

THE GOVERNMENT OF THE REPUBLIC OF CROATIA

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Pursuant to Article 11 paragraph 6 and Article 17 paragraph 7 of the Act on Investment Promotion and Development of Investment Climate (Official Gazette 111/2012 and 28/2013) the Government of the Republic of Croatia at its session on 28 March 2013 adopted the

REGULATION

ON INVESTMENT PROMOTION AND DEVELOPMENT OF INVESTMENT CLIMATE

GENERAL PROVISIONS

Article 1

This Regulation shall regulate the form and mandatory content of the Application for Use of Incentives (hereinafter: the Application) with the pertaining forms; the procedures of application and approval and use of investment incentives; mandatory content of the annual report on the use of investment incentives; the aid amounts for eligible costs of new jobs linked to investment project, as well as criteria for establishing the precise aid amount for eligible costs of new jobs linked to investment project and other related issues.

Article 2

(1) This Regulation shall apply to entrepreneurs – natural persons (craftsmen) liable to pay income tax or companies registered in the territory of the Republic of Croatia, and that based on the Application are eligible for the status of incentives recipients, in accordance with the Act on Investment Promotion and Development of Investment Climate (hereinafter: the Act).

(2) This Regulation shall not apply to:

– entrepreneurs in difficulties that may not achieve the status of incentives recipients, in accordance with Article 6, points 1 and 3 of the Act, and those entrepreneurs to which are applied the rules of the Decision on publishing rules on state aids for rescuing and restructuring (Official Gazette 20/2007 and 119/2011);

– entrepreneurs in steel industry and in synthetic fibres industry that may not achieve status of the recipient of incentive measures, in accordance with Article 6, points 1 and 3 of the Act, and those entrepreneurs that mainly perform activities defined in rules on regional aids from the Budget heading 6 point (a) of the Decision on publishing the list of rules on state aids (Official Gazette 83/2012);

– entrepreneurs in shipbuilding industry (construction of maritime self-propelled facilities–gross tonnage greater or equal to 100) that may not achieve the status of the recipient of incentive measures for investment, in accordance with Article 6 points 1 and 3 of the Act and those entrepreneurs that mainly perform activities contained in rules of state aids to

shipbuilding sector in heading 18 point (b) of the Decision on publishing the list of rules on state aids (Official Gazette 83/2012);

– entrepreneurs in the transport sector that may not achieve the status of the recipient of incentive measures for investments, in accordance with Article 6 points 1 and 3 of the Act and those entrepreneurs that mainly perform activities contained in the rules on state aids to transport from the heading 24 of the Decision on publishing of the list of rules on state aids and in rules on aids to transport from the Decision on publishing rules on aids to transport (Official Gazette 141/2008 and 31/2010); and

– entrepreneurs performing a replacement investment that may not achieve the status of the recipient of incentive measures for investments, in accordance with Article 6 points 1 and 3 of the Act, unless it implies modernization or improvement of the business process and shall not be included in the amount of initial investment. The replacement investment shall be considered those investments in which the existing buildings or equipment/machinery, or part of equipment/machinery shall be replaced by a new building or equipment/machinery, with an increase of production capacity by less than 25% or without change in production's base or applied technology. The replacement investment shall not be considered a complete demolition of the existing building older than 30 years and its replacement by a new building, or the major renovation of the existing building. The renovation shall be considered significant if the costs shall be at least 50% of the existing building's value.

FORM AND MANDATORY CONTENT OF THE APPLICATION

Article 3

(1) The Application shall be submitted on forms laid down by this Regulation.

(2) The content of the forms designated as OP-1 to OP-8 on which the Application is to be submitted is laid down in Annexes 1 to 8 of this Regulation and shall be its integral part.

(3) In addition to the Application, the following documents and information shall be attached:

– An excerpt from the Court Register or the excerpt from the Central Crafts Registry of the Applicant, and depending on whether the Applicant is legal or natural person – craftsman, not older than three months;

– Decision of the Tax Administration on the liability to pay income tax, if the Applicant is a natural person – a craftsman;

– Information on financial condition of the Applicant (Annual Financial Report for the past three years or the audit report),

– Business plan for the next five years, with a projection of financial reports (balance sheet and profit and loss account).

(4) Along with the Application the Applicant for the use of investment incentives may attach a list of references and other annexes that the Applicant considers relevant to prove the eligibility of the use of investment incentives.

(5) At the request of the competent ministry referred to in Article 6 point 13 of the Act, the Applicant shall submit other requested information necessary for the assessment of well-foundedness of the Application.

Article 4

The Applicant shall submit the Application to the competent ministry in the scope of which the subject investment belongs in accordance with the Act.

APPLICATION PROCEDURE, APPROVAL AND USE OF INCENTIVES

Article 5

(1) The competent ministry, on the basis of complete Application, and according to previously obtained approval of the Ministry of Finance – Tax Administration, and when the Applicant requests the application of customs tariff benefit (preference) of the Ministry of Finance-Customs Administration, and in cooperation with other ministries in whose scope the subject investment belongs, shall issue a Certificate on the incentives status award (hereinafter: the Certificate), by which it is confirmed that the Applicant meets all the requirements laid down by the Act and this Regulation and shall be awarded a status of the recipient of incentive measures.

(2) The Application shall be considered complete when fulfilling all the requirements – information and documents laid down by this Regulation.

(3) The Certificate shall be issued by the competent ministry within 60 days of the date of receipt of the Application, fully complying with the requirements of the Act and this Regulation.

(4) If from the received Application the competent ministry establishes that the Applicant does not meet all the requirements laid down by the Act and this Regulation, the competent ministry will within 60 days from the receipt of the Application notify about the unfulfilled requirements for the achievement of the status of the recipient of incentive measures for investments.

Article 6

(1) The costs that are in the Application stated as expenses undertaken in connection with construction works and paid advances on costs will not be recognized as eligible investment costs if incurred prior to the submission of the Applications.

(2) Investment costs shall be considered justified if incurred three years from the start of the investment or costs incurred until the termination of works, if the same shall be terminated in the period shorter than three years from the commencement of the investment.

Article 7

If from the Application results the intention to use tax benefit, the Certificate referred to in Article 5 of this Regulation shall contain:

– the provision that the use of tax benefit is governed by Article 9 of the Act. The use of the tax benefit is provided from the moment of obtaining the status of the recipient of incentive

measures that is in the period of up to 10 years from the year of investment commencement. The company beneficiary of incentives may use the tax benefit in terms of reduction or exemption of prescribed income tax rate already by the end of the first year of investment, but under the condition of the performed investment prescribed by Article 9 of the Act and on condition of opening new jobs related to the investment within the period of three years from the start of the investment. In each subsequent year will be used the tax benefit for which the criterion of investment amount laid down in Article 9 of the Act has been fulfilled, and the criterion of the number of new jobs shall be in accordance with the same Article of the Act be met within the period of three years from the commencement of the investment.

– time limit for the use of tax benefit is regulated by Article 9 of the Act and shall be up to 10 years from the year of the investment commencement. The period of the use of benefit may be shorter in case that prior to expiry of ten-year period maximum aid intensity determined by the regional aids map is reached.

Article 8

(1) If from the Application results the intention to import equipment and realization of tariff benefits, the Certificate referred to in Article 5 of this Regulation shall also contain:

– provision that the equipment that is subject to import is suitable for use for the purpose of performing registered activities of the recipient of benefits,

– specification of equipment to be imported, expressed according to Customs Tariff items and quantity and total value,

– timeframe of the equipment import and within the specified period of investments realization.

(2) Exemption from payment import duty shall be obtained by submitting to the competent Customs Office the Certificate referred to in Article 5 of this Regulation, with Declaration to release the goods in free circulation.

Article 9

(1) The equipment imported with the exemption of customs duty payment before the expiry of mandatory storage shall not be sold or alienated on another basis, lend, given to someone else for use, in pledge, on lease, or given as security for other liabilities, without prior written notice to the Customs Administration thereof and before the calculation of duties and payment of customs debt.

(2) Should circumstances referred to in paragraph 1 of this Article occur the calculation of customs duties shall be made at the rate applicable on the date of the occurrence of circumstances on the basis of the type of goods and customs value determined and accepted by the customs office.

Article 10

If from the Application derives the intention to use aids for eligible costs of the new jobs opening related to investment project or aids for eligible training costs related to investment project, the Certificate referred to in Article 5 of this Regulation shall contain:

– a provision that the newly created jobs, as well as training, are related to investment project implementation and are opened as a result of the increased efficiency of capacities of the recipient of incentive measures created by investment project, and are directly related to the activities of investment project and enable the performing of the registered activities of the recipient of incentive measures.

– determined amount of non-repayable aid for new jobs creation and aid for training related to investment project, under condition that the amount of the non-repayable aid for training related to investment project may amount to maximum up to 50% of the amount of the non-repayable aid for opening new jobs related to investment, and in accordance with maximum allowable aid intensity in case of general and special training.

Article 11

(1) In determining dynamics of approval of non-repayable aid referred to in Article 10 of this Regulation, the competent ministry shall approve the non-repayable aid by the end of the first year from the new jobs creation or training related to investment project provided that the recipient of incentive measures shall submit to the competent ministry in this period:

- a) work contracts with subsidized person for a minimum period of 12 months,
- b) a copy of the application to the Croatian Pension Insurance Institute where it is visible confirmation of registration,
- c) a copy of the application to the Croatian Health Insurance Fund where it is visible confirmation of registration,
- d) payroll for the past 12 months,
- e) financial documentation establishing compliance with the conditions for payment of non-repayable aid (average number of the employed and the amount of gross salaries paid) – the required report on incomes submitted and verified in the Tax Administration for the period of 12 months from the date of application,
- f) confirmation of the Tax Administration on debt,
- g) training programme,
- h) training bill of costs that contains:
 - accounts or other documents evidencing the cost of training, issued by third persons authorized and certified for training activities by state administration bodies or other authorized bodies and institutions of the Republic of Croatia and/or,
 - evidence of instructors and mentors costs, travel expenses of the trainees and other current costs related to training programme implementation – advisory services,
- i) bad debt insurance in case of violation of the provisions of the Act under which is granted the status of the recipient of incentive measures and
- j) written Statement by which a responsible person guarantees under moral, material and criminal liability the accuracy of the submitted data.

(2) Evidence referred to in paragraph 1 subparagraphs a), b), c) and d) of this Article shall be submitted for each individual for which the employer is applying for payment of non-repayable aid.

(3) In determining the amount of aids for eligible costs of new jobs related to investment project the recipient of incentive measures will be granted 100% of the incentives laid down in Article 11, paragraphs 1, 2 and i 3 of the Act, if the employment relates to:

– an unemployed person who prior to employment contract with the recipient of incentive measures was notified at least three months in the records of unemployed persons of the Croatian Employment Service, or

– a person that will be employed for the first time, a person without profession, a person of auxiliary occupations and professions, up to 25 years, not registered in the records of unemployed persons, or

– a person employed for the first time, with acquired secondary or university degree, up to 29 years, not registered in the records of unemployed persons of the Croatian Employment Service, or

– a person aged 29 or younger registered in the records of unemployed persons of the Croatian Employment Service within 90 days from graduation, from having acquired vocation upon completion of the regular secondary school education or a person with no acquired vocation upon completion of primary school education, or

– a person whose employment contract has been terminated due to bankruptcy proceedings.

(4) In evidence of meeting the requirements regulated under paragraph 3 of this Article, the recipient of incentive measures shall, in addition to requirements referred to in paragraph 1 of this Article, deliver to the competent ministry the following documents:

– a certificate on bankruptcy proceedings,

– a certificate that the person for whom the employer requests non-repayable aid is included in the redundancy programme,

– a certificate of registration in the records of unemployed persons of the Croatian Employment Service, and

– a copy of the employment book for each person for whom the employer requests the non-repayable aid.

(5) If the employment linked with an investment does not meet the requirements regulated under paragraph 3 of this Article, the recipient of incentive measures shall be granted 40% of the amount of the incentives regulated under Article 11, paragraphs 1, 2 and 3 of the Act.

(6) Upon establishing eligibility for non-repayable aids referred to in Article 10 of this Regulation, mutual employment and professional training between affiliated companies and persons shall not be considered as job creation and professional training linked with investments, pursuant to the General Tax Act and the Decision which regulates announcements of general rules on block exemptions in the area of state aids.

(7) Mutual employment and professional training between affiliated companies and persons referred to in paragraph 6 of this Article shall be considered as employment and professional training of persons that were employed in the affiliated company or person within three months prior to conclusion of the employment contract with the recipient of incentive measures, regardless of the fact that they were meanwhile employed in another company or a person not linked with the recipient of incentive measures within the meaning of paragraph 6 of this Article.

(8) Mutual employment and professional training between affiliated companies and persons referred to in paragraph 6 of this Article shall not be considered as employment and professional training of persons previously employed in the company or person linked with the recipient of incentive measures, unless they were registered in the records of unemployed persons of the Croatian Employment Service for a minimum of three months, prior to conclusion of the employment contract with the recipient of incentive measures.

(9) In evidence of meeting the requirements referred to in paragraphs 7 and 8 of this Article the recipient of incentive measures shall deliver to the competent ministry a copy of the employment book for every person for whom the employer requests the non-repayable aid and the certificate of registration in the records of unemployed persons of the Croatian Employment Service.

Article 12

If the Application reflects the intention of using non-repayable aid for fixed assets linked with the investment project, i.e. of using incentive measure for development-innovation activities, the certificate referred to in Article 5 of this Regulation shall contain the following:

– the provision that fixed assets, i.e. equipment/machinery used within the framework of development-innovation activities and that represent an investment in fixed assets of the recipient of incentive measures, are equipment/machinery classified as high-tech equipment/machinery pursuant to national/international equipment classification that belongs to the category of high-tech equipment, and are directly linked with the investment project activities and enable execution of the registered activities of the recipient of incentive measures;

– the established amount of the non-repayable aid for fixed assets, i.e. equipment/machinery used within the framework of development-innovation activities that represent an investment in fixed assets of the recipient of incentive measures.

Article 13

(1) On establishing dynamics of non-repayable aid referred to in Article 12 of this Regulation, and pursuant to maximum intensity of aid regulated by the Act, the competent ministry will authorise non-repayable aid after fixed assets, i.e. equipment for development-innovation activities, have been contributed to the ownership of the recipient of incentive measures, starting from the end of the first year of the investment project, i.e. starting from the end of the first year of acquiring the status of the recipient of incentive measures, provided that the recipient of incentive measures shall, within that period, deliver to the competent ministry the following:

- financial reports of the recipient of incentive measures that clearly show the contribution of fixed assets, i.e. equipment for development-innovation activities, to the ownership of the recipient of incentive measures, thus fulfilling the requirements for the non-repayable aid,
- evidence of construction or purchase of fixed assets, i.e. equipment for development-innovation activities with breakdown of the expenditure of construction or procurement,
- material evidence that the said fixed assets, i.e. equipment for development-innovation activities, representing investments in the recipient of incentive measures, are equipment classified as high-tech equipment, pursuant to the standard national/international classification of the equipment,
- an instrument ensuring collection of outstanding debts, in the event of breaching provisions of the Act pursuant to which the status of the recipient of incentive measures has been granted, and
- a written statement by which the responsible person accepts full moral, material and criminal liability for the accuracy of delivered information.

(2) The category of the high-tech equipment, for the purpose of investments in development-innovation activities, shall only include investments in the new equipment used for production-development and innovation processes and not for business administration processes.

(3) High technology, for the purpose of investments in development-innovation activities, shall include industries and activities based on knowledge, having a significant share of investments in research and development, relatively fast technological advancement, long-term development phases and the potential of the fast growth of the production volume.

Article 14

If the Application referring to investments reflects intention of using the non-repayable aid for investments in fixed assets linked with incentive measures for capital expenditure of an investment project, the certificate referred to in Article 5 of this Regulation shall contain the following:

- the provision that fixed assets linked with capital expenditure of an investment project represents an investments in the ownership of the recipient of incentive measures, and that it is directly linked with investment project activities and enables execution of registered activities of the recipient of incentive measures;
- the established amount of the non-repayable aid for investments in fixed assets linked with capital expenditure of an investment project.

Article 15

On establishing dynamics of non-repayable aid referred to in Article 14 of this Regulation, and pursuant to maximum intensity of aid regulated by the Act, the competent ministry will authorise non-repayable aid after contribution of fixed assets to the ownership of the recipient of incentive measures, whereupon the recipient of incentive measures shall deliver to the competent ministry the following:

- financial reports and documentation of the recipient of incentive measures establishing the contribution of fixed assets to the property of the recipient of incentive measures,
- breakdown of the expenditure of the construction of the new plant, industrial facility or tourist service providing facility, i.e. breakdown of the expenditure of new machinery, i.e. production equipment,
- invoices for construction and purchase of the said fixed assets,
- material evidence that the share of investments in machinery, i.e. production equipment has a value of minimum 40% of the total investment value,
- material evidence that minimum 50% of the purchased machinery, i.e. production equipment represent equipment classified as high-tech equipment, pursuant to the standard national/international classification of equipment that belongs to the category of high-tech equipment,
- an instrument ensuring collection of outstanding debts, in the event of breaching provisions of the Act pursuant to which the status of the recipient of incentive measures has been granted, and
- a written statement by which the responsible person accepts full moral, material and criminal liability for the accuracy of delivered information.

OBLIGATORY CONTENT OF THE ANNUAL REPORT ON THE USE OF INCENTIVE MEASURES FOR INVESTMENTS

Article 16

- (1) The annual report on the use of incentive measures for investments, submitted to the competent ministry and to the Ministry of Finance – Tax Administration, shall contain the following:
- filled out GI-1 form;
 - the report in a text form containing description of the investment project realisation under every investment item (fixed assets/wage costs);
 - annual reports on business activities for the previous year, income statement and balance sheet along with the income tax declaration;
 - analytic cards of the account of the basic funds with marked items referring to investments in fixed assets linked with an investment project;
 - information on the amount of investments in reporting period in HRK;
 - information on contribution of the new equipment – type and value;
 - information on the number of employees at the beginning and at the end of the reporting period (Specification per employee on calculated contributions for obligatory pension insurance – R-Sm form);

- information on type and the use of incentive measures in the reporting period;
- calculation of profit and the amount of tax relief used by the recipient of incentive measures, pursuant to provisions of Article 9, point 5 of the Act;
- other information, relevant for the use of incentive measures, i.e. tax relief and tariff benefits.

(2) GI -1 form referred to in paragraph 1 shall be enclosed as Annex IX of this Regulation and shall form its integral part.

(3) The period of the investment project realisation referred to in paragraph 1, subparagraph 2 of this Article shall be the period from the beginning of the investment till the fulfilment of all prerequisites for utilisation of incentive measures.

(4) If the recipients of incentive measures for investments use tax incentives without job creation, provided that they conduct modernisation of a technological process of the existing production line or plant, the recipients of incentive measures shall, in addition to the annual report, deliver information on specification of equipment, at their disposal at the moment of submitting the Application for the use of that incentive measure and the specification of the equipment purchased within modernisation of the technological process, i.e. other documents, relevant for proving eligibility for utilisation of that incentive measure.

(5) The modernisation of technological process referred to in paragraph 4 of this Article represents an increase of the production capacity or changes in the production principles or applied technology. Increase of the production capacity represents an increase of capacity with regard to existing capacities of a company. Changes in production principles represent improvement of production processes enabling a change of the production assortment. Changes in applied technology represent an introduction of the new and more efficient technology that meets the consumer needs, or production of more competitive homogeneous products.

(6) The recipient of incentive measures shall deliver annual report, in addition to the income tax declaration, to the Tax Administration of the Ministry of Finance and to the competent ministry at the latest by 30 April of the current year for the previous year, or four months after expiry of the period for which it is submitted.

(7) Investors who applied their investment project, and who were not issued the certificate on the status of the recipient of incentive measures by 30 April 2013, may, if issued by the competent ministry, deliver it subsequently to the Tax Administration of the Ministry of Finance by 28 June 2013 in order to use the right on a tax relief for 2012.

(8) The recipient of incentive measures may, along with the annual report, also submit additional documents in evidence of the provided information.

(9) The recipient of incentive measures shall, upon the request of the competent ministry, also deliver other requested information relevant for the assessment of the annual report referred to in this Article.

(10) The recipient of incentive measures shall submit annual reports until the expiry of the period for preservation of new jobs and the investment in question, and this period shall last for five years for large enterprises, and three years for small and medium-sized enterprises,

but not less than the period of incentive measure utilisation pursuant to the Act. The obligation to submit annual reports shall exist notwithstanding the fact that the right to use incentive measures no longer exists, i.e. in the event of utilisation of the maximum intensity allowed.

Article 17

(1) The recipient of incentive measures and applicants for utilisation of incentive measures, that have not used incentive measures pursuant to the Investment Promotion Act (Official Gazette 138/2006 and 61/2011) and still are in the period of the investment project realisation, and provided that they submitted a written application referred to in Article 28 of the Act on Investment Promotion and Development of Investment Climate, shall deliver to the competent ministry a supplement to the Application upon the invitation of the competent ministry within the period established by that ministry.

(2) The applicants for utilisation of incentive measures that delivered the application to use incentive measures to the competent ministry after entering into force of the Act on Investment Promotion and Development of Investment Climate (Official Gazette 111/2012 and 28/2013), and prior to entering into force of this Regulation, shall deliver to the competent ministry the supplement to the application to use incentive measures filled in a form and pursuant to requirements of this Regulation upon invitation of the competent ministry within the period established by that ministry and for the purpose of verifying eligibility of expenditure of the applied investment project.

Article 18

This Regulation shall enter into force on the first day after the day of its publication in the Official Gazette.

Class: 022-03/13-03/07

Reg. No: 50301-05/20-13-3

Zagreb, 28 March 2013