

Incentive Guidelines

Family Business: Transfer of Ownership



MALTAENTERPRISE

Issue Date: 1st January 2017

Version: 1

<http://support.maltaenterprise.com>

Malta Enterprise provides interested applicants with support to facilitate the understanding of the objectives and the details relevant to this incentive. Support is also available to address any problems encountered when completing applications. Applicants may contact Business First by calling 144 or by email on info@businessfirst.com.mt.

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1. Introduction

The purpose of the incentive is to assist and facilitate family businesses to transfer their business from one generation to the next by providing benefits including governance and fiscal benefits for the better management and organisation within the family and the business.

1.1 Duration of the Incentive

This measure shall be available until 31st December 2020.

Malta Enterprise may periodically update and amend these Incentive Guidelines. In any case, the applicable Incentive Guidelines shall be those published when the request for assistance is received.

1.1 Legal Basis

The Family Business Act (Chapter 565 of the Laws of Malta) provides the legal basis of the incentive.

1.2 Designated Authority

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

2. Definitions

2.1 Incentive Entitlement Certificate (IEC)

An *Incentive Entitlement Certificate* (IEC) means a certificate issued in terms of Part VI of the Malta Enterprise Act, outlining the support granted and including any relative terms and conditions.

2.2 Family Business

A Family Business is an undertaking as defined in Article 3 of the Family Business Act (Chapter 565 of the Laws of Malta) that is duly registered as a Family Business and holds an updated certificate issued by the Regulator for Family Businesses.

2.3 Regulator for Family Businesses

The Regulator for Family Businesses refers to the office established by Part 3 of the Family Business Act (Chapter 565 of the Laws of Malta)

2.4 Single Undertakings

For the purpose of these Incentive Guidelines, the term '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, a 'single undertaking' includes all undertakings having at least one (1) 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 undertaking 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 undertaking, 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 those undertakings which have no relationship with each

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

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.²

2.5 Applicant

"Applicant" means a business registering as a family business under this Act,

2.6 Benefits

"Benefits" means any assistance or relief granted to a registered family business in terms of the Duty and Documents Transfers Act, Malta Enterprise Act, Business Promotion Act and in terms of any other law or scheme as the Minister may prescribe by regulations,

2.7 Established in Malta

"Established in Malta" means the head office, agency, or branch or part of a business and shall include a permanent presence of that business carried out in Malta,

2.8 Family Business

"Family business" has the meaning assigned to it in article 3 of the Act,

2.9 Family Member

"Family member" means the family business owner's spouse, ascendants, descendants in the direct line and their relative spouses, brothers or sisters and their descendants or as the Minister may prescribe,

2.10 Guidelines

"Guidelines" means the set of rules issued by the Regulator from time to time for the further implementation of the provisions of this Act, and any regulations made hereunder, including the definition, application, administration, grant and revocation of benefits, schemes and other arrangements for the regulation, management and transfer of family businesses and their governance in Malta,

2.11 Limited Liability Company

"Limited liability company" means a company duly formed and registered under Part V of the Companies Act,

2.12 Owner

"Owner" means the ultimate beneficiary, natural person who, directly or indirectly, has a shareholding or other interest in a family business,

2.13 Partnership

"Partnership" means a partnership en nom collectif or partnership en nom commandite duly formed and registered in terms of Part III and Part V of the Companies Act,

2.14 Prescribed

"Prescribed" means either prescribed by regulations made by the Minister under this Act or prescribed by binding guidelines made by the Regulator under this Act, unless otherwise expressly stated, and in the event of a conflict between the regulations made by the Minister and guidelines made by the Regulator on any particular matter, the regulations shall prevail,

2.15 Private Foundations

"Private foundations" means those foundations established for a private interest and registered or otherwise recognised as legal persons in terms of the Second Schedule to the Civil Code,

2.16 Public Limited Company

"Public limited company" means a company duly formed and registered under Part V of the Companies Act,

2.17 Spouse

"Spouse" means a spouse in terms of the Marriage Act and a partner in terms of the Civil Unions Act,

2.18 Trusts

"Trusts" means a trust in terms of the Trusts and Trustees Act.

3. The Incentive

The intention of the objective of this incentive is to facilitate business transfers of their business to other owners who are family members in the same family according to the terms and conditions stipulated in the Family Business Act (Chapter 565 of the Laws of Malta).

3.1 Eligible Sectors

The incentive is intended to support family businesses operating in all economic sectors unless excluded from 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)* (Vide Section 5).

3.2 Eligible Costs

The eligible costs and expenses under this incentive are in relation to:

- Transfer duty of immovable property that had been used for a period of at least three (3) years.
- The assessment of duty chargeable when an individual transfers of shares or interest in a partnership, trust or foundation to family members.

Duty shall be charged on the first five hundred thousand euro (€500,000) of the value of the property transferred at the rate of three euro and fifty cents (€3.50) per one hundred euro (€100).

Transfer of shares or interests in a partnership, trust or foundation held in a family business which carries on a business, no account shall be taken of the first one hundred and fifty thousand euro (€150,000) or such other greater amount as may be prescribed of the value of shares, or interests in a partnership, trust or foundation transferred.

In line with the *De Minimis Regulation*, the total amount of *de minimis* aid granted to a single business shall not exceed the amount of €200,000 over any period of three (3) consecutive fiscal years.

3.3 De minimis aid

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

4. Application Process

Family Businesses seeking support under these Incentive Guidelines should request the required support from the office of the Regulator for Family Businesses. If the Regulator agrees to provide the requested support, an Incentive Entitlement Certificate shall be issued to the applicant indicating the support that may be claimed. The application form shall include:

- A *de minimis* declaration.
- Confirmation that the applicant is a registered Family Business.

5. State Aid Rules and Obligations

5.1 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)².

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 (EC No 800/2008). 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 form³ must be filled in and submitted together with the application form.

5.2 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. 104/2000⁴;
- 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;
- 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.
- g. For Voluntary Organisations

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

² [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_379/l_37920061228en00050010.pdf]

³ The *de minimis* Aid Declaration may be downloaded from <http://www.maltaenterprise.com/en/support/docs/de-minimis-declaration>

⁴ 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).

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.

5.3 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 360/2012⁵ 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 **Family Business: Transfer of Ownership** 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.

⁵ 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).

6. 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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The official Incentive Guidelines are published at
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