

Incentive Guidelines

Certify (Tax Credits) 2018 - 2020



MALTAENTERPRISE

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1. Introduction

1.1 Overview

Certify 2018 – 2020 is a fiscal measure administered by the Malta Enterprise Corporation (hereinafter referred to as ‘the Corporation’) to encourage eligible undertakings to continuously improve the quality of their products, services and processes through the attainment of industry recognised certifications and quality marks. The scheme is intended to boost awareness of the added value that may be achieved through certification when competing in international markets.

Through this scheme the Corporation may approve a tax credits of up to €25,000 per certification to help recover the costs to achieve a qualifying certification, quality mark, or licence (hereinafter referred to as ‘Certification’). This fiscal support that will be available through this scheme should make it easier for undertakings to carry out investments that lead to superior products, services of higher value and more efficient processes.

1.2 Duration of the Incentive

Applications for assistance may be submitted until 30th November 2020.

The Corporation may periodically update and amend these Incentive Guidelines.

1.3 Legal Basis

The Corporation may issue and publish the official Incentive Guidelines covering this aid scheme in terms of Article 8 (3)(a) of the Malta Enterprise Act, Chapter 463 of the Laws of Malta.

Certify Scheme Regulations, 2018, Legal Notice 119 of 2018, forms the national legal basis of this aid scheme.

1.4 Designated Authority

This incentive is administered by the Corporation.

2. Definitions

For the purpose of these Incentive Guidelines, the following definition shall apply:

- a) **Single Undertakings** 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 of the following relationships with each other:

- i. one undertaking has a majority of the shareholders' or members' voting rights in another undertaking;
- ii. one undertaking has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking;
- iii. one undertaking has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association;
- iv. one 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 enterprise, a majority of shareholders' or members' voting rights in that undertaking.

Undertakings having any of the relationships referred to in points (i) to (iv) of the first subparagraph through one or more other undertakings shall also be considered to be a single undertaking.¹

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 undertakings which have 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 enterprises controlled by the same public body or bodies, which may have an independent power of decision, is therefore taken into account.

- b) **Agricultural products'** means products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products covered by Regulation (EC) No 104/2000².
- c) **'Processing of agricultural products'** means any operation on an agricultural product resulting in a product which is also an agricultural

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

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:352:0001:0008:EN:PDF>

2 Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products:

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000R0104&from=EN>

product, except on-farm activities necessary for preparing an animal or plant product for the first sale.

- d) **‘Marketing of agricultural products’** means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing if it takes place in separate premises reserved for that purpose.
- e) **‘Certifying Body’** means an independent body responsible of issuing a formal recognition (such as a certificate) proving that the certification, quality mark or license in question meets specific national and/or international requirements. Where applicable the certifying body should be duly accredited.

3. Incentive Description

3.1 Incentive summary

- a) This incentive will award tax credits to single undertakings that achieve qualifying Certifications awarded by a Certifying Body.
- b) The Certifications must be required:
 - i. To improve the processes, products or services of the undertaking;
 - or
 - ii. to achieve growth in international markets.
- c) Tax credits shall only be utilised against profit derived from the applicant's relevant trade or business activity.

The tax credit shall be utilised from the first year of assessment.

3.2 Maximum Support

The total aid that may be awarded to any single undertaking through this measure is capped at €25,000 per certification.

Consultancy costs are capped at €2,500 per certification.

3.3 Intensity of Aid

The maximum aid intensity shall be capped as follows:

Eligible Costs	%
Consultancy	50
Certification	75

3.4 Qualifying Certifications, Quality Marks, or Licences

The Corporation shall publish a list of qualifying Certifications on the Corporation's website. The list may indicate a specific capping of the applicable value of aid and aid intensity that may have been established by the Corporation in relation to a Certification.

Prior to incurring any costs, it is recommended that an undertaking seeking to achieve a certification which at the time is not listed, to submit the *Certification Verification Form* which could be downloaded from the Corporation's website to verify whether the certification qualifies or not.

In submitting such a request, the undertaking will be required to provide details of the certifying body and an explanation of how the certification would address the criteria set in Section 3.1 of the Guidelines.

The Corporation will make its utmost to provide the beneficiary with a written opinion within six (6) weeks from the submission of the request.

Whilst details of the certification may be provided with the application, the Corporation may reject an application if the certification is not deemed to qualify.

3.5 Eligible Costs

Eligible costs as described below must be rendered and paid for on a date which is after the launch of this incentive and prior to the submission of the application form to the Corporation.

(A) Consultancy Costs

Consultancy services provided by third parties leading to qualifying certifications shall be considered eligible.

The capping established by the Corporation is final.

(B) Certification Costs

Costs incurred from a **Certifying Body** as may be required by the undertaking to achieve the Certification. These costs may include first time audits, due diligence or verification service, and laboratory costs.

3.6 Ineligible Costs

It is hereby clarified that the following costs will not be considered as eligible:

- a) wages, salaries, and another forms of remuneration of employees.
- b) recoverable taxes (such as VAT).
- c) any costs paid for in cash.
- d) costs related to maintain a certification, quality mark or licence.
- e) services that are of a continuous or periodic nature or related the applicants operating costs (such as recurring fee and re-certification audits).
- f) costs that are assisted (even partly) through other support measures administered by the Corporation or any entity other than the Corporation.
- g) costs that are 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.
- h) Travel.
- i) Transportation.

- j) Internal costs.

3.7 Additional Provisions

- a) Applicants shall consent that data and information may be sourced from third parties by the Corporation in the process of assessing and implementing this incentive.
- b) Any penalties contemplated by the Income Tax Act shall apply in case of abuse of this incentive.
- c) Any tax credits awarded under this incentive shall not give rise to a right of any tax refund.
- d) Any approved tax credit may be withheld by the Corporation in due of any other pending recoveries imposed on the applicant/beneficiary.

4. Eligibility

4.1 Eligible Undertakings

This incentive is open to all undertakings, which at point of application satisfy the criteria established within these Incentive Guidelines. Undertakings shall be disqualified if:

- a) The undertaking (at group level) is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.
- b) The undertaking (at group level) is subject to an outstanding recovery in respect to any other incentive awarded by the Corporation.

4.2 Exclusions

The incentive does not apply to:

- a) Undertakings active in the fishery and aquaculture sector.
- b) Undertakings active in the primary production of agricultural products.
- c) 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.
- d) 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” are not eligible under this scheme. Nevertheless commercial undertakings carrying out exclusively an economic activity in direct competition with third parties and in which Government has a controlling interest are eligible under this scheme.
- e) Undertakings engaged in any of the following activities:
 - i. real estate;
 - ii. gambling;
 - iii. financial services and/ or insurance;
 - iv. the trading or manufacturing of arms and military equipment and related services.
- f) Voluntary organisations.

- g) Persons or undertakings engaged in activities specifically excluded under the *de minimis* regulation – (vide Section 6)³.

3 Section 6 deals with State Aid Rules and Obligations regarding the sectors and activities that are excluded from benefitting from assistance under this incentive

5. Application and Assignment of Aid

5.1 Application Process

An Undertaking claiming a tax credit for the attainment of a qualifying certification, is to submit to the Corporation the following documentation within three (3) months from the attainment of the Certification and by not later than 30th November 2020:

- a) a complete application form including annexes which can be downloaded from the Corporation's website
- b) a copy of the documentation issued from the Certifying Body showing that the applicant has been granted a qualifying Certification
- c) a confirmation from the certifying body that conducted the first time audits, due diligence or verification service confirming the date when the service was rendered and that the verification was carried out in relation to a new certification or an upgrade of the certification and was not related to a renewal (or any other similar occurrence)
- d) an Audit report
- e) the consultant's contract of service;
- f) a breakdown of costs incurred from the Certifying Body in granting the qualifying Certification;
- g) fiscal invoices
- h) fiscal receipt or proof of payment (details related to the bank transfer) in relation to all the eligible costs.⁴

5.2 Incentive Entitlement Certificate

After reviewing the submitted documents and verifying that the undertaking and the application is in line with the parameters established by these Incentive Guidelines, the Corporation will issue an Incentive Entitlement Certificate that will enable the applicant to claim the applicable Tax Credit.

Malta Enterprise reserves the right to revoke the Incentive Entitlement Certificate and recover any tax incentive the applicant may have benefited from in terms of this Incentive Guidelines in the case of:

- a) double funding of the same costs from Malta Enterprise or other National or European funds;
- b) any breach of State Aid regulations (vide Section 6);

⁴ In the case where costs are in a currency other than Euro the relevant amounts should be converted to Euro using the middle rate of exchange as determined by the European Central Bank.

- c) any breach of these guidelines or the terms and conditions set in the Incentive Entitlement Certificate;
- d) any recovery order involving the undertaking (at group level) in respect to this or other incentives.
- e) the Inland Revenue Department may reject the utilisation of awarded tax credits if the beneficiary is defaulting on VAT, Income Tax or Social Security Contributions.

6. State Aid Rules and Obligations

6.1 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)⁵

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 of 17th June 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 Malta Enterprise. 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 form⁶ must be filled in and submitted together with the application form.

6.2 Exclusions

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. 104/2000⁷;
- 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:

⁵ http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf

⁶ The *de minimis* Aid Declaration may be downloaded from:

<http://www.maltaenterprise.com/en/support/docs/de-minimis-declaration>

⁷ 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).

- 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;
- 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.

6.3 Undertakings subject to a recovery order

Aid approved by the Corporation under Certify will be suspended until the undertaking has reimbursed old, unlawful and incompatible aid that is subject to a recovery.

6.4 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 360/2012⁸ 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 **Certify (Tax Credits) 2018 - 2020** 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.

⁸ 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).

7. 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 Business First during office hours.

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