

DE MINIMIS AID FOR LOCAL ECONOMY DEVELOPMENT

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Abstract: Considering the current particular economic situation but also the community regulations developed by the EU Commission to diminish the crisis effects, we believe that local institutions should still take into consideration measures to encourage investments and creating work places by supporting potential investors, which very often have to confront against difficulties in accessing funds. However, unlike large sized companies, small and medium sized ones are confronted to this issue of accessing funds. This global economic situation, not only affects severely the economic situation of most solid enterprises and their employees on short term, but it also has negative effects on long term. In this context we have to stress the fact that future investments from the common market of EU, especially those that concern the long term development and other strategic objectives from Lisbon, could be delayed or even cancelled.

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I The content of de minimis aid for stimulating investments and creating workplaces in local economy

The minimis aid schemes for stimulating investments and creating new workplaces follow the criteria's and conditions provided by the EU Commission Regulation nr.1998/2006 regarding the minimis aid for the application of art.87-88 of the Treaty establishing the European Community, published in the OJ nr.379/5 since 28 oct 2006. These schemes are exempted from the prior notification of the EU Commission, according to art.3.E.C Regulation nr.800/6 aug 2008 that declares certain aid categories compatible to common market.

Through this scheme, the minimis aid is granted only if the criteria's of the EC Regulation nr.1998/2006 are respected and followed. This regulation mentions that a measure up to 200.000 Euros for a company over a period of 3 years does not represent a truly state aid. Therefore, the companies that invest more than 500.000 Euros (new buildings) and create workplaces in an area, can benefit of building tax reduction, accessing the minimis aid schemes for stimulating investments and creating new workplaces in that area. The scheme is approved by the Local Council in that area and it can be applied from that moment to a period of at least 5 years, and all the companies that invested and requested a tax exemption have to benefit of the scheme facilities. Such a minimis aid scheme has to provide the whole procedure of granting fiscal benefits in the form of building tax reduction.

The minimis aid scheme's objectives are:

- regional development;
- sustain the development of small/medium companies in that region;
- increase the rate of employment;
- stimulating enterprises which develop economic activities with profitable effects both economical and social.

The general objective should be the regional development in all the 3 main areas of local economy: industrial production, services, commercial activities and tourism.

That certain area can pursue, by applying this scheme, on the one hand a regional development attracted by fiscal facilities in the form of building tax reduction for the companies that invest more than 500.000 Euros, and on the other hand creates a certain number of workplaces. People who issue the scheme should estimate the budget on the whole period (ex.5 years), but also on each year, because granting fiscal benefits is based on 3 criteria's:

- the value of the investment;
- the number of employees;
- the profit of the enterprise.

As a consequence, according to the norms, the building tax reduction(fiscal benefit) varies based on the value of investment, the number of employees and the profit of the company. For example:

- Investments-for investments between 500.000-5.000.000 Euros the reduction is 15%, and for investments over 15.000.000 Euros the reduction can go up to 60%;
- Employees - for creating 20-80 workplaces the reduction is 5% and if more than 300 persons the reduction can go up to 20%;
- Production activity - 20% reduction in services, commercial activity - 5%.

For all the activities, the gathered minimum reduction percentages can go up to 25% and the maximum to 100% from the building tax for a period of at most 5 years.

Beside these 3 criteria's the investment has to be eligible, meaning it has to consist of building industrial hales or other buildings for placing the company's activity. The fiscal benefit solicitor has to invest over 500.000 Euros in building and create new workplaces as a consequence of the investment in a certain area, this being another eligibility condition .Worth mentioning is the fact that the whole value of the minimis aid granted to a company over a period of 3 successive years (2 past fiscal years and the current one),gathered with the value of financial allocation granted conform the respective scheme must not exceed the equivalent of 200.000 Euros, regardless the area of activity, and for the companies that activate in transport must not exceed 100.000 Euros. These limits apply to all minimis aid forms, regardless the objective pursued or the financing source (nation, communitary).The fiscal benefits provided by the minimis schemes are granted only for new buildings, regardless their economic purpose.

The aid provided by the scheme can be granted through the decision of the local council for each recipient, based on a request and a file completed with all the fulfilled eligibility criteria's/conditions.

II The minimis aid scheme's content for companies that place their activity inside industrial parks in an area

Through these schemes, minimis aid can be granted in the form of property tax exemptions provided in the art.250 line 1 point 9 and art.257 from Law nr.571/2003 regarding the Fiscal Code, upgraded, for the enterprises which place their activity inside industrial parks in an area. This aid is exempted from the prior notification of EU Commission, according to EC regulation nr.1998/2006 for the application of art.87-88 from the Treaty of establishing the European Community. The minimis aid is granted by such a scheme if the above mentioned minimis criteria are provided by the EU legislation are respected and followed.

According to OUG nr.117/2006 (Government decision) approved by Law 137/2007 regarding the state aid national procedures, the mayor of that area can issue a decision approving a regulation regarding state aid procedures, after receiving the prior notice from the Council of Competition. The above mentioned procedure is based on art.250 line1 point.9 and art.257, (1) Law 571/2003 regarding the upgraded Fiscal Code, where the buildings and lands subjected to tax exemption are established. In this sense, the real estates and sites part of industrial, scientific, technologic parks are mentioned.

This sort of fiscal benefits are state aid measures because they gather the necessary elements for state aid, transforming the economic and business environment because:

- they create an economic advantage;
- they are selective;
- they are granted by the state or administrative-territorial authorities from sources administrated by themselves;
- distort or threat to distort competition.

Therefore we can conclude that companies can benefit of fiscal facilities for the estates and terrains placed inside industrial parks, in the shape of state aid.

As a consequence, respecting the lines of art.1 (5) Law 571/2003 regarding Fiscal Code, “any fiscal measure that represents state aid is granted according to OUG (Gov. decision) nr.117/2006 regarding state aid national procedures, approved by Law 137/2006”. In this sense, art.3 line 3 from the above mentioned government decision says that “granting state aid measures involves the issue of state aid or individual state aid schemes.

1 Implementing the minimis scheme

The minimis scheme should contain the eligibility conditions but also the exact way of implementing the scheme. Therefore, according to chapter III from HG regarding minimis aid granting for the development and modernization on companies since 26 Nov 2007, only companies that fulfill all the eligibility criteria`s can benefit of special individual allocations, based on the minimis aid scheme. The eligibility criteria`s are:

- are registries according to Law nr. 31/1990 regarding small and medium companies (framed by Law nr. 346/2004);
- activate in the areas specified in the appendix nr.1 to HG regarding the grant of minimis aid in 26 Nov 2007;
- were granted minimis aid that doesn't exceed the 200.000 Euros limit on a period of 3 consecutive years prior to the date of soliciting;
- have an investment plan which reflects the way the sums will be used
- are not in debts to the state (general budget);
- are not in the middle of bankruptcy, judicial reorganization, forced execution, operational closure
- do not find themselves in the “companies in difficulty” category, according to EC Communicaton - *lines on State aid for rescuing and restructuring firms in difficulty, published in OJ of EU - C244/2 since 1 oct 2004*
- no decision of recovering a state aid was issued or if it was, it has been executed;
- no illegal aid was received.

Therefore, the request of solicitor (company) for granting fiscal benefits completed by the justification documents is lodged at the Local Council of that area. In term of 10 working days all the requests go to Fiscal Direction from that area, to issue the file for each solicitor. After the evaluation of each case, a proposal is made, whether the solicitor should or not be granted this kind of facility. The facilities are actually being operated only based on the decisions of the leader of that Fiscal Direction.

To ensure a suitable transparency and an effective control of minimis aid, the local council, through the Fiscal Direction, communicates the scheme to the Council of Competition (applying this way the lines of O.U.G. nr. 117/2006 regarding the state aid national procedures) in term of 15 days since it was adopted.

The local council from that area, through the Fiscal Direction, as a state aid supplier, communicates each year the Council of Competition a report regarding the implementing of the granted minimis scheme. At the same time the allocated budget for that certain scheme is but also the content of “The minimis aid scheme” that all the companies that place the activity inside the industrial parks of that area can benefit of, compulsory published on the local council's site.

As a consequence, the agents of the Inspectorate of Competition, together with the agents from the Fiscal Direction from that county can organize work sessions for ensuring professional assistance to find best ways of granting such fiscal facilities from local financial sources. For example, these would consist of building tax reduction over a period of 5 years, starting right from 1st January 2010, that would generate an intense economic growth and fulfill all the conditions and criteria's established by the approved minimis scheme. *We have to outline the fact that we, the people who started this project have to participate too, as well as the agents of the special direction of the Council of Competition, who can make observations about each structure of the scheme.*

In this context, the Council of Competition can mention its attitude and position if such a minimis aid scheme is the right option or not in the current economic context of granting fiscal benefits.

Moreover, for implementing a minimis aid scheme, the agents of the business environment should be taken into account. This way, through the minimis aid scheme which pursues to create workplaces in that county, the investors bond tight with the local administration, because the estate tax is very high, and the effective reduction of this tax gives the investors a positive signal, at the same time being found solutions for the economic and financial crisis. Nevertheless, this is not either the first or the last measure adopted by the local administration in order to attract investors.

This kind of initiatives should be intensely brought up in the local media, because minimis aid schemes for stimulating investments and creating new workplaces, should be known by those interested in order that all the economic activities influenced by the local administration, contributes to the diminishing of economic crisis effects and improve the standard of living of the population living in that county.

2 EU's economic straightening proposals

Beside the "traditional" state aid instruments, The European Commission decided, in the context of global economic crisis, to make the conditions for granting certain state aids more flexible. In this context, at the end of 2008 (26 nov), the EU Commission adopted the "*Temporary Framework for State aid measures*" (Communication from the Commission — Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis OJ – C.O.16 din 25 feb 2009). This legislation frame purses to allow state members to grant state aid to firms who are confronted with difficulties in accessing funds.

The state aid that can be granted based on this temporary framework are:

- a) state aid in the form of 500.000 Euros/firm;
- b) state aid in the form of guarantees;
- c) state aid in the form of interest rate subsidy;
- d) interest rate subsidies to loans for investing in ecological/green products.

1) State aid in the form of 500.000 euros/firm

This aid is considered compatible with the common market by the EC if the following conditions are cumulated:

- the aid is granted in the aid scheme form;
- the aid must not exceed 500.000 Euros/firm;
- the aid is not destined to export or privilege intern products over imported ones;
- the aid scheme does not apply to firms that activate in primary production of agricultural products and those from fishing;
- before granting the aid, the supplier asks for a declaration from the firm regarding any minimis aid and any aid granted according to this measure in the current financial year and checks if the aid will not lead to the raise of the total value of the aid received between 1st January 2008-31st December 2010 that can exceed the limit of 500.000 Euros;

-the aid can be gathered to other aids granted according other schemes .notified or exempted from notification, with the condition of respecting the intensities provided by this scheme.

II) State aid in the form of guarantees

This aid is compatible with the common market if the following conditions are cumulated:

-a small or medium enterprise can be granted an up to 25% annual prime reduction that has to be paid for the new guarantees according to the level of safe-harbor provided in the appendix to the temporary framework;

-large enterprises can be granted an annual prime reduction up to 15% calculated on base of the same prime;

-the maximum value of the loan must not exceed the salary annual cost (included the budget obligations) of the recipient for 2008. In case of firms established after 1st January 2008, the maximum value of the loan must not exceed the estimated annual cost with salaries for the first 2 years of activity;

-the guarantee must not exceed 90% of the loan, the whole period of the loan;

-the guarantee applies to investment loans but also for work capital loan;

-the guarantee prime reduction applies only on a period of maximum 2 years since the guarantee grant.

d) interest rate subsidies to loans for investing in ecological/green products

Communitarian regulations provide that this type of state aid is compatible to common market if the following conditions are cumulated:

-interest reductions are granted only to loans for investments destined to financing projects that pursue the production of new products that improve significantly the environment protection

-this aid is granted not only for starting a new project but also for an existent one, if its progress is necessary, taking into account the special economic situation;

-the financed projects consist of fabricating products that imply the anticipated adjustment to future community standards and the investment should start before 31 dec 2010 and the new product should come out on the market at least 2 years before the standard;

-the loans can cover investments costs in tangible and intangible fixed assets;

-the loans should be granted until 31 dec 2010;

-the interest rate reductions can reach 25% for large firms and up to 50% for small/medium firms, being taken into consideration the risk factors of the company;

-the subsidies interest rate applies for a period at most 2 years since the grant of the loan

In the context of economical-financial crisis, the banking system plays an important part. Concerning the state aids that can be granted to banking sector, a high authority from the General Direction of Competition of EC, said that the “banking stability is the most important element to limit the extension of negative effects of financial crisis over real economy”. The banking system was in danger of crashing but EC activated the article that allows state aid grant in crisis situations and permits the regulation of problems in state members.

This context includes also capitalizing of CEC Bank with the sum of 900 million lei and Eximbank, with the sum of 170 million lei, taking part in the anticrisis measures program included in the Romanian budget in 2009. The CEC Bank and Eximbank funds will be used mainly to ensure co financing and granting projects accomplished from European funds and financing small and medium firms.

Moreover, “Prima Casa” (First House) and “Rabla” (Wrecked car) programs (the recipients are physical and legal persons) initiated by the Romania Government are a successful example according to official sources. The Council of Competition collaborated with the Government, Finance Ministry, banking sector so as to find the most acceptable solutions for these programs so that no more competition problems, and the program is as quick as possible operational.

Another example: EC authorized for Romania through Decision 467/2009, the state aid scheme for supporting investments in extending and modernizing the distribution lines of electric energy and natural gases notified by Romania authorities.

The total budget of the scheme is 28.400.000 Euros, and the state aids will be granted in form of non-reimbursable financial allocations from EU and national funds. This state aid scheme, initiated by the Economy Ministry, will be implemented in applying the proprietary Axe 4 "Raising the energetic efficiency and the security of supplying in the context of climate change" in the frame of Sectorial Operational Program "Raising the economic competitiveness".

As a *conclusion* to the above information, we can affirm the fact that granting fiscal benefits is, usually the creditor's attribute, but unfortunately, there are some exceptions provided in the Fiscal Code, that, in our opinion, are not necessary. For example, *it is not natural for a creditor (ministry) to grant fiscal benefits on behalf and on the account of other creditor (local public authority)*. In this case, fiscal benefits related to local budget obligations should be granted only by the administrator of the local budget (The Local Council) through its documents. Proceeding the modification of the norms of Fiscal Code, the local autonomy principle would be exactly respected, a main principle in the context of EU integration. Thanks to these legislative modifications, the local public administration is offered the possibility of guiding better the local economic life, including with this fiscal aid. The fact that the state is the only competence to promote fiscal policy is acknowledged but, at the same time, respecting all the constitutional principles is necessary.

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