

**ORDINANCE OF THE COUNCIL OF MINISTERS**  
**of 10 December 2008**  
**concerning state aid for entrepreneurs operating under a permit to conduct economic activity**  
**in special economic zones**

On the basis of Article 4 Paragraph 4 of the Act of 20 October 1994 on special economic zones (Journal of Laws of 2015, Item 282) it is hereby ordained:

**§ 1.** The Ordinance specifies:

- 1) subjects of economic activity for which the permit shall not be issued;
  - 2) a maximum amount of the state aid available for an entrepreneur conducting economic activity in a zone under the permit;
  - 3) conditions to grant the state aid to an entrepreneur conducting economic activity in a zone under the permit;
  - 4) conditions for expenditure to be considered eligible as expenditure incurred for an investment in a zone, and also a minimum amount of such expenditure;
  - 5) investment costs taken into consideration when calculating state aid for entrepreneurs who received the permit after 31 December 2000.
  - 6) the manner of discounting of the investment costs and the amount of the state aid
- subject to the conditions stipulated in the Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Official Journal of the European Union, L 187 of 26. 06. 2014, p. 1), hereinafter referred to as the "Regulation No. 651/2014".

**§ 2.** 1. The permit shall not be issued for economic activity conducted in the following scope:

- 1) manufacturing of explosives, manufacturing of tobacco products, processing of motor fuels, and also manufacturing, bottling and processing of alcoholic beverages and spirit for purposes other than production of biocomponents;
- 2) operation of gaming establishments referred to in the Act of 19 November 2009 on gambling (Journal of Laws, No. 201, Item 1540 as amended);
- 3) services of installation, repairing, maintenance and overhaul of machines and appliances used for conducting economic activity in a zone;
- 4) services connected with sewage disposal and treatment; sewage sludge, specified in the section E, division 37 of the Polish Classification of Goods and Services introduced with the Ordinance of the Council of Ministers of 29 October 2008 on the Polish Classification of Goods and Services (Polska Klasyfikacja Wyrobów i Usług, PKWiU) (Journal of Laws No. 207, Item 1293 as amended), hereinafter referred to as "PKWiU";
- 5) services connected with collection, treatment and disposal of waste; recovery of secondary raw materials, specified in the section E, division 38 of the PKWiU, excluding:
  - a) non-hazardous recyclable waste specified in the category 38.11.5,
  - b) hazardous waste specified in the headings: 38.12.22.0, 38.12.24.0, 38.12.25.0 and in the subcategory 38.12.27,
  - c) waste organic solvents specified in the category 38.21.3,
  - d) services in the scope of materials recovery; secondary raw materials specified in the group 38.3;
- 6) remediation services and other waste management services specified in the section E, division 39 of the PKWiU;
- 7) constructions and construction works specified in the section F of the PKWiU;
- 8) wholesale and retail trade services; repair services of motor vehicles and motorcycles, as well as accommodation and food services, specified in the sections G and I of the PKWiU;
- 9) towing services in the road transport, specified in the section H, subcategory 52.21.25 of the PKWiU;
- 10) licensing services for information and communication, specified in the section J of the PKWiU, connected with:
  - a) acquisition of the rights for books, brochures, leaflets, maps, specified in the category 58.11.6,

- b) acquisition of the right to use directories and mailing lists, in particular address and telephone lists specified in the category 58.12.3,
  - c) acquisition of rights for journals and other periodicals, specified in the category 58.14.4,
  - d) acquisition of rights for other printed material, specified in the category 58.19.3,
  - e) acquisition of the right to use computer games, specified in the category 58.21.4,
  - f) acquisition of the right to use computer software, specified in the category 58.29.5,
- 11) information and communication services, specified in the section J of the PKWiU, connected with:
- a) production of motion pictures, video, television programmes, sound recording and music, specified in the division 59, excluding sound recording and music publishing services, specified in the category 59.20.3,
  - b) programming and broadcasting services, specified in the division 60,
  - c) other information services, specified in the group 63.9
- 12) financial and insurance services and real estate services, specified in the sections K and L of the PKWiU;
- 13) professional, scientific and technical services, specified in the section M of the PKWiU, excluding:
- a) financial auditing services, specified in the category 69.20.1,
  - b) accounting services, specified in the category 69.20.2,
  - c) technical testing and analysis services, specified in the group 71.2,
  - d) scientific research and development services, specified in the division 72;
- 14) administrative and support services, specified in the section N of the PKWiU, excluding call center services, specified in the group 82.2;
- 15) public administration and national defence services; compulsory social security and education services, human health and social work services, arts, entertainment and recreation services, specified in the sections O-R of the PKWiU;
- 16) other services, specified in the section S of the PKWiU, excluding repair and maintenance services of computers and communication equipment, specified in the group 95.1 of the PKWiU;
- 17) services of households and services provided by extraterritorial organisations and bodies, specified in the sections T and U of the PKWiU;
- 18) economic activity which requires a concession in accordance with Article 32, Paragraph 1 of the Act of 10 April 1997 - Energy Law (Journal of Laws of 2012, Item 1059, as amended);
2. Also, the permit shall not be granted in the following cases:
- 1) in the cases specified in Article 1 Paragraph 2 point c and d, Paragraph 3 point a-d, Paragraph 4 and 5, and Article 13 point a-c and point e of the Ordinance No 651/2014;
  - 2) for a large enterprise within the meaning of Article 2, Subparagraph 24 of the Ordinance No. 651/2014 to conduct economic activity in the areas of the Masovian Voivodeship within the same class of activity, specified in accordance with the provisions issued with regard to the classification of activity on the basis of Article 40, Paragraph 2 of the Act of 29 June 1995 on public statistics (Journal of Laws of 2012, Item 591, as amended<sup>1)</sup>), as the activity conducted by that entrepreneur within those areas.

**§ 3. 1.** State aid granted to an entrepreneur in the form of tax exemptions under Article 17, Paragraph 1, Subparagraph 34 of the Act of 15 February 1992 on corporate income tax (Journal of Laws of 2014, Item 851, as amended<sup>2)</sup>) or under Article 21, Paragraph 1, Subparagraph 63a of the Act of 26 July 1991 on personal income tax (Journal of Laws of 2012, Item 361, as amended<sup>3)</sup>) constitutes regional investment aid for:

- 1) costs of a new investment, the size of which is calculated as the maximum aid intensity specified for a given area multiplied by investment costs eligible for aid, specified in § 6, or

<sup>1)</sup> Amendments to the consolidated text of the indicated Act were announced in the Journal of Laws of 2013, Item 2 and of 2014, Item 1161 and 1662.

<sup>2)</sup> Amendments to the consolidated text of the indicated Act were announced in the Journal of Laws of 2014, Item 915, 1138, 1146, 1215, 1328, 1457, 1478, 1563, 1662 and of 2015, Item 73, 211 and 226.

<sup>3)</sup> Amendments to the consolidated text of the indicated Act were announced in the Journal of Laws of 2012, Item 362, 596, 769, 1278, 1342, 1448, 1529 and 1540, of 2013, Item 21, 888, 1027, 1036, 1287, 1304, 1387 and 1717, and of 2014, Item 223, 312, 567, 598, 773, 915, 1052, 1215, 1328, 1563, 1644, 1662 and 1863 and of 2015 Item 73, 211 and 251.

2) creating new jobs, the size of which is calculated as the maximum aid intensity specified for a given area multiplied by employment costs for two years of employment of newly recruited employees, including gross wages of those employees, plus obligatory contributions, such as social security premiums, incurred by the employer from the day of recruiting such employees.

2. The condition to grant aid for a new investment is that an entrepreneur must provide a percentage of his own funds understood as the resources not acquired as part of the aid granted to him, in the amount of at least 25 % of total investment costs.

3. Creation of new jobs shall mean net increase of jobs in a given enterprise in connection with implementation of the new investment, compared to average employment rate within 12 months preceding the date of the permit.

4. A new investment shall be understood as an investment into fixed assets and intangible assets, which involves creating a new enterprise or development of an existing enterprise, diversification of the production of an enterprise which involves introduction of new additional products or a material change regarding overall production process of an existing enterprise. A new investment also refers to an acquisition of an enterprise which is in liquidation or would be liquidated if not acquired, or of an organised part of such an enterprise, unless the acquiring party is connected with the disposing party.

5. Aid for replacement investments is not allowed.

6. Newly recruited employees shall be defined as the employees recruited after the date of the permit, in connection with the implementation of the new investment, but not later than within 3 years from the completion of the investment, whereas every job shall be maintained for at least 5 years, and in the case of small and medium entrepreneurs - for at least 3 years, from the date of their creation. The number of employees shall be understood as full-time employees within one year together with part-time employees and seasonal employees, expressed as full-time equivalents.

7. Aid for new investments may be granted together with aid for new job creation provided that the total size of such forms of aid does not exceed the maximum size of aid specified in § 4, whereas the allowed size of aid is expressed as the maximum aid intensity multiplied by the amount, whichever is higher, of the costs: either of the new investment or of the labour costs of newly recruited employees.

8. The aid referred to in Paragraph 1 may be granted in combination with other kinds of aid for new investments or job creation, regardless of its source or form, provided that the total amount of aid does not exceed the allowed size of aid specified in § 4.

**§ 4.** 1. The maximum intensity of regional investment aid calculated as the ratio of the gross grant equivalent and the costs eligible for such aid, subject to Paragraph 2, 3 and 6, shall be:

- 1) 50% - in the areas within the following voivodeships: Lublin Voivodeship, Podkarpackie Voivodeship, Warmian-Masurian Voivodeship and Podlaskie Voivodeship;
- 2) 35% - in the areas within the following voivodeships: Kuyavian-Pomeranian Voivodeship, Lubusz Voivodeship, Łódź Voivodeship, Lesser Poland Voivodeship, Opole Voivodeship, Pomeranian Voivodeship, Świętokrzyskie Voivodeship, West Pomeranian Voivodeship and in the areas of the following subregions: ciechanowsko-płocki, ostrołęcko-siedlecki, radomski and warszawski wschodni;
- 3) 25% - in the areas within the following voivodeships: Lower Silesian Voivodeship, Greater Poland Voivodeship and Silesian Voivodeship;
- 4) 20 % - in the area of the warszawski zachodni subregion;
- 5) 15 % - in the area of the Capital City of Warsaw by 31 December 2017;
- 6) 10 % - in the area of the Capital City of Warsaw from 1 December 2018;

2. The maximum intensity of the regional investment aid for small and medium entrepreneurs, within the meaning of Article 2, Subparagraph 2 of the Ordinance No. 651/2014, shall be increased by 20 percentage points gross for small entrepreneurs and by 10 percentage points gross for medium entrepreneurs, in relation to the maximum intensity specified for each of the areas. The increase shall not be applicable to large investment projects.

3. In the case of regional aid granted to an entrepreneur for implementation of a large investment project, the maximum amount of aid shall be calculated with the following formula:

$$I = R \times (50 \text{ m. EUR} + 0.5 \times B + 0 \times C),$$

where the symbols stand for:

I - the maximum value of aid for a large investment project,

R - the maximum intensity for regional investment aid for the area where the large investment project is located,

B - the amount of the costs eligible for aid exceeding the equivalent of 50 m. EUR, and not exceeding the equivalent of 100 m. EUR,

C - the amount of the costs eligible for aid exceeding the equivalent of 100 m. EUR.

4. A large investment project shall mean a new investment, where the costs eligible for aid exceed the equivalent of 50 m. EUR as per the exchange rate announced by the National Bank of Poland as of the date of the permit.

5. A new investment started by the same entrepreneur or another entrepreneur from the same capital group within the meaning of Article 3, Paragraph 1, Subparagraph 44 of the Accounting Act of 29 September 1994 (Journal of Laws of 2013, Item 330, as amended<sup>4)</sup>) within three years from commencement of the works on another investment subject to aid in the same subregion distinguished on the third level (NTS 3), in accordance with the provisions issued under Article 40, Paragraph 2 of the Act of 29 June 1995 on public statistics, shall be regarded a part of that investment.

6. The individual aid project requires a notification to the European Commission, if:

- 1) the total value of the regional aid granted from all sources would exceed the value of aid calculated in accordance with § 4 of the Ordinance of the Council of Ministers of 30 June 2014 determining the map of regional aid for the years 2014-2020 (Journal of Laws, Item 878) for a new investment with the costs eligible for aid amounting to 100 m. EUR;
- 2) the entrepreneur applying for aid has ceased the economic activity in the scope of the same class of activity, specified as per the Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (Official Journal of the European Union L 393 of 30. 12. 2006, p. 1, as amended), on the territory of a state being a party to the Agreement on the European Economic Area within two years preceding to the date of filing an application for aid, or if on the date of filing an application for aid he intends to cease such an activity within two years from completion of the investment under the permit.

**§ 5.** 1. An entrepreneur shall be entitled to exemption from income tax for the costs of the new investment, starting with the month when he incurred the investment expenditure in the period from the date of the permit, until the allowed regional aid is exhausted.

2. The condition to benefit from the exemption from the income tax referred to in Paragraph 1 shall be the following:

- 1) retention of ownership of the assets connected with the investment expenditure - for the period of 5 years from the date of their introduction into the records of tangible and intangible assets, within the meaning of the provisions on income tax, and in the case of small and medium enterprises - for the period of 3 years, whereas replacement of obsolete installation or equipment in connection with rapid technological development shall not be excluded.
- 2) retention of the investment in the region where the aid was granted, for the period of minimum 5 years from the date of completion of the whole investment, and in the case of small and medium enterprises - for the period of minimum 3 years.

3. Exemption from income tax for new jobs creation shall be applicable from the month when the entrepreneur started incurring labour costs, until the allowed regional aid is exhausted, subject to the conditions stipulated in § 3 Paragraph 6.

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<sup>4)</sup> Amendments to the consolidated text of the indicated Act were announced in the Journal of Laws of 2013, Item 613 and of 2014, Item 768 and 1100 and of 2015 Item 4.

4. In the case of an entrepreneur whose enterprise or organised part thereof fell within a zone in connection with implementation of a new investment, the exemptions referred to in Paragraph 1 and 3 shall be applicable from the month following the month when the investment expenditure was incurred and the level of employment was attained as specified in the permit, in the period from the date of the permit, until the allowed regional aid is exhausted.

5. The exemptions referred to in Paragraph 1 and 3 shall be applicable solely for the activity conducted within the zone. If an entrepreneur also conducts economic activity outside the zone, the activity conducted within the zone must be organizationally separated, and the amount of the exemption shall be determined on the basis of the information of the organizational unit which conducts activity solely within the zone.

6. To determine the amount of exemption from income tax for an entrepreneur who conducts activity within the zone through an organizational unit referred to in Paragraph 5, the provisions of Article 25 of the Act on personal income tax or Article 11 of the Act on corporate income tax shall apply accordingly.

**§ 6.** 1. The expenditure eligible for aid shall be considered investment costs less the calculated goods and services tax and excise tax, if their deduction is allowed by separate provisions, incurred within the zone in the period of validity of the permit, such costs being:

- 1) the purchasing price of the land or its perpetual usufruct;
- 2) the purchasing price of fixed assets or the cost of their manufacturing within own scope, subject to their inclusion to the assets of the taxable person, as per separate provisions;
- 3) the cost of extension or modernization of the existing tangible assets;
- 4) the purchasing price of intangible assets connected with transfer of technology involving acquisition of patent rights, licences, know-how or non-patented technological knowledge, subject to Paragraph 2 and 3;
- 5) the cost connected with rent or lease of land, buildings and constructions - provided that the renting or leasing period is at least 5 years, and in the case of small and medium entrepreneurs - at least 3 years, from the date of the planned completion of the new investment;
- 6) the purchasing price of assets other than land, buildings and constructions rented or leased, if the rent or lease has the form of financial lease and involves an obligation to purchase the assets on the date of expiry of the rent or lease.

2. In the case of entrepreneurs other than small and medium entrepreneurs, the investment costs specified in Paragraph 1, Subparagraph 4 shall be included in the costs eligible for aid in the amount not exceeding 50% of the value of the costs referred to in Paragraph 1.

3. Intangible assets should fulfil all of the following conditions:

- 1) shall be used by the entrepreneur receiving regional aid solely in the enterprise for the benefit of which the entrepreneur receives support, and shall be included in the assets of that enterprise, and shall remain with it for at least 5 years, and in the case of small and medium entrepreneurs - for at least 3 years;
- 2) shall be purchased from a third party on terms and conditions not divergent from normal investment practices;
- 3) shall be depreciated in accordance with income tax provisions.

4. The purchasing price and the cost of development of tangible assets and intangible assets shall be determined in accordance with the provisions of the Accounting Act of 29 September 1994.

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6. If, prior to the purchase of an enterprise, state aid has been already granted in relation to its elements, the purchasing price of such elements shall not be included in costs eligible for aid.

7. Tangible assets referred to in Paragraph 1, Subparagraph 2 purchased by an entrepreneur other than a small and medium entrepreneur must be new.

8. Minimum amount of the investment costs referred to in Paragraph 1 shall be 100 thousand EUR as per the exchange rate announced by the National Bank of Poland as of the date of the permit.

9. In the case of regional aid granted for a material change in the overall production process of an existing enterprise, the costs eligible for aid should exceed depreciation costs of the assets connected with the activity subject to the change within the last three financial years preceding the day of filing the application for aid.

10. In the case of regional aid granted for diversification of production of an existing enterprise, the costs eligible for aid should exceed by at least 200% the book value of reused assets as recorded in the financial year prior to the commencement of diversification.

**§ 7.** 1. Investment costs and the amount of aid shall be discounted as of the date of the permit.

2. To discount the expenditure incurred before 1 February 1998, WIBOR 6M from 1 January 1998 shall be applicable.

3. To discount the received aid and expenditure incurred in the period from 1 February 1998 to 31 August 2004, WIBOR 6M shall be applicable, recorded in the months preceding the month when the entrepreneur incurred the expenditure or received aid.

4. To discount the received aid and expenditure incurred in the period from 1 September 2004 to 30 June 2008, the reference rates for the Republic of Poland determined by the European Commission shall be applicable.

5. To discount the received aid and expenditure incurred from 1 July 2008, the base rates for the Republic of Poland determined by the European Commission shall be applicable, increased by 100 basis points.

6. The discounted value of the incurred expenditure and received aid shall be determined as per the following formula:

$$PV = F \times \prod_{i=1}^n \frac{1}{1 + r_i/12} = F \times \frac{1}{1 + r_1/12} \times \frac{1}{1 + r_2/12} \times \dots \times \frac{1}{1 + r_n/12}$$

where the symbols stand for:

- PV - discounted, as of the date of the permit, value of the incurred expenditure or received aid,
- F - the value of the incurred expenditure from the day it was incurred or the received aid from the day it was received,
- i - subsequent month of discounting,
- $r_i$  - the discount rate referred to in Paragraph 2-5 respectively, expressed as a decimal fraction, applicable to i. period of discounting,
- n - the number of months lapsed from the date of the permit to conduct activity in the zone to the day the expenditure was incurred or aid was received, whereas:
  - the day when the expenditure was incurred shall be the last day of the month when the expenditure was incurred,
  - the day when the aid was granted shall be the last day of the month when the aid was granted within the meaning of the Act of 30 April 2004 on state aid procedure (Journal of Laws of 2007, No 59, Item 404 as amended),
  - the date of the permit shall be the last day of the month when the permit was issued.