

**REGULATION
OF THE COUNCIL OF MINISTERS**

of 10 December 2008

**on public aid granted to economic entities operating pursuant to a permit for carrying out
business activity within special economic zones**

Pursuant to Article 4 sub-clause 4 of the Act of 20 October 1994 on special economic zones (Journal of Laws No 42/2007, item 274 and No 118/2008, item 746) it is hereby ordered as follows:

§ 1. The regulation shall stipulate:

- 1) scope of the business activity for conducting of which the permit will not be issued;
 - 2) maximum level of public aid that may be granted to an economic entity conducting business activity within a zone under the permit;
 - 3) conditions of granting public aid to an economic entity conducting business within a zone under the permit;
 - 4) conditions of considering expenditure as the expenditure spent on investment within a zone, as well as their minimum amount of such expenditure;
 - 5) expenditure on investment taken into consideration while the level of public aid is being decided upon for economic entities which obtained the permit after 31 December 2000;
 - 6) manner of investment expenditure discounting and public aid level
- taking into consideration the provisions of the Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (Official Journal of the European Union, L 214 of 9 August 2008, page 3).

§ 2. 1. The permit shall not be issued for carrying out business activity within the scope of:

- 1) manufacturing explosives, tobacco products, engine fuel processing, as well as manufacturing, bottling and processing of alcoholic beverages and spirit designed for other purposes than manufacturing of biocomponents;
- 2) running game centres referred to in the Act of 29 July 1992 on games of chance and mutual bets (Journal of Laws No 4/2004, item 27, as amended¹⁾);
- 3) installing, maintaining and repairing devices used for carrying out business activity on the area of a special economic zone and items for personal use;
- 4) construction works stipulated in section F of the Polish Classification of Goods and Services established under the regulation of the Council of Ministers of 6 April 2004 on Polish Classification of Goods and Services (PKWiU) (Journal of Laws No 89, item 844, as amended²⁾), hereinafter referred to as the "PKWiU";
- 5) wholesale and retail trade, repairing of motor vehicles, motorcycles and items for personal use and household goods, hotel and gastronomic services stipulated in sections G and H of PKWiU;
- 6) financial intermediation services and services related to real property, lease, science and conducting business activity stipulated in sections J and K of PKWiU, except for:
 - a) information technology services stipulated in section 72,
 - b) research and development services stipulated in section 73,
 - c) accounting and auditing of books services stipulated in category 74.12.1,
 - d) bookkeeping services, excluding tax declarations stipulated in category 74.12.2,
 - e) technical testing and analysis stipulated in group 74.3,
 - f) call centre services stipulated in class 74.86;

¹⁾ Amendments to the consolidated text of the Act were published in the Journal of Laws No 273/2004, item 2703, No 132/2005, item 1111 and No 178/2005, item 1479 and No 50/2007, item 331 and No 192/2007, item 1380.

²⁾ Amendments to the regulation were published in the Journal of Laws No 90/2005, item 760, No 245/2006, item 1780 and No 243/2007, item 1785.

- 7) services related to public administration, national defence, obligatory social insurance and universal health insurance, education, health care and social welfare, other public utilities, social and individual, household services, services rendered by extraterritorial organizations and units stipulated in sections L-Q of PKWiU;
- 8) business activity for which a license is required pursuant to Article 32 sub-clause 1 of the Act of 10 April 1997 – Energy Law (Journal of Laws No 89/2006, item 625, as amended³⁾).

2. Moreover, the permit shall not be issued in the cases referred to in Article 1 sub-clauses 2-6 of the Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty.

§ 3. 1. Public aid granted in the form of tax exemptions under Article 17 sub-clause 1 item 34 of the Act of 15 February 1992 on corporate income tax (Journal of Laws No 54/2000, item 654, as amended⁴⁾) or under Article 21 sub-clause 1 item 63a of the Act of 26 July 1991 on personal income tax (Journal of Laws No 14/2000, item 176, as amended⁵⁾) shall constitute a regional aid due to:

- 1) costs of new investment, whose amount is calculated as a product of maximum intensity of the aid determined for a given area and costs of investment qualifying for the aid, referred to in § 6, or
- 2) creation of new workplaces, whose amount is calculated as a product of maximum intensity of the aid determined for a given area and two-year labour costs of newly employed employees, covering gross wages costs of such employees increased by obligatory premiums, such as social insurance premiums paid by the economic entity starting from the day of employing such employees.

2. The participation of the own funds of an economic entity in the investment shall constitute the condition upon which the aid for a new investment may be granted. The own funds of an economic entity shall mean funds which have not been obtained within the aid granted and amounting to, at least, 25% of total qualified investment costs.

³⁾ Amendments to the consolidated text of the Act were published in the Journal of Laws No 104/2006, item 708, No 158, item 1123 and No 170, item 1217 and of 2007 No 21, item 124, No 52, item 343, No 115, item 790 and No 130, item 905.

⁴⁾ Amendments to the consolidated text of the Act were published in the Journal of Laws of 2000 No 60, item 700 and 703, No 86, item 958, No 103, item 1100, No 117, item 1228, No 122, item 1315 and 1324, of 2001 No 106, item 1150, No 110, item 1190 and No 125, item 1363, of 2002 No 25, item 253, No 74, item 676, No 93, item 820, No 141, item 1179, No 169, item 1384, No 199, item 1672, No 200, item 1684 and No 230, item 1922, of 2003 No 45, item 391, No 96, item 874, No 137, item 1302, No 180, item 1759, No 202, item 1957, No 217, item 2124 and No 223, item 2218, of 2004 No 6, item 39, No 29, item 257, No 54, item 535, No 93, item 894, No 116, item 1203, No 121, item 1262, No 123, item 1291, No 146, item 1546, No 171, item 1800, No 210, item 2135 and No 254, item 2533, of 2005 No 25, item 202, No 57, item 491, No 78, item 684, No 143, item 1199, No 155, item 1298, No 169, item 1419 and 1420, No 179, item 1484, No 180, item 1495 and No 183, item 1538, of 2006 No 94, item 651, No 107, item 723, No 136, item 970, No 157, item 1119, No 183, item 1353 and No 217, item 1589 and No 251, item 1874, of 2007 No 165, item 1169, No 171, item 1208 and No 176, item 1238 and of 2008 No 141, item 888.

⁵⁾ Amendments to the consolidated text of the Act were published in the Journal of Laws of 2000, No 22, item 270, No 60, item 703, No 70, item 816, No 104, item 1104, No 117, item 1228 and No 122, item 1324, of 2001 No 4, item 27, No 8, item 64, No 52, item 539, No 73, item 764, No 74, item 784, No 88, item 961, No 89, item 968, No 102, item 1117, No 106, item 1150, No 110, item 1190, No 125, item 1363 and 1370 and No 134, item 1509, of 2002 No 19, item 199, No 25, item 253, No 74, item 676, No 78, item 715, No 89, item 804, No 135, item 1146, No 141, item 1182, No 169, item 1384, No 181, item 1515, No 200, item 1679 and No 240, item 2058, of 2003, No 7, item 79, No 45, item 391, No 65, item 595, No 84, item 774, No 90, item 844, No 96, item 874, No 122, item 1143, No 135, item 1268, No 137, item 1302, No 166, item 1608, No 202, item 1956, No 222, item 2201, No 223, item 2217 and No 228, item 2255, of 2004 No 29, item 257, No 54, item 535, No 93, item 894, No 99, item 1001, No 109, item 1163, No 116, item 1203, 1205 and 1207, No 120, item 1252, No 123, item 1291, No 162, item 1691, No 210, item 2135, No 263, item 2619 and No 281, item 2779 and 2781, of 2005 No 25, item 202, No 30, item 262, No 85, item 725, No 86, item 732, No 90, item 757, No 102, item 852, No 143, item 1199 and 1202, No 155, item 1298, No 164, item 1365 and 1366, No 169, item 1418 and 1420, No 177, item 1468, No 179, item 1484, No 180, item 1495 and No 183, item 1538 and of 2006 No 46, item 328, No 104, item 708 and 711, No 107, item 723, No 136, item 970, No 157, item 1119, No 183, item 1353 and 1354, No 217, item 1588 and No 249, item 1824, of 2007 No 35, item 219, No 99, item 658, No 115, item 791 and 793, No 176, item 1243, No 181, item 1288, No 191, item 1361 and 1367 and No 225, item 1673 and of 2008 No 97, item 623, No 141, item 888 and No 143, item 894.

3. Creation of new workplaces shall mean net increase in the number of workplaces in a given entity due to the performance of a new investment in comparison with the average employment within the period of 12 months prior to the day of obtaining the permit.

4. A new investment shall mean an investment in fixed assets and intangible assets consisting in the establishment of a new entity or the extension of the existing one, diversification of the entity's production by introducing new, additional products or significant amendment relating to the whole manufacturing process within the existing entity. A new investment shall also mean an acquisition of an entity which is put in liquidation or would be put in liquidation if it was not acquired, provided that such an entity is acquired by an independent economic entity within the meaning of the attachment I to the Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty.

5. The aid for recovering investments shall not be permissible.

6. Newly employed employees shall mean the number of employees employed after obtaining a permit in connection with the performance of a new investment, however not later than within the period of 3 years following the termination of an investment, and each workplace is maintained for the period of at least 5 years, and in the case of small and medium-sized enterprises – for the period of at least 3 years starting from their creation. Number of employees shall mean the employees employed on full-time basis for the period of one year together with employees employed on part-time basis and seasonal employees per jobs on full-time basis.

7. The aid designed for new investments may be granted together with the aid for creation of new workplaces, provided that the total amount of these aids does not exceed the amount of the aid stipulated in § 4. The permissible amount of the aid shall be calculated as a product of maximum aid intensity and higher amount of costs: of new investment or two-year labour costs of newly employed employees.

8. The aid referred to in sub-clause 1 may be granted jointly with other aid for new investments or creation of new workplaces, regardless of its source and form, provided that the total value of such an aid does not exceed the permissible aid amount stipulated in § 4.

§ 4. 1. The maximum intensity of the regional aid calculated as a proportion of the equivalent of gross subsidy to the costs which qualify to be covered by such an aid, subject to sub-clause 2 and 3, shall amount to:

- 1) 50 % - on the areas belonging to the following provinces: Lubelskie, Podkarpackie, Warmińsko-Mazurskie, Podlaskie, Świętokrzyskie, Opolskie, Małopolskie, Lubuskie, Łódzkie, Kujawsko-Pomorskie;
- 2) 40 % - on the areas belonging to the following provinces: Pomorskie, Zachodniopomorskie, Dolnośląskie, Wielkopolskie, Śląskie, and until 31 December 2010 - on the area belonging to the Mazowieckie province, except for the capital city of Warsaw;
- 3) 30 % - on the area belonging to the capital city of Warsaw and between 1 January 2011 and 31 December 2013 – on the area belonging to Mazowieckie province.

2. The maximum intensity of the regional investment aid granted to small and medium-sized enterprises within the meaning of the Attachment I to the Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty, except for the economic entities carrying out business activity within the transport sector, shall be increased by 20 gross percentage points in the case of small enterprises and by 10 gross percentage points in the case of medium-sized enterprises with relation to the maximum intensity stipulated for specific areas.

3. In the case of the regional aid granted to an economic entity for the performance of a large investment project, the maximum amount of the aid shall be calculated according to the following formula:

$$I = R \times (\text{EUR } 50 \text{ million} + 0.5 \times B + 0.34 \times C)$$

where the separate symbols shall mean the following:

I - maximum aid amount for a large investment project,

R - intensity of the aid for the area of the investment location, stipulated in accordance with sub-clause 1,

B - amount of costs which qualify to be covered by the aid over the equivalent of EUR 50 million, however not exceeding the equivalent of EUR 100 million,

C - amount of costs which qualify to be covered by the aid exceeding the equivalent of EUR 100 million.

4. A large investment project shall mean a new investment undertaken within the period of 3 years by one or a few economic entities, in which fixed assets are combined together in economically indivisible manner and costs qualifying for the aid exceed the equivalent of EUR 50 million and have been calculated in accordance with the exchange rate announced by the National Bank of Poland on the basis of prices and exchange rates as of the day of granting the permit.

5. Should the total amount of the regional aid granted from all sources exceed 75% of the maximum amount of the aid which may be granted for the investment with costs qualifying for the aid and constituting the equivalent of EUR 100 million by applying standard levels of the aid binding upon large economic entities in the approved map of regional aid as of the day of granting the aid, the project of an individual aid shall be notified to the European Commission.

§ 5. 1. An economic entity shall have the right to income tax exemption due to new investment costs starting from the month in which it incurred investment expenditure within the period between the day of obtaining the permit and the exhaustion of permissible regional aid.

2. The following conditions shall be met in order to obtain the right to income tax exemption:

- 1) preservation of ownership title to the property elements connected with investment expenditure – for the period of 5 years following their entry into fixed and intangible assets register within the meaning of income tax regulations, and in the case of small and medium-sized enterprises – for the period of 3 years, however the replacement of outdated installations or equipment due to fast pace of technological development shall not be excluded;
- 2) preservation of the investment in the region in which the aid has been granted for the period not shorter than 5 years following the termination of the whole investment, and in the case of small and medium-sized enterprises – for the period not shorter than 3 years.

3. An economic entity shall have the right to income tax exemption due to creation of new workplaces starting from the month in which it commenced bearing labour costs until the exhaustion of permissible regional aid upon the fulfilment of the conditions referred to in §3 sub-clause 6.

4. An economic entity whose enterprise or its organized part has been covered by the borders of a special economic zone due to the performance of a new investment, shall have the right to the exemptions referred to in sub-clauses 1 and 3 starting from the month following the month in which investment expenditure and the employment have reached the level stipulated in the exemption, within the period between the day of obtaining the permit and the exhaustion of permissible regional aid.

5. An economic entity shall have the right to the exemptions referred to in sub-clauses 1 and 3 solely for the performance of the business activity within a special economic zone. Should the economic entity carry out business activity also outside a special economic zone, activity carried out within a special economic zone shall be organizationally separated, and the exemption amount shall be calculated on the basis of data relating to organizational unit carrying out business activity solely within a special economic zone.

6. For the purpose of calculating the amount of income tax exemption vested in an economic entity carrying out business activity within a special economic zone through the organizational unit

referred to in sub-clause 5 the provisions of Article 25 of the Act on personal income tax or Article 11 of the corporate income tax shall apply respectively.

§ 6. 1. The costs qualifying for the aid shall mean costs of an investment decreased by tax on goods and services and excise tax charged, if the possibility of their deduction results from separate regulations, incurred within a special economic zone during the duration of the permit, constituting:

- 1) purchase price of the ownership title or perpetual usufruct right to the lands;
- 2) purchase price or costs of manufacturing, within one's capacity, of fixed assets, provided that they are classified, under separate regulations, as elements of taxpayer's property;
- 3) costs of extension or modernization of the existing fixed assets;
- 4) purchase price of intangible assets connected with the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge, subject to sub-clause 2 and 3;
- 5) costs connected with lease of lands, buildings and structures, provided that the lease period shall be at least 5 years, and in the case of small and medium-sized enterprises – at least 3 years counting from the expected date of new investment termination;
- 6) purchase price of the assets other than lands, buildings and structures covered by the lease, if the lease has the form of financial leasing and covers the obligation to purchase assets upon the expiry of lease period.

2. In the case of economic entities other than small and medium-sized enterprises, investment costs stipulated in sub-clause 1 item 4 shall be included in the costs qualifying for the aid in the amount not exceeding 50% of the value of the costs referred to in sub-clause 1.

3. Intangible assets shall meet, jointly, the following conditions:

- 1) economic entity being granted regional aid uses them solely in the enterprise for which the aid has been granted, and they are recognized as assets of such an enterprise and will be maintained there for the period of at least 5 years, and in the case of small or medium-sized enterprises – for the period of at least 3 years;
- 2) they have been purchased from a third party on conditions not differing from normal investment practices;
- 3) they are subject to amortization pursuant to income tax regulations.

4. The purchase price and costs of manufacturing fixed assets and intangible assets shall be determined pursuant to the provisions of the Accounting Act of 29 September 1994 (Journal of Laws No 76/2002, item 694, as amended⁶⁾).

5. In the case of an economic entity carrying out business activity in the transport sector, expenditure incurred for the purchase of means of transport shall not qualify for the aid.

6. If, prior to the acquisition of an enterprise, public aid had been already granted towards one of its elements, purchase price of such elements shall not be classified as costs qualifying for the aid.

7. Fixed assets referred to in sub-clause 1 item 2 purchased by the economic entity other than small and medium-sized shall be new.

8. The minimum amount of investment costs referred to in sub-clause 1 shall amount to EUR 100 thousand according to the exchange rate announced by the National Bank of Poland as of the day of granting the permit.

⁶⁾ Amendments to the consolidated text of the Act were published in the Journal of Laws of 2003 No 60, item 535, No 124, item 1152, No 139, item 1324 and No 229, item 2276, of 2004 No 96, item 959, No 145, item 1535, No 146, item 1546 and No 213, item 2155, of 2005 No 10, item 66, No 184, item 1539 and No 267, item 2252, of 2006 No 157, item 1119, No 208, item 1540 and of 2008 No 63, item 393, No 144, item 900 and No 171, item 1056.

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

2. The monthly average rate of six-month loan granted on Warsaw interbank market (WIBOR) from January 1998 shall apply for the purpose of discounting expenditure incurred before 1 February 1998.

3. The monthly average rate of six-month loan granted on Warsaw interbank market (WIBOR) quoted in months preceding the month in which the economic entity incurred expenditure or obtained the aid shall apply for the purpose of discounting aid granted and expenditure incurred between 1 February 1998 and 31 August 2004.

4. The reference rates determined by the European Commission for the Republic of Poland shall apply for the purpose of discounting aid granted and expenditure incurred between 1 September 2004 and 30 June 2008.

5. The base rates determined by the European Commission for the Republic of Poland and increased by 100 base points shall apply for the purpose of discounting aid granted and expenditure incurred from 1 July 2008.

6. The discounted value of expenditure incurred and aid granted shall be calculated according to the following formula

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

$$\dots \times \frac{1}{1 + r_n/12},$$

where individual symbols shall mean the following:

- PV - discounted value of expenditure incurred or aid granted as of the day of granting permit
- F - value of expenditure incurred as of the day of their incurrence or the value of aid obtained as of the day of obtaining the aid,
- i - subsequent monthly discounting period,
- r_i - discount rate referred to in, respectively, sub-clause 2-5, expressed in decimal fraction, appropriate for “i” discounting period,
- n - number of months which elapsed from the day of obtaining the permit for carrying out business activity until the day of incurring expenditure or the day of obtaining the aid, subject to the following:
 - day of incurring expenditure shall be the last day of a month in which given expenditure was incurred,
 - day of obtaining the aid shall be the last day of a month in which the aid within the meaning of the Act of 30 April 2004 on the procedural issues concerning public aid (Journal of Laws of 2007, No 59, item 404 and of 2008, No 93, item 585) was obtained,
 - day of obtaining the permit shall be the last day of a month in which the permit was issued.

§ 8. The conditions for granting regional aid that have been hitherto in force shall apply to the economic entity holding the permit issued prior to the day of coming into force of this regulation.

§ 9. The regulation shall come into force on 30 December 2008.

PRIME MINISTER