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Ordinance on the Granting of Tax Relief within the Scope of the Regional Policy

3 June 2016

Based on Article 12 Paragraph 3 of the Federal Act of 6 October 2006¹ on Regional Policy, the Swiss Federal Council decrees:

1. Section: Principles and areas of application

Article 1 Principles

¹ Within the scope of regional policy, the Swiss Confederation may grant industrial companies and production related service providers (companies) tax relief for projects that:

- a. meet the requirements of the law and this Ordinance; and
- b. are realised in a municipality within the areas of application.

² The Federal Department of Economic Affairs, Education and Research (EAER) outlines the companies in accordance with Paragraph 1.

Article 2 Terminology

The terminology used in this Ordinance has the following meaning:

- a. rural centre: municipality in a rural area that:
 1. has a central local function important for the surrounding areas and municipalities,
 2. is located at a certain distance to the agglomeration, and
 3. has between 2,000 and 3,000 residents, depending on distance;

¹ SR 901.0

- b. small urban centre: town that:
 - 1. has an important function as a centre within the region,
 - 2. is located at least 10 km from a larger centre or forms the core municipality of an agglomeration, and
 - 3. has a total of at least 8,500 residents and a minimum of 3,500 employed persons;
- c. medium-sized urban centre: city that:
 - 1. has an important function as a centre within the region,
 - 2. is located at least 10 km from a larger centre or forms the core municipality of an agglomeration, and
 - 3. has at least 40,000 residents and employed persons;
- d. suburban area: municipalities that:
 - 1. surround a medium-sized or small urban centre,
 - 2. border the urban area,
 - 3. maintain close functional contact with the centre;
- e. large urban centre: city with an important central function in the country that has a minimum total of 70,000 residents and employed persons.
- f. metropolitan centre: city with an important central function in the country and internationally that has a minimum total of 200,000 residents and employed persons.

Article 3 Areas of application

¹ Tax relief may be granted in any municipality that meets the following requirements:

- a. A municipality that is:
 - 1. a medium-sized or small urban centre or belongs to such centre as a suburban municipality,
 - 2. a rural centre, or
 - 3. a small, less urban centre which nevertheless assumes a central function.
- b. A municipality that is one of the weakest areas in Switzerland in terms of unemployment, income, economy and population.

² These areas of application may cover a maximum total of 10% of the Swiss population.

³ The EAER determines the municipalities included in the areas of application after consulting the cantons.

Article 4 Mergers of municipalities

¹ If a municipality merges with another municipality located within the area of application, the merged municipality is included in the areas of application until the next update.

² The merged municipality is no longer included in the areas of application if a medium-sized urban centre outside the areas of application or a large urban or metropolitan centre is involved in the merger.

³ The inclusion of an additional municipality in the areas of application as a result of a merger does not have any consequences for the municipalities in the areas of application.

Article 5 Reporting, updates and audits

¹ The EAER provides the Federal Council with a report on the determination of the areas of application once during a legislative period.

² The EAER updates the list of the municipalities included in the areas of application once per legislative period.

³ Every second legislative period, the EAER audits:

- a. the criteria for determining the municipalities in accordance with Article 3 Paragraph 1 a;
- b. the criteria and their weightings for the inclusion of municipalities in the areas of application.

2. Section: Requirements**Article 6** Requirements for the granting of tax relief

¹ Tax relief can only be granted if:

- a. the canton also grants tax relief for the project;
- b. the project:
 1. aims to create new jobs in the company or restructure existing jobs to ensure that they are maintained in the long term, and
 2. is of particular importance to the regional economy.

² If the applicant is a production related service provider, the Swiss Confederation may only grant tax relief if the project aims to create at least 10 new jobs.

³ In the case of projects leading to jobs being shifted from one canton to another, only the newly created jobs can be considered for determining the tax relief.

⁴ No tax relief is granted for projects that result in an overall reduction of jobs within one company or the same group of companies.

⁵ Tax relief may be denied for political reasons, namely if a project conflicts with other objectives of the Swiss Confederation.

⁶ The EAER may issue further details regarding the requirements for the granting of tax relief.

Article 7 Calculating the number of jobs

¹ The number of jobs that are planned or to be newly restructured is based on the total of the percentages for each job position. 100% equals one job.

² The percentages resulting from temporary or permanent employment contracts under Swiss law concluded by the company or its parent company in Switzerland form the authoritative figure.

Article 8 Importance to the regional economy

¹ The special importance of a project to the regional economy is based in particular on the following criteria:

- a. integration in a cantonal economic development strategy or similar documents;
- b. jobs to be newly created or restructured within the area of application;
- c. planned investments within the area of application;
- d. planned or completed purchases, orders or requests for services within the area of application;
- e. cooperation with research institutions and educational facilities with a direct link to the planned project;
- f. planned training opportunities within the area of application;
- g. new solutions for the improvement of products, production processes or business processes;
- h. a sales market that exceeds the area of application.

² Investments within the meaning of Paragraph 1 c are:

- a. tangible assets that can be capitalised in accordance with the Swiss GAAP FER² (FER) accounting standards or the International Accounting Standards³ (IAS);
- b. intangible assets in accordance with FER or IAS.

Article 9 Form of the cantonal tax relief decision

The cantonal tax relief decision must contain the following elements:

- a. duration of the cantonal tax relief;
- b. the maximum amount granted for the entire duration of tax relief;
- c. provisions for reclaiming tax relief unlawfully claimed.

² www.fer.ch

³ www.ifrs.org

3. Section: Duration and amount of tax relief

Article 10 Start and duration

¹ The Swiss Confederation grants tax relief for a maximum period not exceeding the duration of the tax relief granted by the canton and not exceeding 10 calendar years.

² The EAER determines the start of tax relief granted by the Swiss Confederation.

Article 11 Amount

¹ The tax relief granted by the Swiss Confederation corresponds with the lesser of the following two amounts:

- a. the tax savings expected for the company at cantonal and municipal level;
- b. the maximum amount of tax relief applied for by the canton for federal tax.

² However, it shall never exceed the maximum amount determined by the Swiss Confederation.

³ The EAER regulates the levels and calculation of the maximum amount for the federal tax relief. In doing so, it ensures that the tax savings and jobs to be newly created or restructured are proportionate to one another.

4. Section: Procedure

Article 12 Application by the company

¹ The company submits its application for federal tax relief to the canton in which it plans to implement the project.

² The application must contain a project business plan, including the following information:

- a. description of the project objectives;
- b. description of the phases and procedures used for the implementation of the project;
- c. plan balance sheet and plan income statement for the entire duration of the tax relief applied for;
- d. planned investment volume; and
- e. list of jobs to be newly created or restructured each year.

Article 13 Application by the canton

¹ If the canton decides to grant the applying company a cantonal tax relief, it may forward the complete dossier, including its decision and application for approval of the request, to the State Secretariat for Economic Affairs (SECO).

² The application by the canton shall contain the following information:

- a. cantonal tax relief decision;
- b. confirmation that its decision complies with Article 23 Paragraph 3 of the Federal Act of 14 December 1990⁴ on the Harmonisation of Direct Taxation at Cantonal and Communal Level;
- c. estimated tax savings at cantonal and communal level to be expected by the applying company pursuant to its decision;
- d. maximum amount of tax relief applied for;
- e. start of tax relief applied for;
- f. amount of federal tax to be expected without the tax relief for the duration applied for;
- g. business plan;
- h. description of the special importance of the project for the regional economy.

³ The canton must submit its application to SECO no later than 270 calendar days after the start of the tax liability on the form provided. Applications for projects by existing companies must be submitted no later than the calendar year in which the project generates revenue for the first time.

⁴ If the canton fails to submit the application in the correct form, SECO shall grant it a period of grace in which to regularize it. This period of grace is linked to the strict condition of the application not being followed up should the regularisation not be submitted within the period of grace. At the same time, SECO notifies the applying company of the period of grace.

⁵ If the canton fails to submit the application on time, it shall not be followed up.

⁶ SECO may request further information.

Article 14 Responsibility

The canton determines the cantonal body responsible for the application, extension and monitoring of the execution.

Article 15 EAER decision

¹ The EAER rules on the request, based on the application submitted by the canton and assessment made by SECO.

² The application by the canton is assessed on the basis of federal law applicable at SECO at the time of the submission of the complete application.

³ In its decision, the EAER specifies the following elements, in particular:

- a. maximum amount of tax relief;
- b. start, duration and expiry of tax relief;

⁴ SR 642.14

c. conditions and obligations.

⁴ The decision by the EAER is disclosed to the applying company.

⁵ The EAER notifies the applying canton and cantonal authorities responsible for the tax assessment regarding the federal tax relief granted to the company. It also notifies the Federal Tax Administration (FTA).

⁶ Upon application by a company, SECO may grant it the right to delay the use of the tax relief, in full or part thereof, for its duration. This shall not affect the amount and duration of the tax relief granted.

Article 16 Monitoring

¹ SECO audits compliance with the conditions and obligations.

² Once a year, the FTA forwards to SECO the data received from the canton regarding the amount of taxable net profits for those the direct federal tax was not levied.

³ The cantons provide SECO with the data on job development and all other data and documents required for auditing compliance with the conditions and obligations and the evaluation of the effects of the tax relief granted no later than 12 months after the company's balance sheet date.

⁴ They report deviations from the original project with a potential effect on the tax relief decision to SECO as soon as they become aware of them.

Article 17 Auditing body

Companies with a reporting obligation in accordance with Article 727 or 727a of the law on obligations⁵ must appoint an auditor to approve the data on job development once a year and forward it to the cantons and the Swiss Confederation.

Article 18 Information

Once a year, SECO publishes:

- a. the aggregated data of the total actual tax relief granted throughout Switzerland;
- b. for each project that has been granted tax relief:
 1. company name,
 2. place of realisation,
 3. range of the number of jobs to be newly created or realigned by the project.

⁵ SR 220

5. Section: Revocation and unlawful claim

Article 19 Revocation

¹ The EAER revokes its decision regarding federal tax relief if a canton revokes its corresponding cantonal tax relief decision. EAER's revocation order is based materially on the cantonal revocation decision and contains the same subsequent payment modalities, in particular.

² The EAER also revokes its decision regarding federal tax relief, in full or part thereof, regardless of any cantonal decision, if:

- a. the minimum requirements stated in the decision have not been met;
- b. the conditions and obligations stated in the decision have not been or are no longer being met; or
- c. the tax relief was claimed unlawfully.

³ In case of a revocation in accordance with Paragraph 2, the amount of tax relief granted must be repaid.

⁴ The EAER may only revoke its decision in accordance with Paragraph 1 or 2 during a period corresponding with one and a half times the duration of the federal tax relief.

Article 20 Unlawfully claimed tax relief

Tax relief is deemed to have been claimed unlawfully if:

- a. the requirements for the granting of tax relief for the project have not been or are no longer being met; or
- b. the company claimed the tax relief incorrectly, namely by providing incorrect information.

6. Section: Final provisions

Article 21 Suspension of another decree

The Ordinance of 28 November 2007⁶ on the Granting of Tax Relief within the Scope of the Regional Policy is being repealed.

Article 22 Transitional tax relief provisions

¹ Tax relief granted under previous law remains valid until its expiry.

² The EAER may amend a tax relief granted under previous law until its expiry in accordance with the previous law applicable at the time of the decision, subject to Paragraph 3.

⁶ AS 1996 1922, 2000 187, 2001 3033, 2004 5113, 2006 4305 2007 6865

³ Amendments regarding the location of the project are assessed in accordance with the areas of application valid at the time of the planned move. The decision may be amended if the project moves within the same canton. A new application must be submitted if the project moves to another canton, particularly with respect to Article 6 Paragraph 3.

⁴ Article 17 does not apply to companies subject to the reporting obligation in accordance with Article 727 or 727a of the law on obligations (OR)⁷ which have been granted tax relief under previous law.

⁵ SECO does not publish the information in accordance with Article 18 b on companies granted tax relief under previous law.

Article 23 Transitional guarantee provisions

¹ Guarantees issued in accordance with the Federal Act of 6 October 1995⁸ in favour of economic regeneration areas and before the effective date of the Ordinance of 28 November 2007⁹ on the Granting of Tax Relief within the Scope of the Regional Policy are subject to the transitional provisions in accordance with Article 22 until their expiry.

² Guarantees resolved before the effective date of the Ordinance of 28 November 2007¹⁰ on the Granting of Tax Relief within the Scope of the Regional Policy may be extended to a maximum period of eight years.

³ If a canton revokes its decision regarding countersecurity on a loan guarantee, the Swiss Confederation also revokes the corresponding guarantee decision.

⁴ The revocation of the guarantee decision by the EAER is materially based on the cantonal revocation decision.

Article 24 Effective date

This ordinance shall become effective on 1 July 2016.

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In the name of the Swiss Federal Council

The President of the Swiss Confederation: Johann N.
Schneider-Ammann

The Federal Chancellor: Walter Thurnherr

⁷ SR 220

⁸ AS 1996 1918, 2001 1911, 2006 2197 4301, 2007 681

⁹ AS 1996 1922, 2000 187, 2001 3033, 2004 5113, 2006 4305 2007 6865

¹⁰ AS 1996 1922, 2000 187, 2001 3033, 2004 5113, 2006 4305 2007 6865