional discipline. While intended to enhance judicial efficiency, this administrative solution created a potential legal vacuum concerning the review of discretion. This paper responds directly to the

consequences of this judicial governance decision. Previous scholarships have frequently connected the review of administrative discretion to the General Principles of Good Governance (AUPB), derived from general administrative law. This study, however, identifies a critical gap in that approach, arguing that the abstract nature of the AUPB renders them unsuitable for the concrete and quantitative realities of tax disputes, where liability is determined by the fulfillment of the *taibestand* (legal facts or events) under tax statutes, not merely by the administrative assessment itself.

The novelty of this article lies in its hypothesis that the most appropriate benchmark for assessing the "element of justice" is not the AUPB, but rather a foundational doctrine of tax law itself: substance over form. This research posits that SEMA 02/2024 does not eliminate judicial oversight but instead transforms its nature. The analytical focus of the Tax Court must now shift from a review of the substance of the tax assessment to a review of the legality and propriety of the DGT's exercise of discretion, with the application of the substance over form doctrine serving as the primary metric. The contribution of this research is the provision of a new, more relevant analytical framework for judges, the DGT, and taxpayers to navigate the post-SEMA 02/2024 legal environment, ensuring that discretion remains accountable.

METHOD

This study is grounded in a normative juridical research method, which centers on the analysis of library-based materials and secondary data sources. The investigation employs a dual-pronged approach, combining a statute approach with a conceptual approach.

Through the statute approach, this research undertakes an in-depth examination of the hierarchy and harmonization of pertinent legal instruments. The primary focus is on Law No. 6 of 1983 concerning General Tax Provisions and Procedures, as most recently amended by Law No. 7 of 2021 (UU KUP); Law No. 30 of 2014 concerning Government Administration (UUAP); and Supreme Court Circular (SEMA) No. 02 of 2024. This analysis evaluates the interplay between these regulations to construct a coherent legal understanding of the DGT's discretionary power and the scope of its review.

The conceptual approach is utilized to dissect the legal doctrines that form the theoretical underpinnings of the research. Key concepts subjected to rigorous analysis include discretion (*freies ermessen*), material truth, substance over form, abuse of power (*détournement de pouvoir*), and manifest unreasonableness. The secondary legal materials consulted encompassed a wide range of sources, including relevant decisions from the Tax Court and the Supreme Court, authoritative legal textbooks, academic journals in law and taxation, and scholarly articles from experts discussing tax justice, administrative discretion, and tax dispute resolution. The data analysis is conducted qualitatively, employing a systematic legal interpretation method. Through this process, existing legal norms are interpreted and systematized to build a cohesive argument that addresses the core research problem and formulates precise criteria for judicial review in the post-SEMA 02/2024 era.

RESULTS AND DISCUSSION

The Reshaping of Judicial Oversight in Tax Disputes

The issuance of SEMA No. 02 of 2024 did not establish an absolute or unreviewable discretion for the DGT. Instead, it fundamentally reshaped the judiciary's role in tax disputes by shifting the focus of judicial review from the substantive content of tax assessments to the legality and propriety of the administrative action itself.¹ While the Tax Court is now precluded from re-examining the material substance of a tax assessment within the context of a lawsuit, it unequivocally retains its authority to review the legality of the DGT's discretionary decision-making process.

The Inadequacy of General Administrative Principles in Tax Adjudication

Initial scholarly and judicial efforts to delineate the boundaries of the DGT's discretion have frequently referenced the General Principles of Good Governance (AUPB), as codified in the Government Administration Law (UUAP). These principles include legal certainty, carefulness, impartiality, and the prohibition of arbitrariness—serve as a foundational framework for overseeing government actions across various administrative domains. However, within the highly specialized and quantitative context of tax disputes, the AUPB prove to be excessively abstract and ultimately inadequate as a judicial benchmark. An assertion that a tax decision is, for instance, "imprudent" or "unjust" based on these general principles is often difficult to substantiate in a concrete and objective manner.

This inadequacy stems from the unique nature of tax law as a *lex specialis*, which operates on its own distinct and more concrete principles. A tax debt does not arise from the mere issuance of an administrative assessment (SKP); rather, it originates from the fulfillment of specific conditions, events, or legal acts (*tatbestand*) that, according to tax statutes, give rise to the liability. The determination of a tax obligation is therefore a matter of applying specific statutory provisions to a set of quantifiable facts. Consequently, the benchmark for evaluating the "element of justice" in this context must be sourced from within the doctrinal framework of tax law itself, rather than from the more generalized principles of administrative law that govern a broader and more varied range of state actions.

Substance Over Form: The Doctrinal Core of Tax Justice

The most appropriate and effective test for the "element of justice" as contemplated by Article 36(1)(b) is the fundamental tax law doctrine of substance over form. This principle, which has its origins in accounting theory, mandates that the economic reality and underlying substance of a transaction must prevail over its formal legal structure. In the context of taxation, this empowers the DGT to look through the formal arrangement of a transaction to ascertain the true tax liability based on its economic substance. This doctrine is widely recognized throughout Indonesian tax regulations and effectively functions as a General Anti-Avoidance Rule (GAAR), granting the tax authority the necessary flexibility to make corrections to transactions that are structured primarily to reduce tax burdens.

The substance over form doctrine must be understood as a principle of doctrinal symmetrical "two-way street" that applies equally to the state and the taxpayer. On one hand, the DGT employs this doctrine as a tool to combat tax avoidance and protect state revenue. On the other hand, it provides the very foundation for the "element of justice." When a taxpayer is substantively not liable for a particular tax burden but is procedurally barred by a formal rule (for example, missing the deadline for filing an objection), the DGT is empowered by Article 36(1)(b) to cancel the "incorrect" tax assessment by prioritizing the economic reality (substance) over the procedural failure (form). This application creates a crucial balance. For the state's power to disregard form for its own benefit to be legitimate under the rule of law, it must be matched by a corresponding duty to do the same for the benefit of the citizen.

By establishing substance over form as its guiding benchmark, the DGT's authority under Article 36(1)(b) is not an exercise of free discretion (*vrij beleid*) or absolute power. It is, rather, a bound discretion (*gebonden discretie*). This authority is conferred by law for a specific, delineated purpose: to uphold material truth when formal procedures have failed to achieve a just outcome. This interpretation is strongly supported by the official elucidation of the UU KUP, which provides the explicit example of a taxpayer who is materially correct but files an objection late. This illustration directs that the focus of the "element of justice" is precisely the conflict between material truth (substance) and formal impediments (form).

The Transformed Judicial Landscape: From Substantive Adjudicator to Legality Supervisor

SEMA 02/2024 did not render the DGT's discretion absolute; rather, it clarified and shifted the focus of judicial testing. The Tax Court now functions as a supervisor of the administrative process, ensuring that the DGT exercises its discretion in a manner consistent with its legal purpose. The fundamental question before a judge is no longer, "Is the tax calculation in this assessment correct?" That question is reserved for the appeal mechanism. Instead, the judicial inquiry has been transformed to, "In evaluating the taxpayer's application under Article 36(1)(b), did the DGT correctly and reasonably apply the substance over form principle to achieve material justice?". This shift is of paramount importance. The court is no longer tasked with recalculating the tax liability but with examining the integrity and legality of the DGT's reasoning process.

The Tax Court is empowered to intervene and annul the DGT's decision on an Article 36(1)(b) application if it is demonstrated that the DGT failed to properly apply the substance over form principle. This failure can manifest in several distinct forms, each providing a clear ground for judicial intervention:

1. **Refusal to Analyze Substance (Détournement de Pouvoir):** This occurs if the DGT rejects a taxpayer's application solely on formal grounds (e.g., "the application is denied because the objection was time-barred") without conducting any analysis of the material arguments and evidence presented. Rooted in French administrative law, *détournement de pouvoir* describes an action where an authority uses its powers for a purpose other than that for which they were conferred. In this context, such a rejection constitutes an abuse of power because the DGT is ignoring the primary legislative purpose of Article 36(1)(b), which is precisely to transcend formalities in the interest of justice.
2. **Manifestly Unreasonable Substance Analysis:** This ground applies if the DGT does conduct a substance-based analysis, but its conclusion is so irrational, arbitrary, or contrary to the available evidence that no reasonable administrative official would have arrived at the same outcome. This concept, derived from Dutch administrative law, serves as a check on decisions that are clearly unwarranted. For instance, if a taxpayer provides irrefutable evidence demonstrating that a tax assessment is materially incorrect, but the DGT rejects the application with irrelevant reasoning or without presenting strong counterevidence, such a decision can be deemed arbitrary and thus be annulled by the court.

Inconsistent Application of Substance Over Form (Discriminatory): This occurs if a taxpayer can prove that in other cases with identical or highly similar economic substance, the DGT granted the application, but in their own case, it was denied without a clear and reasonable justification. Such an action violates the principle of equality, which is a fundamental pillar of a just and fair tax system.

Empirical Corroboration of the Transformed Review Model

The argument that judicial review persists in a transformed state is not merely theoretical; it is supported by empirical data from Tax Court decisions following the implementation of SEMA 02/2024. An analysis of rulings on lawsuits related to Article 36(1)(b) reveals a pattern that confirms the operation of this new review framework.

The table below provides a quantitative summary of these decisions.

Table 1. Quantitative Summary of Decisions

DECISION	COUNT
Fully Granted	46
Partially Granted	26
Rejected	215
Annulled	2
Inadmissible	21
TOTAL	310

Source: Author's data processing, 2025.

This data provides a compelling empirical anchor for the paper's central thesis. The high rejection rate (215 cases) can be interpreted as evidence of SEMA 02/2024's success in purifying jurisdiction; the court is correctly dismissing lawsuits that improperly attempt to argue the material substance of the tax assessment, which now belongs to the appeal track. However, the most crucial insight lies in the number of granted cases. The fact that 72 applications were either fully or partially granted is powerful evidence that the DGT's discretion is not absolute and remains subject to meaningful judicial oversight. These cases represent the "proof of life" for judicial review. They demonstrate that taxpayers were able to successfully convince the court not that their tax calculation was wrong, but that the DGT's discretionary decision-making process was legally flawed. They successfully proved that the DGT's decision met one of the criteria for intervention outlined above: the DGT either refused to analyze the substance (*détournement de pouvoir*), or its analysis was manifestly unreasonable and arbitrary. This data empirically confirms that the Tax Court has effectively transitioned into its new role as a supervisor of the tax administration's adherence to the principle of material truth.

Limitations of the Research

This research is subject to several acknowledged limitations that provide avenues for future scholarly inquiry. First, SEMA 02/2024 is a relatively recent policy instrument. As a result, the body of jurisprudence available for analysis is still in its nascent stages. The trends observed in this study, while indicative, may not fully capture the long-term evolution of judicial practice as the courts continue to develop their interpretation and application of this new framework.

Second, the study's normative-juridical methodology, while appropriate for doctrinal analysis, does not incorporate in-depth empirical research, such as qualitative interviews with judges, DGT officials, or tax practitioners. Such research could yield richer, more nuanced insights into the practical implementation of the transformed review process and the challenges faced by stakeholders on the ground.

Third, access to the DGT's internal deliberations and reasoning in the processing of Article 36(1)(b) applications is highly restricted. This means that the analysis of the "element of justice" from an administrative perspective is necessarily based on publicly available documents and final decisions, rather than the complete administrative record. A more transparent process would allow for a more thorough evaluation of the DGT's decision-making. These limitations underscore the need for ongoing research as more data and jurisprudence become available.

CONCLUSION

The issuance of Supreme Court Circular No. 02 of 2024 did not create a realm of absolute discretion for the Director General of Taxes. Instead, it purified and fundamentally transformed the function of judicial oversight into tax disputes. This research concludes that the discretionary authority vested in the DGT under Article 36(1)(b) of the UU KUP is a

bound discretion, specifically intended to uphold material truth. The most appropriate and legally sound test for the "element of justice" in the context of tax law is not the abstract General Principles of Good Governance (AUPB), but the foundational tax doctrine of substance over form.

In the post-SEMA 02/2024 landscape, the Tax Court no longer adjudicates the substantive correctness of a tax assessment in a lawsuit. Its role has evolved to that of a legal supervisor, examining whether the DGT has properly and reasonably applied the substance over form principle in its decision-making. A failure by the DGT to apply this principle correctly—whether by refusing to analyze the substance, conducting a manifestly unreasonable analysis, or applying the principle inconsistently—constitutes legitimate grounds for judicial intervention. To foster harmony and enhance legal certainty within this new framework, the following recommendations are proposed:

1. For the Directorate General of Taxes (DGT): It is strongly recommended that the DGT issue formal internal regulations or guidelines that operationalize the "element of justice" based on the substance over form principle. Such guidelines would provide clarity and consistency for both tax officials and taxpayers, thereby increasing legal certainty and strengthening administrative accountability.
2. For Taxpayers and Legal Consultants: The strategic focus of argumentation in lawsuits challenging Article 36(1)(b) decisions must shift. Instead of attempting to re-litigate the substance of the tax assessment, legal arguments should concentrate on proving that the DGT has failed to properly apply the principle of material truth, demonstrating procedural and legal flaws in the discretionary process through the established grounds of *détournement de pouvoir* or unreasonable and arbitrary.
3. For the Judiciary: The Tax Court must consistently apply this transformed review framework. By focusing on the legality of the DGT's discretionary process rather than the substance of the tax liability, the court can increase the predictability of its rulings and reinforce the rule of law in tax administration.

The harmonization of these three pillars—administrative guidance, strategic litigation, and consistent judicial application—will ensure that the justice instrument enshrined in Article 36(1)(b) of the UU KUP functions as a credible, accountable, and effective mechanism for achieving substantive justice within Indonesia's tax system.

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