

Incentive Guidelines

Tax Credits for Digital Applications Development.



MALTAENTERPRISE

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<http://support.maltaenterprise.com>



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1. Introduction

1.1 Scope

The incentive shall provide a tax credit to business undertakings that are further embracing digital technologies by commissioning the development of digital game applications.

The integration of social media into different aspects of business is a development that forward looking businesses cannot ignore. Through this incentive, enterprises that commission the development of digital game applications that are intended as a promotional, educational or functional tool may receive a tax credit of up to €15,000.

1.2 Duration of the Incentive

This incentive will be available until the 31st December 2013.

Malta Enterprise may periodically update and amend these Incentive Guidelines.

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.

2. Eligibility

2.1 Eligible Undertakings

- a. To be eligible for aid through this incentive, undertakings shall be:
 - i. duly incorporated under the Company's Act, Chapter 386 of the Laws of Malta being a partnership en nom collectif, en commandite or a limited liability company;
 - or
 - ii. any body of persons constituted, incorporated or registered outside Malta, and of a nature similar to the above;
 - or
 - iii. be duly registered as a Cooperative under the Co-operatives Societies Act, Chapter 442 of the Laws of Malta.
- b. Undertakings should be in possession of the applicable regulatory licences and permits. Such licences include:
 - i. trading licences issued by the Commerce Division;
 - ii. licence issued by the Malta Tourism Authority for the operation of bars, restaurants and hotels.

2.2 Exclusions

- a. Applicants / beneficiaries must not be defaulting on VAT, Income Tax, Social Security and rent payments to Government.
- b. Applicants / beneficiaries should not be in breach of any applicable regulatory requirement (as applicable).
- c. Undertakings engaged in activities specifically excluded under the [de minimis regulations – To be confirmed through State Aid notification process] (vide Section 5) are not eligible for this incentive.
- d. Undertakings in difficulty (vide Section 5) are excluded from benefiting from assistance under this incentive.
- e. Undertakings engaged in any of the following activities are not eligible for this incentive:
 - i. gambling;
 - ii. the trading or manufacturing of arms and military equipment and related services.
- f. This incentive is intended to support undertakings that carry out a trade or business, the profits or gains from which are chargeable to tax pursuant to article 4(1)(a) of the Income Tax Act, hence it is not intended for voluntary organisations.
- g. 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.

3. Incentive Description

3.1 Maximum Aid per Enterprise

An undertaking may benefit from this incentive only once. The maximum tax credit per undertaking shall be capped at €15,000 which can be claimed against the development of a single digital game project¹.

3.2 Applicable Aid Intensity

Malta Enterprise may approve a tax credit equivalent to 100% of the total subcontracted costs incurred for the development of an eligible digital game.

3.3 Qualifying Costs

An eligible undertaking² may claim the cost incurred for the subcontracted development of a single digital game project.

To qualify for this incentive all the following conditions should be met:

- a. The digital game should:
 - i. educate users about the beneficiary's products or services
 - or
 - ii. should serve as a promotional tool for the beneficiary
- b. The game should be developed for at least one electronic device which at the time of development is considered to be widely available on the market.
- c. The developed digital game should be made available to the general public over the internet³.
- d. The digital game shall not include any elements :
 - i. related to gambling;
 - ii. of unnecessarily graphical violence;
 - iii. promoting illegal activities .
- e. The development needs to be entrusted to a development team dedicated to game production. The development team is expected to include persons with knowledge and/or experience in digital game development.
- f. The undertaking developing the digital game may not be related (linked or partnered) to the applicant. The terms linked and partnered shall have the meaning provided by the SME definition.
- g. An Intellectual Property related to the game should be held either by the undertaking applying for this incentive or the undertaking commissioned to develop the game.

¹ A single digital game project implies that the an undertaking could commission the development of one or more digital games as long as these are incorporated in single project.

² 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).

³ Including internet based digital distribution channels for wired and wireless devices.

3.4 Ineligible Costs

Costs that are assisted (even partly) through other incentive measures administered by the Corporation or other entities do not qualify for aid under this incentive and only the costs listed in section 3.3 are considered eligible. It is hereby clarified that the following costs will not be considered as qualifying:

- a. Wages, salaries and other forms of employee remuneration
- b. costs that are related to in house development of a digital game
- c. tax
- d. licensing costs
- e. software (other than the game software specified in the approved development agreement) and hardware costs
- f. internet hosting and other services required to maintain and supported digital game
- g. Services that are of a continuous or periodic nature or related the applicants operating costs (such as recurring fee and re-certification audits).

3.5 Additional Provisions

- a. All eligible costs should have been paid for by the beneficiary between 1st January 2012 and 31st December 2013.
- b. The digital game should be available on the internet before 31st December 2013 and should remain available for a period of 36months (A beneficiary may still replace the digital game on which support was granted by a new version of the same game).
- c. All applications for this incentive must be submitted to the Corporation after the game is made available on the internet but in any case not later than 31st December 2013.
- d. Any tax credits awarded under this incentive shall not give rise to a right of any tax refund.
- e. Tax Credits may be claimed from the basis year in which an Incentive Entitlement Certificate is issued by the Corporation.
- f. The tax credit shall be utilised against tax incurred on income derived from a trade or business activity as shall be indicated in the Incentive Entitlement Certificate.
- g. An undertaking may benefit from this incentive only once.
- h. Applicants shall consent to the Corporation the right to acquire from third parties any necessary data and information required for the process of assessing and implementing this incentive.
- i. Any penalties contemplated by the Income Tax Act shall apply in case of abuse of this incentive.
- j. Should the approved value of the tax credit exceed the tax from the trade or business activity the balance may be carried forward as a tax credit to subsequent years but must be utilised by year of assessment 2015.
- k. In the case where financial statements 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.
- l. 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.

4. Application and Assignment of Aid

4.1 Application

Malta Enterprise will receive applications for this incentive until the 30th September 2013, and these will be processed in terms of the guidelines in force at the date of application.

Applicants should use the official application form which may be downloaded from the incentives website <http://incentives.maltaenterprise.com>. In the application form, applicants would be required to provide:

- a. A complete game design document indicating the scope, look, feel and central mechanics of the game (created by the game development team).
- b. A detailed breakdown of the costs which shall be incurred for the development of the digital game project.
- c. Details of the holder of any Intellectual Property Rights related to the game.
- d. The business objectives for which the digital game was developed.
- e. An outline of the development team that will develop the digital game project with particular focus on the skills they possess to develop such a game and detailing prior experience in game development, if any.
- f. The Enterprise Size Declaration. This may be downloaded from: <http://support.maltaenterprise.com/size>.
- g. The De Minimis Aid Declaration. This may be downloaded from: <http://support.maltaenterprise.com/deminimis>.

4.2 Approval

All applications will be checked for eligibility. This process shall ensure that the applicant and proposed digital game development project are in line with the parameters established by these Incentive Guidelines.

After verifying the submitted documents, Malta Enterprise will issue a Letter of Approval which will list the approved costs and grant the applicant the possibility to claim a tax credit certificate covering the approved costs once the digital game project is complete.


The Letter of Approval can have a validity of up to 12 months.

Any rights to the fiscal incentive shall be lost:

- a. if the game development is contracted to a developer other than the one specified in the application form;
- b. if the resultant digital game project is significantly different from the project specified in the application form;
- c. the digital game project is not completed;
- d. the claim for an Incentive Entitlement Certificate is not received by the Corporation before the expiry of the Letter of Approval

4.3 Claims

Once the development of the digital game project is complete and the digital game has been published, the holder of a Letter of Approval must submit a claim to the Corporation for an Incentive Entitlement Certificate. The claim request should include a detailed invoice outlining the resources allotted for the approved game development, the location from where the game may be accessed and any other details as may be requested in the Letter of Approval issued by the corporation.



After confirming that the project has been completed in compliance to these guidelines and to the Letter or Approval, Malta Enterprise will issue an Incentive Entitlement Certificate that will allow the applicant to benefit from the applicable tax credit commencing from the following income tax return.

4.4 Monitoring

Malta Enterprise and the Inland Revenue Department reserve the right to revoke the Incentive Entitlement Certificate and recover any tax incentive the applicant may have benefited from in terms of this guideline in the case of:

- a. double funding of the same costs from Malta Enterprise or other public entities;
- b. any breach of regulations on State Aid;
- c. any breach of these guidelines or the terms and conditions set in the Letter or Approval or the Incentive Entitlement Certificate.

5. State Aid Rules and Obligations

5.1 Applicable State Aid

These Incentive Guidelines are in line with Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid, Official Journal L379 of 28.12.2006.

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

Under this regulation an undertaking may receive an aggregate maximum amount of €200,000 under all de minimis aid measures over a 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 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 form⁴ must be filled in and submitted together with the application form.

5.2 De minimis Aid

This incentive is governed by the de minimis regulations and therefore the incentive will not apply to the following:

- a. Aid granted to undertakings active in the fishery and aquaculture sectors as covered by Council Regulation (EC) No. 104/2000;
- b. Aid granted to undertakings active in the primary production of agricultural products as listed in Annex 1 to the Treaty;
- c. Aid granted to undertakings active in the processing and marketing of agricultural products as listed in Annex 1 to the Treaty, in the following cases:
 - i. when 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. when 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;

⁴ The De minimis Aid Declaration may be downloaded from <http://www.maltaenterprise.com/en/support/docs/de-minimis-declaration>

5.3 Undertakings in Difficulty

Aid granted to undertakings in difficulty in terms of Community Guidelines on State aid for rescuing and restructuring firms in difficulty, Official Journal C244, 01.10.2004, are excluded from benefiting from assistance under this incentive.⁵

5.4 Cumulation

Aid granted under this incentive may only be cumulated with other aid under any other incentive, or with other Community funding, in relation to the same item of expenditure as long as such cumulation does not exceed the gross aid intensity fixed by these Incentive Guidelines.

In terms of the de minimis regulation quoted above, assistance shall not be cumulated with State Aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that fixed in the specific circumstances of each case by a block exemption regulation or decision adopted by the European Commission.

⁵ [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004XC1001\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004XC1001(01):EN:HTML)



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 Malta Enterprise during office hours.

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

Tel: 144

Websites: <http://www.maltaenterprise.com>

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

Email: info@maltaenterprise.com