

Incentive Guidelines

Business Development and Continuity Scheme



MALTAENTERPRISE

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1. Introduction

The Business Development & Continuity Scheme is intended to facilitate value adding projects that are expected to contribute to the regional development of Malta and to support existing undertakings sustain operations during restructuring. The scheme may support various activities such as the initial development phase of undertakings establishing an operational base in Malta, expansion projects, consolidation of activities and the reorganisation of activities. Supported initiatives should lead to the development of new business or to ensuring the continuity of current operations.

1.2 Duration of the incentive.

This incentive is available till 31st December 2020.

1.3 Legal Basis

Malta Enterprise is enabled to issue and publish official Incentive Guidelines in terms of Article 8(3)(a) of the Malta Enterprise Act, Chapter 463 of the Laws of Malta.

The Enterprise Support Incentives Regulations SL 463.04 (Malta Enterprise Act, Chapter 463 of the Laws of Malta) provides the legal basis of this incentive.

1.4 Designated Authority

This incentive is administered by Malta Enterprise Corporation (hereinafter referred to as 'the Corporation').

2. Definitions

2.1 Single Undertaking

For the purpose of these Incentive Guidelines, the terminology 'single undertaking' shall be defined as follows:

As per Commission Regulation EU No 1407/2013 of 18 December 2013 on the application of the Treaty on the Functioning of the European Union to *de minimis aid*, 'Single undertaking' includes, for the purposes of this Regulation, all undertakings having at least one (1) of the following relationships with each other:

- (a) one (1) undertaking has a majority of the shareholders' or members' voting rights in another undertaking;
- (b) one (1) undertaking has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking;
- (c) one (1) undertaking has the right to exercise a dominant influence over another undertaking pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association;
- (d) one (1) undertaking, which is a shareholder in or member of another undertaking, controls alone, pursuant to an agreement with other shareholders in or members of that undertaking, a majority of shareholders' or members' voting rights in that undertaking.

Undertakings having any of the relationships referred to in points (a) to (d) of the first subparagraph through one or more other undertakings shall also be considered to be a single undertaking.

The same regulation states that a group of linked undertakings is considered as one single undertaking for the application of the *de minimis* rule, but that undertaking which has no relationship with each other except for the fact that each of them has a direct link to the same public body or bodies are not treated as being linked to each other. The specific situation of undertakings controlled by the same public body or bodies, which may have an independent power of decision, is therefore taken into account.¹

2.2 Basic Wage Costs

For the purpose of these Incentive Guidelines, *Basic Wage Costs* shall mean wage costs excluding any allowances, bonuses, insurances and national insurance borne.

2.3 Incentive Entitlement Certificate

Incentive Entitlement Certificate means a certificate issued in terms of Part VI of the Malta Enterprise Act and outlining the support granted and its terms and conditions.

2.4 Tax Credit Certificate

Tax Credit Certificate means a certificate issued by the Corporation establishing the value that may be deducted from the tax due commencing from the year of assessment specified within the certificate itself.

¹ Commission Regulation (EU) No 1407/2013 of 18th December 2013

3. Eligibility

3.1 Eligible Undertakings

The support available through this measure may be awarded to undertakings that following an evaluation by the Corporation are deemed to be relevant to the economic development of Malta.

The Corporation shall consider all proposals but shall give priority to:

- a. Manufacturing operations;
- b. Providers of Industrial Services;
- c. Creative Enterprises;
- d. Developers of Digital Media; and
- e. Activities linked to Life Sciences.

3.2 Exclusions

- a. Public entities defined as: “Ministries, Departments, Entities, Authorities, Public Commissions Public Sector Foundations and similar organisations that carry out a public or regulatory function which does not involve the carrying out of an economic activity, whether or not such organisations are established by law” and Commercial undertakings in which Government has a direct or indirect holding of more than 25% are not eligible.
- b. Undertakings engaged in activities specifically excluded under the de minimis regulations (vide Section 8) are not eligible for this incentive.
- c. Undertakings engaged in any of the following activities:
 - i. Real Estate;
 - ii. Retail and Wholesale;
 - iii. Transportation;
 - iv. Quarrying;
 - v. Construction;
 - vi. Hotels, resort hotels, suite/aparthotels or guest houses;
 - vii. Gambling;
 - viii. Financial services and/ or Insurance; or
 - ix. Voluntary Organisations

3.3 Disqualifying Criteria

- a. Aid approved by the Corporation will be suspended until that undertaking has reimbursed old, unlawful and incompatible aid that is subject to a recovery decision.
- b. Applicants must not be defaulting on VAT, Income Tax, and Social Security. No Incentive Entitlement Tax Certificate will be issued by the Corporation prior to regularising the position with the relative departments.

4. Incentive Description

4.1 Details of Incentive

The Corporation may award tax credits or cash grants of up to € 200,000 to undertakings that carry out a project aimed to expand their business operation or to consolidate their current operations.

The aid shall be awarded to support costs incurred following the formal approval of the Corporation. The extent of aid granted through this incentive will take into consideration the potential contribution of the project to the Maltese economy and the number of new jobs that will be created or maintained.

4.2 Budget

This incentive has an annual budget of €4,000,000 with an overall budget of €25 Million. The support shall be primarily awarded in the form of tax credits yet the Corporation may approve that the support is provided in full or partially as a cash grant.

Complete applications will be processed on a first come first served basis until the budget allocated for this measure is fully utilised. Incomplete applications will be rejected and no budgetary provision will be made for such applications.

4.3 Aid Intensity

The aid may not exceed €200,000 over a period of three (3) rolling fiscal years.

The value disbursed in any fiscal year shall not exceed the wage costs incurred by the single undertaking in that fiscal year².

4.4 Establishing the value of Aid

The Corporation may grant aid under this incentive as a:

- i. direct assistance equivalent or less than the paid up shared capital invested by private individuals or entities in the beneficiary.
and /or
- ii. reimbursement of the eligible expenses listed in Section 4.5.

4.5 Eligible Expenses

The approved financing shall be directly related to the operation of the undertaking and in any case shall be limited to:

4.5.1 Relocation Costs of Key Personnel:

Support of up to €2,000 per employee (or director) may be awarded to cover the relocation of key employees (or directors), who are not resident in Malta at the time when the aid is awarded by the Corporation. Employees must have a contract of employment clearly indicating that the persons shall be engaged for at least one (1) year.

4.5.2 Temporary Secondment of Personnel:

The secondment of personnel required to assist in the development of the new business may be supported. Eligible costs shall be limited to costs paid by the beneficiary to the undertaking providing the seconded personnel as specified in a contractual agreement between the two

² This regulation will not apply to undertakings that have been registered in Malta for less than five (5) years.

undertakings. The maximum aid shall be limited to €2,000 per month for a maximum of twelve (12) months.

Applicants benefitting from temporary secondment may not claim for relocation of costs outlined in Section 4.5.1 of the same personnel.

4.5.3 Relocation Costs of Assets:

Relocation expenses related to the transportation of machinery, plant and equipment being relocated to Malta is eligible for funding.

4.5.4 Operating expenditure covering the twelve (12) months

Costs incurred over a consecutive period of up to twelve (12) months in relation to:

- a. Telecommunication costs (Internet and Telephone) incurred from a telecommunications provider and that are specific to business usage.
- b. Rental of business premises.
- c. Water and Electricity costs.
- d. Professional Services

4.5.5 Services directly related to the business operations

Services related to the business operations and that are provided from third parties through an agreement (or contract) covering a period not longer than twelve (12) months which specifies a fixed weekly, monthly or overall fee.

Support services must be specifically approved by the Corporation. Nevertheless, the Corporation shall not support:

- i. services supplied by related undertakings (partner or linked undertaking) or by persons having a controlling interest in such undertakings;
- ii. services related to training and/or resulting in the provision of training.

4.5.6 Wage Costs:

Wage costs limited to full time employees covered by an employment contract of at least twenty-four (24) months. The Corporation will only accept claims after the person whose wages costs are claimed has been employed with the undertaking for at least six (6) months.

Wage costs shall only be considered in respect of full pay periods. (If the Corporation approved aid starting from 24th May and the beneficiaries pay period is monthly, wages incurred in the month of May shall not be considered).

4.6 Ineligible Expenses

Only the costs mentioned in Section 4.5 (above) are eligible. Any tax (such as VAT) will be deducted from claims presented.

4.7 Disbursement of Cash Grants and Tax Credits Certificates

The Corporation may establish parameters that should be reached by the undertaking before the disbursement of an approved cash grant and the issuing of a tax credit certificate.

5. Evaluation and Assignment of Aid

Aid under this incentive is subject to approval and is awarded at the sole discretion of the Corporation. Applicants should submit the official application which can be downloaded from the Corporation's website.

All applications must be completed electronically and may be posted, or delivered by hand. The application must be addressed to:

Malta Enterprise
Gwardamangia Hill,
Pieta', MEC 0001
Malta.

5.1 Evaluation and Assessment

In assigning aid under this incentive, the Corporation will examine the potential contribution of the project to the Maltese economy and the number of new jobs that will be created or maintained. The Corporation will base its evaluation by various criteria that will include:

- a. **Feasibility:** Is the project undertaking seeking support based on a feasible business model and is it reasonably likely to remain (or become) feasible in the foreseeable future?
- b. **Track Record:** The investor's reputation (Is the undertaking listed on international stock exchanges? Does the undertaking have a leading position in the same line of business/industry? Has the investor successfully executed cross-border investments? Has the entrepreneur behind the business been able to maintain the business stable or increase its economic value over the year? Is the entrepreneur involved in other successful business ventures?)
- c. **Technology:** Will the technology used and the associated technological know-how expand local capabilities, potentially providing access to technology to other local undertakings through technology transfer?
- d. **Employment:** Will the project generate employment opportunities in areas where the required human capital is available be created or and will it offer job opportunities for to qualified or highly skilled personnel be created?
- e. **Impact:** Will the investment support help maintain existing value chains or generate a positive impact on the productivity of other domestic companies through networking and clustering opportunities?
- f. **Sustainability:** Will the investment support assist the undertaking in the sustainability of the business?

A due diligence process may be required prior to the granting of aid under this incentive to establish that the proposed project is feasible and demonstrates a fair chance of success.

5.2 Notification of results

Once a project is approved, a Letter of Approval or an Incentive Entitlement Certificate will be issued in line with Part 6 Section 28 et seq. of the Malta Enterprise Act.

6. Claim

6.1 Claim Submission

Undertakings shall claim the eligible costs as approved by the Corporation in the Incentive Entitlement Certificate.

The Claim Form may be downloaded from the Corporation's website.

6.1.1 Claiming Relocation Costs of Personnel

When aid is approved in relation to the relocation of personnel the undertaking will be required to submit:

- a. A copy of the residence permit.
- b. A lease agreement for a residential property covering a period of at least one (1) year.
- c. The employment history of the employee as issued by ETC or the M&A in the case of a director.

6.1.2 Claiming Temporary Secondment of Personnel

When aid is approved in relation to the temporary secondment of personnel the undertaking will be required to submit:

- a. A copy of the agreement between the foreign undertaking and the beneficiary
- b. Proof of payment which shall be considered to be a copy of the encashed cheque image or a bank statement clearly identifying the bank transaction.

6.1.3 Claiming Relocation Costs of Assets

When aid is approved in relation to the relocation of assets the undertaking will be required to submit:

- a. Fiscal invoices or fiscal receipts.
- b. Proof of payment which shall be considered to be a copy of the encashed cheque image or a bank statement clearly identifying the bank transaction.

6.1.4 Claiming operating expenditure

When claiming operating expenditure the following documentation is required:

- a. Telecommunication costs:
 - i. Contract signed with suppliers.
 - ii. Fiscal invoices or fiscal receipts.
 - iii. Proof of payment which shall be considered to be a copy of the encashed cheque image or a bank statement clearly identifying the bank transaction.
- b. Rental of business premises:
 - i. Rental Agreement.

- ii. Permit confirming that the rented property is a licensed business premises.
 - iii. Proof of payment of applicable rental fees which shall be considered to be a copy of the encashed cheque image or a bank statement clearly identifying the bank transaction.
- c. Water and Electricity costs:
- i. Fiscal invoices or fiscal receipts issued by the utilities provider and addressed to the undertaking receiving the aid or to the leaser of the owner of the business premises being rented to the beneficiary.
 - ii. Proof of payment which shall be considered to be a copy of the encashed cheque image or a bank statement clearly identifying the bank transaction.
- d. Professional services:
- i. A copy of the agreement between the service provider and undertaking receiving the aid.
 - ii. Fiscal invoices or fiscal receipts.
 - iii. Proof of payment which shall be considered to be a copy of the encashed cheque image or a bank statement clearly identifying the bank transaction.

6.1.4. Wage Costs:

When claiming aid awarded on the basis of wage cost the following documentation is required:

- a. Payslips for the relevant period signed by the respective employee.
- b. Proof of payment which shall be considered to be copies of the encashed cheques or a bank statement clearly identifying the bank transactions and employee's details.

6.2 Additional requirements

Any expenditure claimed shall meet all the following conditions:

- a. The activity or expenditure supported may not be reimbursed to or otherwise recoverable through other sources.

Where the beneficiary may benefit from any other State Aid in respect of expenditure incurred in the carrying out the approved project, the beneficiary must ensure that any rules governing the cumulation of aid are respected.

- b. The expenditure must be incurred during the approved period.

6.3 Tax Credits

For aid awarded in the form of Tax Credits, the Corporation shall issue a Tax Credit Certificate which may be utilised by the undertaking as from the Year of Assessment following the year in which the tax credit certificate is issued. That is, for claims processed in 2016 a tax credit certificate which may be utilised against tax incurred as from Year of Assessment 2017 will be issued.

Any amount not absorbed by the tax payable for that year of assessment may be carried forward to be allowed as a tax credit for the subsequent years of assessment. In this respect, any Tax Credits not utilised shall be accumulated with any other tax credits awarded to the undertaking under the provision of the *Investment Aid (July 2014) Regulations*, as subsidiary legislation 463.10 to the *Malta Enterprise Act, Chapter 463 of the Laws of Malta*.

7. General Provisions

7.1 Changes to Approved Assistance

Any modification to an approved project should be notified to and be approved by the Corporation. The Corporation shall reserve the right to re-evaluate the project on the basis of the proposed amendments and may, pursuant to the outcome of the evaluation, terminate further assistance.

7.2 Monitoring

Beneficiaries will be subject to monitoring to ensure that the project is being or was implemented according to:

a) These Incentive Guidelines.

b) The terms and conditions set in the Incentive Entitlement Certificate issued by the Corporation.

c) [Commission Regulation \(EU\) No. 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid.](#)

7.3 On-Site Visits

The Corporation may carry out or commission third parties to carry out on-site checks during or after the implementation of the investment project. Such visits may entail the verification of the documentation related to the investment project and the confirmation of the works carried out.

7.4 Revocation of Aid

If an applicant is found to have breached the terms and conditions set in these Incentive Guidelines, the Regulation or the Incentive Entitlement Certificate, the Corporation reserves the right to revoke, suspend or recover any aid awarded.

8. State Aid Rules and Obligations

8.1 Applicable State Aid

These Incentive Guidelines are in line with the [Commission Regulation \(EU\) No. 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid](#) (the *de minimis* Regulation).

The total amount of *de minimis* aid granted to a single undertaking shall not exceed the amount of €200,000 over any period of three consecutive fiscal years.

This aggregate maximum threshold applies in principle to all economic sectors with the exception of the road transport, agriculture and fisheries sectors for which different thresholds and criteria apply. The term 'undertaking' includes also all companies in a group (which fall under the direct or indirect ownership or control of the same ultimate parent company) and relevant partner and linked enterprises as defined in Annex I of Commission Regulation (EU) No 651/2014. This period covers the fiscal year concerned as well as the previous two fiscal years. 'Fiscal year' means the fiscal year as used for tax purposes by the undertaking concerned.

This maximum threshold would include all State aid granted under this aid scheme and any other State aid measure granted under the *de minimis* rule including that received from any entity other than the Corporation. Any *de minimis* aid received in excess of the established threshold will have to be recovered, with interest, from the undertaking receiving the aid.

The [de minimis declaration form](#) must be filled in and submitted together with the application form.

8.2 Applicability of the Aid

Assistance approved under this aid scheme is NOT:

- a. Aid granted to undertakings active in the fishery and aquaculture sector, as covered by Council Regulation (EC) No. 104/2000³;
- b. Aid granted to undertakings active in the primary production of agricultural products;
- c. Aid granted to undertakings active in the sector of processing and marketing of agricultural products, in the following cases:
 - i. Where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned;
 - ii. Where the aid is conditional on being partly or entirely passed on to primary producers;

³ Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products (OJ L 17, 21.1.2000, p. 22).

- d. Aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
- e. Aid contingent upon the use of domestic over imported goods;
- f. Aid for the acquisition of road freight transport vehicles granted to undertakings performing road freight transport for hire or reward.

Where an undertaking is active in the sectors referred to in points (a), (b) and (c) above as well as in other sectors falling within the scope of the *de minimis* Regulation, the Corporation will ensure a separation of the activities or distinction of costs. Only those sectors eligible for assistance under the *de minimis* Regulation will be assisted. Activities in the sectors excluded from the scope of the *de minimis* Regulation will not benefit from assistance under this aid scheme.

8.3 Cumulation

In terms of Article 5 of the *de minimis* Regulation, *de minimis* aid granted under this incentive may be cumulated with *de minimis* aid granted in accordance with Commission Regulation (EU) No 360/2012⁴ up to the ceiling laid down in that Regulation. It may be cumulated with *de minimis* aid granted in accordance with other *de minimis* regulations up to the relevant ceiling fixed in terms of these Incentive Guidelines.

De minimis aid approved under the **Business Development and Continuity Scheme** shall not be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measure, if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the European Commission. *De minimis* aid which is not granted for or attributable to specific eligible costs may be cumulated with other State aid granted under a block exemption regulation or a decision adopted by the Commission.

⁴ Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

9. Contact Details

Further information on the scheme, as well as information and guidance on the filling in of the application form may be obtained by contacting Malta Enterprise during office hours.

Postal Address: Malta Enterprise
Gwardamangia Hill,
Pieta`, MEC 0001
Malta.

Tel: 144

Websites: www.maltaenterprise.com

The official Incentive Guidelines are published at:
<http://support.maltaenterprise.com/>

Email: info@businessfirst.com.mt