

## Resolution GA15-6i

Proposed Resolution to be adopted at the 15th General Assembly of the  
Roundtable on Sustainable Palm Oil (RSPO)

15<sup>th</sup> November 2018

**Title:** RESOLUTION TO AMEND THE STATUTES OF THE RSPO TO SUPPORT ITS TAX  
EXEMPTION STATUS IN SWITZERLAND

**Submitted By:** The Board of Governors of the Roundtable on Sustainable Palm Oil  
(Currently represented by: Unilever, Malaysian Palm Oil Association, Golden Agri-Resources Ltd. \*,  
FELDA, AAK AB, Wilmar International Limited, Mondelez International, Inc., Retailers' Palm Oil  
Group \*\*, Coöperatieve Rabobank U.A., The Hongkong and Shanghai Banking Corporation, Both  
ENDS, Oxfam, World Resource Institute, WWF International)

*\* Represents the Indonesian Growers Caucus*

*\*\* Royal Ahold Delhaize NV, ALDI International Services GmbH & Co. oHG, ASDA Stores Ltd (part of the Walmart Group),  
Boots UK Ltd, Coles Supermarkets Pty Ltd, Coop Switzerland, The Co-operative Food (UK), Federation of Migros Co-  
operatives, Lidl Stiftung & Co.KG, Marks & Spencer, Sainsbury's Supermarket Ltd., Tesco Plc and Waitrose Ltd*

### Background:

A decision by the Cantonal Tax Authorities Zurich on 1 June 2018 had informed that there must be provisions in the Statutes<sup>1</sup> of RSPO to support its tax exemption status and explicitly provide that the RSPO in pursuing its non-profit objectives does not engage in activities for the purpose of making profit either for its members or the Board of Governors.

The Cantonal Tax Authorities holds that certain amendments to the articles must be made in order for the tax exemption status to remain in force. The amendments to the articles and the reasoning provided by the Cantonal Tax Authorities are as below:

#### i) **Waiver to pursue any profit or self-help purposes**

Amendment of Article 1(c) by inclusion of:

**RSPO does not pursue activities for the purpose of making profit or for the interests of its Board of Governors or Members.**

REASONING: Pursuant to § 61 lit g of the Tax Law (StG) legal entities pursuing public or non-profit purposes are tax exempted with regard to the profit and the capital which are exclusively and irrevocably dedicated to these purposes. In accordance with the doctrine and the practice, confirmed by the decisions of the administrative court, institutions which operate an enterprise based on economic principles besides pursuing purposes being in the general interest may as a matter of principle not be tax privileged. The pursuit of economic self-help purposes excludes any tax exemption (including a partial tax exemption) (RICHNER / FREI / KAUFMANN / MEUTER, Commentary pertaining to the harmonized Zurich Tax Law, 2. A. Zürich 2006, § 61 N 44-49, 61, 75 f.).

ii) **Volunteerism**

Amendment to Article 11(a) by inclusion of:

**The members of the Board of Governors are in a honorary capacity and are as a matter of principle only entitled to a remuneration equalling the effective expenses and out-of-pocket expenses. It is admissible to pay a reasonable remuneration for special performances of individual members of the Board of Governors.”**

REASONING: This clause is furthermore required for non-profit institutions for which qualified altruism and sacrifice is demanded (RICHNER / FREI / KAUFMANN / MEUTER, a.a.O. § 61 N 44-49, 61, 74).

iii) **Dissolution Clause**

Amendment to Article 19(c) by inclusion of:

**The assets remaining upon dissolution of the association must be allocated to a tax exempted institution domiciled in Switzerland with same or similar objectives. A distribution amongst the members is excluded.**

REASONING: In accordance with the doctrine and best practice of the Cantonal Tax Authorities the stipulation of a corresponding clause is one of essential requirements in order to be granted tax exemption; the permanent dedication to the purpose of the assets of a tax exempted institution must be explicitly ensured (RICHNER / FREI / KAUFMANN / MEUTER, as indicated, § 61 N 79).

Written declarations, signed by the Chairpersons of the Board of Governors on 18 July 2018, agreeing to the above modifications to the RSPO Statutes, were provided to the Cantonal Tax Authorities. Following the declarations made, the Cantonal Tax Authorities Zurich issued a decree on 17 August 2018 confirming RSPO's tax exemption status.

**THIS RESOLUTION PROPOSES:**

**That the Statutes of the RSPO be amended to support its tax exemption status as decreed by the Cantonal Tax Authorities Zurich.**

**The revised articles are mentioned below (changes are marked in bold italic):**

1. Name

***(c) RSPO does not pursue activities for the purpose of making profit or for the interests of its Board of Governors or Members.***

11. Board of Governors

(a) The Board of Governors shall be comprised of not less than three (3) Ordinary Members and shall not be more than sixteen (16) Ordinary Members. ***The members of the Board of Governors are in a honorary capacity and are as a matter of principle only entitled to a remuneration equalling the effective expenses and out -of-pocket expenses. It is admissible to pay a reasonable remuneration for special performances of individual members of the Board of Governors.”***

19. Dissolution

- (c) ***The assets remaining upon dissolution of the association must be allocated to a tax exempted institution domiciled in Switzerland with same or similar objectives. A distribution amongst the members is excluded. The allocation of assets shall be made after payment or constitution of a deposit for all indebtedness of RSPO.***

**Contact Information:**

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**Reference**

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<sup>1</sup> The current RSPO Statutes can be downloaded for review at <http://www.rspo.org/key-documents/membership>