



DIREKTORAT JENDERAL PAJAK

TAX REGULATIONS AND POLICIES RELATED TO FOREIGN LOANS AND GRANTS





INTRODUCTION

What is tax incentives?

- A special treatment given for specific conditions,
- It's not provided in a regular basis.

Any tax incentives, including tax facilities, shall be based legally on the tax laws.

1. Tax laws is a legitimate basis,
2. the existing tax laws have specific provision on tax exemptions/ facilities,
3. they reflect the current government policies.



LEGAL BASIS

1. Law No.7 of 1983 concerning **Income Tax** as amended lastly by Law No.36 of 2008.
2. Law No.8 of 1983 concerning **Value Added Tax and Sales Tax on Luxury Goods** as amended lastly by Law No.42 of 2010.
3. Government Regulation No.42 of 1995 as amended lastly by Government Regulation No.25 of 2001. [PP 42/1995]
4. Minister of Finance Decision No.239/KMK.01/1996 as amended lastly by Minister of Finance Decision No.486/KMK.04/2000.



BACKGROUND & OBJECTIVE

Background:

1. The needs to regulate the liable Import Duties, Value Added Taxes and Income Taxes in relation to Government Projects funded by foreign loans/grants.
2. To provide certainty in the implementation of Government Projects funded by foreign loans/grants.

Objective:

- To provide easiness in matters related to customs and taxation to support the implementation of Government Projects funded by foreign loans/grants.



TAX FACILITIES-1

VAT and Import Duties

Tax facilities is provided in terms of the exemption of VAT, Import Duty and Additional Import Duty on the following transactions in relation to the Government Projects funded by foreign loans/grants:

- a. importation of taxable goods,
- b. consumption of services provided from outside of the Custom Area;
- c. consumption of intangible taxable goods provided from outside of the Custom Area; and
- d. transfer of taxable goods/services by the Main Contractor to the Project Owner.



TAX FACILITIES-2

Income Tax

1. The liable Income Tax of the Main Contractors shall be borne by the Government, including *Branch Profit Tax*, in case such Contractors carry on business or activities through a permanent establishment situated in Indonesia.
2. The “*borne-by-Government Income Tax*” shall be calculated in proportion with the amount of foreign loans/grants.
3. The “*borne-by-Government Income Tax*” may deduct the liable income tax on global income earned during the tax year.
4. The overpayment of Income Tax that arise from the “*borne-by-Government Income Tax*” may not be refunded.



Definition

Government Project:

Project that listed in *Daftar Isian Proyek* (DIP) or any other documents which have similar nature to DIP, including project funded by the Subsidiary Loan Agreement (SLA).

Main Contractors:

any contractors, consultants and suppliers who, according to Contract, shall implement the Government Project funded by foreign loan/grant, including the dispatched experts and instructors funded by the foreign grants.

Second-tier contractors, consultants, and suppliers:

any contractors, consultants and suppliers who are received job orders from the Main Contractors in relation to the implementation of Government Project funded by foreign loans/grants.



Other Policies

Policy background:

1. It was very common in the past, Agreements regarding the Government Project funded by foreign loans/grants have clauses that provide tax exemptions/facilities with no reference to any prevailing tax laws or regulations.
2. Tax exemptions/facilities have been provided legally and specifically in the prevailing tax laws and regulations.
3. Many times, difficulties and disputes arise during the implementation of the Agreement, as the Tax Office strictly follows the prevailing tax laws and regulations.



Other Policies

Policies:

1. Tax exemptions/facilities should be legally based on the prevailing tax laws and regulations.
2. To insert a clause “*Tax exemption and relief shall be in accordance with the prevailing tax laws and regulations.*” in any draft agreement related to foreign loan/granst or other international cooperation agreement.



Related Issues

1. Donor countries/institutions do not want any part of the loans/grants used by any party for tax payment.
2. It may cause a confusion on some issues:
 - a. who derives income from the implementation of Government Project?
 - b. income derived by the third party,
 - c. with or without tax exemption, any different with the outcome?



Potential Problems

1. The third party withholding tax.
2. Credited by the third party.
3. Double deduction may happen if relieve is granted.
4. PP 42/1995: tax is borne by the government, it creates problems regarding the governance of tax expenditure.



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Thank You

