

## Achieving Public Welfare through Tax Facilities On Foreign Grants For The Government Projects

### Mencapai Kemakmuran Rakyat melalui Fasilitas Perpajakan atas Hibah Luar Negeri untuk Proyek Pemerintah

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#### ABSTRAK

Penelitian ini bertujuan untuk mengetahui fasilitas perpajakan dalam pelaksanaan hibah untuk kepentingan proyek pemerintah dalam upaya mencapai kemakmuran rakyat. Perpajakan berperan sebagai instrumen penting dalam mendukung pertumbuhan ekonomi dan pembanguan nasional. Fungsinya dalam aspek anggaran berperan vital dalam memastikan tersedianya dana negara yang cukup untuk membiayai kegiatan pemerintah. Selain itu, fungsi *regulerend* perpajakan berkontribusi dalam memfasilitasi pertumbuhan ekonomi nasional, seperti pemberian insentif pajak untuk hibah luar negeri yang ditujukan untuk pelaksanaan proyek pemerintah. Setelah diberlakukannya PMK 80/2024, ketentuan telah ditetapkan untuk mempermudah pemberian fasilitas perpajakan bagi hibah luar negeri yang ditujukan untuk proyek pemerintah baik dalam bentuk barang yang termasuk tanah dan/atau bangunan dan/atau jasa. Namun, diperlukan analisis terhadap prosedur dan mekanisme penerapannya. Metode penelitian yang digunakan dalam penelitian ini adalah yuridis normatif dengan pendekatan kualitatif. Penelitian ini menemukan bahwa proyek pemerintah yang didanai oleh hibah luar negeri yang memenuhi syarat untuk fasilitas perpajakan berdasarkan PMK 80/2024 memiliki cakupan yang lebih luas dibandingkan dengan definisi proyek kepentingan umum. Fasilitas perpajakan yang diberikan mencakup pajak pertambahan nilai (PPN), pajak penjualan atas barang mewah (PPnBM), pajak penghasilan, serta bea masuk, sehingga memudahkan pemanfaatan hibah yang dilaksanakan baik dalam bentuk barang yang termasuk tanah dan/atau bangunan dan/atau jasa, dan secara khusus jika dalam bentuk tanah dan/atau bangunan maka merupakan upaya melaksanakan amanat Pasal 33 ayat (3) UUD NRI 1945 dalam pemanfaatan sumber daya agraria.

#### ABSTRACT

*This study aims to identify tax facilities in the implementation of grants for government project purposes to achieve public welfare. Taxation serves as a crucial instrument in supporting economic growth and national development. Its budgetary function plays a vital role in ensuring sufficient state funds for financing government activities. Additionally, its *regulerend* function contributes to facilitating national economic growth, such as providing tax incentives for foreign grants aimed at government project implementation. Following the enactment of PMK 80/2024, provisions have been established to ease the granting of tax facilities for foreign grants intended for government projects either in the form of goods including land and/or buildings, and/or services. However, an analysis of the procedures and mechanisms for its application is necessary. The research method used in this study is normative juridical with a qualitative approach. This study found that government projects funded by foreign grants eligible for tax facilities under PMK 80/2024 have a broader scope compared to the definition of public interest projects. The tax facilities provided include value-added tax (VAT), sales tax on luxury goods, income tax, and as well import duties, thereby facilitating the utilization of grants implemented in the form of goods, including land and/or buildings, and/or services. Specifically, if the grants are in the form of land and/or buildings, it serves as an effort to fulfill the mandate of Article 33 paragraph (3) UUD NRI 1945 concerning the utilization of agrarian resources.*

## INTRODUCTION

Tax is one of the key instruments in maintaining the resilience and growth rate of the national economy beside other instrument as business activities, as one of their functions is budgetary, thereby playing a role in determining the amount of state funds available to finance government operations for the greatest possible prosperity of the people. Taxes also have another function, namely *regulerend*, as an instrument to achieve specific objectives. For instance, to promote national development, various activities are granted tax facilities (tax incentives).

National development is an effort carried out by all components of the nation to achieve national objectives. National development activities is not always originate internally, at times, other countries, especially more developed nations, often provide assistance to participate in national development. Generally, the aim is to create a better collective global life and to contribute to achieving the Sustainable

Development Goals (SDGs), specifically, the economic objectives are to alleviate poverty and increase savings, investment and rate of growth of gross national product in developing country.

Foreign assistance for national development may take various forms, such as foreign loans. A concrete example is the Jakarta-Bandung High-Speed Railway Project, funded by loans from China. Foreign debt may address Indonesia's financial challenges but could also pose a potential debt trap if the project is not well-managed. Therefore, to minimize the increasing amount of loans, tax facilities are required for the development of such projects. Apart from loans, assistance from other countries may also come in the form of grants, which are unconditional contributions without reciprocal obligations. For the government, grants are a source of the State or Regional Budget that can be used to finance government programs.

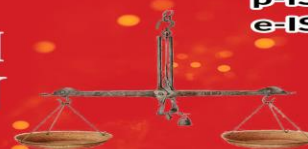
The acceptance of grants by the government from grantors significantly aids the administration of government operations, which can contribute to efforts aimed at achieving public welfare. Welfare or the welfare state can be viewed from two perspectives: first, welfare as a condition where the needs of most of the population are met at a certain level; and second, the fulfillment of various basic life necessities, such as the needs for clothing, housing, food, education, security, health, and employment, to a certain extent. Such a welfare state is regarded as the most appropriate response to the form of state involvement in promoting public welfare. This belief is reinforced by the emergence of empirical realities concerning market failure and government failure in improving public welfare. Indonesia has indeed adopted the concept of a welfare state, which can be observed in the constitution, particularly in its preamble. The Encyclopedia Americana states that a welfare state is "a form of government in which the state assumes responsibility for minimum standards of living for every person," meaning that a welfare state is a country whose government consciously acknowledges its responsibility to ensure the standard of living for every citizen. The preamble of the Indonesian constitution strongly reflects the adoption of the welfare state concept, as it reads:

"That indeed independence is the right of all nations, and therefore, colonialism on earth must be abolished because it is not in accordance with humanity and justice. And the struggle of the Indonesian independence movement has reached a fortunate moment, safely bringing the people of Indonesia to the gateway of the independence of the Indonesian state, which is independent, united, sovereign, just, and prosperous. By the grace of Almighty God and encouraged by the noble desire to live a free national life, the people of Indonesia hereby declare their independence. Subsequently, to establish a Government of the State of Indonesia that protects the entire Indonesian nation and all Indonesian territories and to advance the general welfare, to educate the nation's life, and to participate in the establishment of a world order based on freedom, lasting peace, and social justice, the Independence of Indonesia is therefore composed in a Constitution of the State of Indonesia, which is established in the form of a Republic of Indonesia that is sovereign by the people, founded upon: The Almighty God, a just and civilized humanity, the unity of Indonesia, and democracy guided by the inner wisdom of deliberations among representatives, as well as by realizing social justice for all the people of Indonesia."

The regulation of foreign loans and grant receipts is governed under Government Regulation Number 10 of 2011 on Procedures for Procuring Foreign Loans and Receiving Grants (PP 10/2011), Point 1 of Article 1 in PP 10/2011 defines foreign loans as: "Any financing through debt obtained by the Government from Foreign Lenders, bound by a loan agreement, and not in the form of state securities, which must be repaid under certain terms and conditions," Meanwhile, Point 2 of Article 1 in PP 10/2011 defines grants as: "Any state revenue in the form of foreign exchange, foreign exchange converted into rupiah, rupiah, goods, services, and/or securities obtained from Grant Providers, which do not need to be repaid, originating from domestic or foreign sources." According to Article 50 paragraph (2) of Government Regulation No. 10 of 2011, foreign grants may originate from: foreign countries, institutions under the United Nations, multilateral institutions, foreign financial institutions, foreign non-financial institutions, national financial institutions domiciled and conducting business activities outside the territory of the Republic of Indonesia, and individuals.

Assistance from foreign countries, whether in the form of loans or grants, may be provided in the form of funds, goods, and/or services. Generally, the receipt of such assistance becomes a taxable object due to the transfer from one party to another. Similarly, if the assistance is in the form of goods and/or services from abroad, the import activities may become subject to import duties. Imposing tax costs on foreign assistance activities could hinder the goodwill of donors. Hence, the government implements the regulatory function of taxes by establishing specific positive arrangements through tax incentives for foreign loans and grant receipts.

The regulation of tax facilities for the procurement of foreign loans and receipt of grants is governed under Government Regulation Number 42 of 1995, which has been amended several times, most



recently by Number 25 of 2001, concerning Import Duties, Additional Import Duties, Value-Added Tax, Sales Tax on Luxury Goods, and Income Tax for the Implementation of Government Projects Funded by Grants or Foreign Loans (PP 42/1995). Essentially, PP 42/1995 regulates the provision of facilities in the fields of customs and taxation to support the implementation of government projects funded by grants or foreign loans.

Previously, the implementing regulations for tax facilities for government projects funded by grants or foreign loans were stipulated under Minister of Finance Decree Number 239 of 1996, amended several times, most recently by Number 486/KMK.04/2000 on the Implementation of Government Regulation Number 42 of 1995 on Import Duties, Additional Import Duties, Value-Added Tax, Sales Tax on Luxury Goods, and Income Tax for Government Projects Funded by Grants or Foreign Loans (KMK 239/1996). However, under the previous regulations, tax facilities could only be obtained for foreign loans or grants in the form of funds, while grants in the form of goods including land and/or buildings and/or services were not eligible for tax facilities. Currently, updated provisions are stipulated under Minister of Finance Regulation Number 80 of 2024 concerning Procedures for Granting Tax Facilities for Value-Added Tax, Sales Tax on Luxury Goods, and Income Tax for the Implementation of Government Projects Funded by Grants or Foreign Loans (PMK 80/2024), rendering KMK 239/1996 revoked and no longer valid.

The issuance of PMK 80/2024 positively impacts the receipt of foreign grants intended for government projects. Tax facilities can now be utilized by grantors, grantees, and principal contractors implementing government projects, thereby optimizing the use of grant receipts, whether in the form of goods, including land and/or buildings, or services. Specifically, if the grants are in the form of land and/or buildings, this can effectively realize public welfare as an effort to utilize agrarian resources in accordance with Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).

The types of taxes eligible for such facilities include value-added tax, sales tax on luxury goods, and income tax. Unlike the previous KMK 239/1996 regulation, PMK 80/2024 stipulates that foreign grants in the form of goods and/or services are also eligible for tax facilities in the context of government projects. Thus, an analysis of the procedures and mechanisms for granting tax facilities under the latest provisions for foreign grant receipts is required.

## LITERATURE REVIEW

Taxes are one of the state's revenue sources that function as contributors to the state treasury (budgetary) and also serve as instruments to regulate society towards the desired direction of the government (*regulerend*). According to data from the Central Statistics Agency and the Ministry of Finance in 2024, taxes are the highest-ranking revenue source compared to other revenue sources such as non-tax revenues and grants.

The collection of taxes from the public, which is carried out coercively, must be regulated by law as mandated by Article 23A of the 1945 Constitution of the Republic of Indonesia. This means that indirect tax collection is fundamentally based on public consent through their representatives, which is embodied in the form of laws. Therefore, the principle of "no taxation without representation, and taxation without representation is robbery" applies. The requirement for regulation by law implies that all taxes and other levies that are not regulated by law are considered unlawful or unconstitutional.

Although tax collection is regulated by law, which according to the positivism legal theory can be interpreted as tax collection being fundamentally based on public consent, the reality shows that not all taxpayers comply with their tax payment obligations. Such non-compliance gives rise to tax liabilities that must be settled by taxpayers, and failure to do so will result in administrative sanctions in the form of fines or interest.

In certain cases, taxes are not collected from the public, such as the implementation of foreign grants intended for government project purposes whether provided in the form of goods, including land and/or buildings, and/or services, where such grants are exempt from taxation. This exemption is due to the fact that the implementation of the grants is aimed at public interests and the welfare of society.

## METHODS

The research method used in this study is a normative juridical, which refers to the tax law norms stipulated in Minister of Finance Regulation Number 80 of 2024 on Procedures for Granting Value-Added Tax or Value-Added Tax and Sales Tax on Luxury Goods and Income Tax Facilities in the Context of Implementing Government Projects Funded by Grants or Foreign Loans. The approach used in this research is qualitative approach, focusing on an analysis of tax facilities that can be utilized for foreign grants in the implementation of government projects.

## RESULT AND DISCUSSION

### Definition of Government Project based on Minister of Finance Regulation Number 80 of 2024

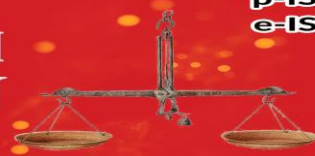
The enactment of PMK 80/2024 aims to provide legal certainty, ease, and simplicity in granting tax facilities for government projects funded by grants and/or foreign loans. Foreign grant activities provide direct benefits to the government to support the duties and functions of ministries/agencies, or are passed on to regional governments, State-Owned Enterprises (SOEs), and Regional-Owned Enterprises (ROEs). The parties eligible to receive are ministries or state agencies, regional governments, and State-Owned Enterprises (SOEs). The grant proposal must be signed by the highest leadership of each institution, while proposals from Regional-Owned Enterprises (ROEs) must be submitted through their respective regional governments. In general, government projects are defined as all activities related to the procurement of goods/services by the government funded by the State Budget (APBN) / Regional Budget (APBD) , meanwhile, specifically in Article 1 point 7 of PMK 80/2024, a Government Project is defined as a project or activity carried out by Ministries/Agencies or Regional Governments to perform government functions, including regulation, services, development, empowerment, and protection. PMK 80/2024 does not provide further explanation or regulation regarding the definition of government projects. This contrasts with certain types of tax facilities that can be granted for government activities, which must be intended for public interest, with the additional requirement that the public interest in question must not involve collecting fare.

Article 16B paragraph 1a point f of Law Number 42 of 2009 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, as amended by Law Number 7 of 2021 concerning Harmonization of Tax Regulations, provides that certain imports of goods by the central government and regional governments intended for public interest may be exempted from value-added tax. However, in the implementing regulation, Article 6 point t of Government Regulation Number 49 of 2022 concerning Exemption from Value Added Tax and Non-Collection of Value Added Tax or Sales Tax on Luxury Goods for Imports and/or Delivery of Certain Taxable Goods and/or Delivery of Certain Taxable Services and/or Utilization of Certain Taxable Services from Outside the Customs Area (PP 49/2022) defines the goods eligible for exemption from import duties as those that may be enjoyed or utilized directly by the general public or many people, without requiring a specific burden to obtain the benefits. For example, this includes a street lighting project or the construction of a bridge where the public does not need to pay a fee to cross. In this context, fare collection imposes a certain burden on the people.

The implementation of foreign grants can also be carried out through imports, as the implementation of national development and the growth of Indonesia's economy is closely tied to various forms and practices of international trade activities. Before the enactment of Minister of Finance Regulation Number 109 of 2024 concerning Exemption of Import Duty on Imported Goods for Government Projects Financed by Foreign Loans and/or Grants (PMK 109/2024), in accordance with Minister of Finance Regulation Number 171 of 2019 concerning Exemption from Import Duty on Goods Imported by the Central or Regional Government for Public Interest (PMK 171/2019), it is stated that goods received as a grant and intended for public interest may be eligible for customs/import duty exemption. Public interest in this regulation refers to the interests of the nation and state and/or the public, which do not focus on financial sector interests. Therefore, fare collecting may be applied, but it should not be the main purpose for obtaining the exemption.

The definition of import activities for public interest in PP 49/2022 and PMK 171/2019 is narrower compared to the definition of government projects in PMK 80/2024, as these regulations impose a restriction on financial interests as part of the definition of public interest. This restriction leads to an interpretation that no fare collection can be involved. However, there are actually several public interest activities that are crucial but require fare collection for their operation, such as the development of public transportation, like the provision of city buses.

PMK 80/2024 indeed does not regulate the limitation regarding the requirement of no fare collection or the prioritization of non-financial interests, as PMK 80/2024 merely defines a government project as "a government project to perform government functions, including regulation, services, development, empowerment, and protection." This definition allows for flexibility in utilizing tax facilities for foreign grants whether received in the form of goods, including land and/or buildings, or services, which must subsequently be recorded as State-Owned Assets or Regional-Owned Assets. Specifically, if the grant is provided in the form of land and/or buildings, it illustrates efforts to maximize the state's authority to control, which, according to Boedi Harsono, can be interpreted in both physical and juridical senses, and to manage the received assets in pursuit of achieving public welfare in accordance with the constitutional mandate under Article 33 paragraph (3) Constitution of the Republic of Indonesia of 1945 (UUD NRI 1945). Therefore, to avoid ambiguity, the principle of *lex specialis derogat legi generali* may be applied, meaning that specific law overrides general law to use the definition of a government project in



PMK 80/2024 while disregarding the public interest requirement in the tax facility provisions for foreign grants.

## Procedure and Mechanism to Obtain Tax Facilities on Foreign Grant for Government Project Implementation

The tax facilities for foreign grants for government projects in PMK 80/2024 include Value Added Tax (VAT) exemption, which is a tax imposed on the consumption/acquisition of taxable goods within the customs territory. Based on the VAT Law, VAT should be imposed on:

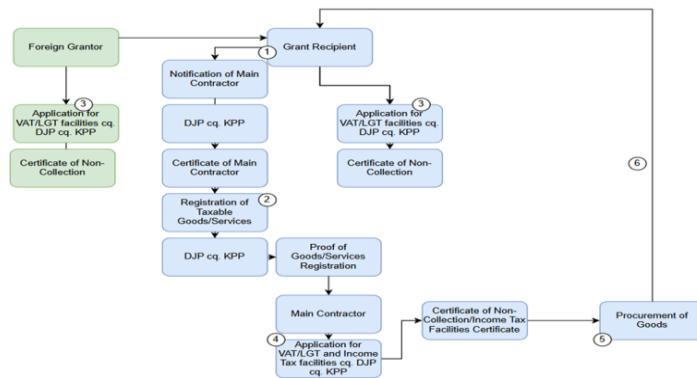
- a. The delivery of taxable goods within the customs territory by a business entity;
- b. The importation of taxable goods;
- c. The delivery of taxable services within the customs territory by a business entity;
- d. The utilization of intangible taxable goods from outside the customs territory within the customs territory;
- e. The utilization of taxable services from outside the customs territory within the customs territory;
- f. The export of tangible taxable goods by a taxable entrepreneur;
- g. The export of intangible taxable goods by a taxable entrepreneur; and
- h. The export of taxable services by a taxable entrepreneur.

The tax facilities also include the exemption from Luxury Goods Tax (LGT), which is a tax imposed on goods considered unnecessary for all segments of society, but are only enjoyed by certain groups with high purchasing power, such as motor vehicles with large engine capacities, jewelry, and premium electronics, and including Income Tax borne by the government, which is a tax owed in relation to employment, services, and activities that must be withheld and remitted by the employer. This tax is an official levy imposed on individuals with income or on income received or earned in the tax year, for the benefit of the state and society, as a duty that must be fulfilled. Specifically, with regard to the receipt of grants in the form of land and/or buildings, in addition to the non-collection of Income Tax, they are also exempted from the Duty on the Acquisition of Land and/or Building Rights pursuant to Article 44 paragraph (6) points (a) and (b) of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, as such assets are recorded as State-Owned Assets or Regional-Owned Assets and/or intended for the administration of government and/or the implementation of development for the public interest.

The government project activities may also utilize the customs duty exemption facility based on PMK 109/2024 if the foreign grant is implemented through the importation mechanism. Customs duty itself is a levy imposed on goods imported into the customs territory based on the value or nature of the goods. The utilization of tax facilities for foreign grants for government projects is carried out through several mechanisms and procedures. Referring to Government Regulation No. 10 of 2011, the initial procedure is to register the foreign grant agreement with the Directorate General of Budget Financing and Risk Management (DJPPR), Ministry of Finance, through the SEHATI application (online). DJPPR will then issue a letter confirming the grant registration number.

After obtaining the grant registration number, based on Minister of Finance Regulation Number 99/PMK.05/2017 concerning the Administration of Grant Management, the implementing agency (as the grant recipient) must then submit the determination letter to the related secretary general through the internal Bureau of State Property Management (BMN), which is subsequently forwarded to the working unit of the implementing agency. Based on PMK 80/2024, the procedures and mechanisms to obtain tax facilities for the foreign grant for the government project can be illustrated in the following chart:

**Figure 1 Procedurs And Mechanism To Obtain Tax Facilities**



source: PMK80/2024

The parties involved in the grant agreement may apply for tax facilities by first notifying the Directorate General of Taxes (DJP), Ministry of Finance, regarding the main contractor of the government project to issue a Certificate as the Main Contractor. The implementing agency must also register the taxable goods to obtain the taxable goods registration certificate from the DJP through the Head of the Tax Service Office (KPP). Afterward, the foreign grantor and the grant recipient must submit a Value Added Tax/Luxury Goods Tax Facility request to the DJP through KPP in order to obtain a non-collection certificate. For the main contractor, after obtaining the certificate as the main contractor, they may apply for Value Added Tax/Luxury Goods Tax and Income Tax facilities to the DJP through KPP. The procurement of goods for the government project can then be carried out by the main contractor without being subject to taxes.

If the foreign grant involves goods and/or services from abroad that are then imported, the mechanism for utilizing import duty exemptions is based on PMK 109/2024. If the grant involves goods, as soon as the goods reach Indonesian jurisdiction, certain documents must be prepared prior to their arrival. The implementing agency (as the grant recipient) must first submit a request for duty exemption to the Duty and Excise Office. Before the goods can be released, the main contractor must report the imported goods.

## CONCLUSION AND SUGGESTIONS

### Conclusion

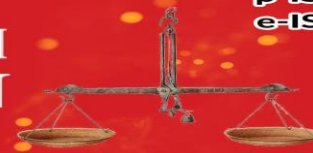
1. The definition of a government project in PMK 80/2024 is "a government project to perform government functions, including regulation, services, development, empowerment, and protection," so this definition is not constrained by the concept of public interest as regulated in several other regulations concerning tax facilities. The definition of public interest narrows the meaning of government activities because it tends to require the absence of fare collection or financial interests, whereas some government projects implemented through foreign grants require operational costs that are obtained through fare collection. Thus, both forms of grant receipts, whether in the form of goods, including land and/or buildings, and/or services, can utilize tax facilities for the welfare of the people.
2. The procedures and mechanisms for utilizing tax facilities for foreign grants for government projects are regulated in PMK 80/2024. In essence, before obtaining tax facilities, the parties involved must first register the grant agreement with the Directorate General of Budget Financing and Risk Management (DJPPR), Ministry of Finance. Afterward, the parties, including the main contractor appointed to carry out the government project, must submit a request for tax facilities and customs duty exemptions through the relevant authorities.

### Suggestion

1. The provision of tax facilities for foreign grants aimed at government project purposes should be carried out by providing convenience to the grantors, as the assistance provided by them will undoubtedly benefit the government and society. Facilitating tax facilities will enhance opportunities for receiving other grants aimed at achieving public welfare, and specifically, regarding the receipt of grants in the form of goods, particularly land and/or buildings, this can manifest the state's authority to control agrarian resources to fulfill the constitutional mandate.
2. The government is expected to comply with the provisions of Minister of Finance Regulation Number 80 of 2024 and other related tax regulations when implementing tax-related activities for foreign grants intended for government project purposes. The government must also disseminate this regulation to stakeholders, particularly those currently in the process of grant implementation.

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