

# Incentive Guidelines

Investment Aid Tax Credits 2014 - 2020



**MALTA**ENTERPRISE

Issue Date: 1<sup>st</sup> July 2014

Version: 2

Update: 9<sup>th</sup> April 2015

<http://support.maltaenterprise.com>

# Contents

1.	Introduction	5
1.1	Scope and Background	5
1.2	Duration of the scheme	5
1.3	Legal Basis	5
1.4	Designated Authority	5
2.	Eligibility	6
2.1	Eligible Undertakings	6
2.2	Eligible Investments	6
2.3	Eligible Activities	7
2.3.1	Manufacturing	7
2.3.2	Information Technology	8
2.3.3	Call Centre Activities	8
2.3.4	Research and Development, and Innovation	8
2.3.5	Eco-innovation, waste treatment and environmental solutions	8
2.3.6	Biotechnology:	9
2.3.7	Pharmaceuticals	9
2.3.8	Facilities for Filming and Audiovisual productions	9
2.3.9	Provision of Tertiary Education	10
2.3.10	Provision of private health care services	10
2.3.11	Freeport and Logistics Operation	11
2.3.12	Hotels, resort hotels, suite/apartment hotels or guest houses	11
2.3.13	Knowledge intensive business services	11
2.3.14	Cultural Restoration	12
2.3.15	Large Scale cultural, creative and trade facilities	12
2.3.16	Industrial Packaging	12
2.4	Disqualifying Activities	12
2.4.1	Sale by Retail	13
2.4.2	Non value adding processes	13
2.4.3	Catering	13
3.	Incentive Description	14
3.1	Details of Incentive	14
3.1.1	Applicable Aid Intensity	14
3.2	Qualifying Expenditure	15
3.2.1	Qualifying tangible assets	15

3.2.2	Qualifying Intangible Assets	17
3.2.3	Calculating the value of investment in relation to Job Creation	17
3.3	Utilisation of Tax Credits	18
3.4	Additional Provisions	18
4.	Application Process	19
4.1	Application for Entitlement as an Eligible Undertaking	19
4.2	Determination	19
4.3.	Application for the preapproval of significant projects.	19
4.4	Notification of results	20
4.5	Annual returns	20
4.6	Calculating the value of tax credits on the basis of jobs created	21
5.	Claims	22
5.1	Claim Submission	22
5.2	Annual Reports	22
5.2.1	Submission of Annual Reports	23
5.2.3	Processing of Annual Reports	23
6.	State Aid Rules and Obligations	24
6.1	Definition of Small and Medium Sized Enterprises	24
6.2	Applicable State Aid	24
6.3	State Aid Conditions	24
6.4	Rules on cumulation of aid	25
7	General Rules and Conditions	26
7.1	Monitoring	26
7.2	On-Site Visits	26
7.3	Sanctions and recovery of aid	26
8.	Contact Details	27
	Annex I – Amendments to the Incentive Guidelines	28

# 1. Introduction

## 1.1 Scope and Background

Investment Aid Tax Credits are intended to sustain the regional industrial and economic development of Malta. This measure facilitates initial investments by encouraging the setting up of new establishments and the expansion and development of existing businesses.

## 1.2 Duration of the scheme

These incentive guidelines shall be affective from 1<sup>st</sup> July 2014 and unless reviewed or updated shall remain in force until 31<sup>st</sup> December 2020.

The incentive may be reviewed in line with any revisions of the relevant State Aid regulations or in view of any national policy requirements.<sup>1</sup>

## 1.3 Legal Basis

Malta Enterprise 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.

The Investment Aid (July 2014) Regulations as subsidiary legislation 463.10 to the Malta Enterprise Act, mentioned in the previous paragraph, forms the national legal basis of this aid scheme.

The terms and conditions covering this aid scheme shall be in line with Commission Regulation (EU) No 651/2014 of 17<sup>th</sup> June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, (OJ L 187/1, 26.6.2014).

## 1.4 Designated Authority

This incentive is administered by Malta Enterprise Corporation.

## 2. Eligibility

### 2.1 Eligible Undertakings

This incentive is available to undertakings engaged solely in eligible activities, (vide guideline 2.3) and not otherwise disqualified by these guidelines. To be eligible for aid through this incentive, undertakings shall be:

- a. 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
- b. any body of persons constituted, incorporated or registered outside Malta, and of a nature similar to the above;  
or
- c. be duly registered as a Cooperative under the Co-operatives Societies Act, Chapter 442 of the Laws of Malta.

### 2.2 Eligible Investments

#### *2.2.1 Eligible Investments for SMEs.*

Investment Aid Tax Credits shall be awarded to SMEs in respect to 'initial investment' meaning:

- A. an investment in tangible and intangible assets related to:
  - a. the setting-up of a new establishment;
  - b. the extension of the capacity of an existing establishment;
  - c. the diversification of the output of an establishment into products not previously produced in the establishment; or
  - d. a fundamental change in the overall production process of an existing establishment;or
- B. the acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller and excludes sole acquisition of the shares of an undertaking.

#### *2.2.2 Eligible Investments for Large Enterprises*

Investment Aid Tax Credits shall be awarded to large enterprises in respect to 'initial investments in favour of a new economic activity or activities' as long as the activity is not the same or a similar activity to the activity previously performed in the establishment (i.e. an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council

Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains).

Eligible 'initial investments in favour of a new economic activity or activities' must consist of:

A. an investment in tangible and intangible assets related to the setting up of a new establishment, or to the diversification of the activity of an establishment, under the condition that the new activity is not the same or a similar activity to the activity previously performed in the establishment;

or

B. the acquisition of the assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller, under the condition that the new activity to be performed using the acquired assets is not the same or a similar activity to the activity performed in the establishment prior to the acquisition.

### ***2.2.3 Aid for a fundamental change in the production process***

For aid granted for a fundamental change in the production process, the eligible costs must exceed the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years.

### ***2.2.4 Aid for a diversification change in the production process***

For aid granted for a diversification of an existing establishment, the eligible costs must exceed by at least 200 % the book value of the assets that are reused, as registered in the fiscal year preceding the start of works.

## **2.3 Eligible Activities**

Eligible Undertakings shall carry on an economic activity which consists solely of one or more of the activities listed below.

### **2.3.1 Manufacturing**

Undertakings engaged in:

- a. the production, manufacture, improvement, assembly, preservation and processing of goods, materials, commodities, equipment, plant, machinery. Provided that the resultant product(s) should be clearly distinct from the materials and components utilised.
- b. industrial services analogous to the activities referred to in (a) above, provided that consultancy services shall not be eligible.
- c. the manufacture, repair, overhaul or maintenance of:

- i. any water craft not covered by the definition of shipbuilding as provide for in the Framework on state aid for shipbuilding as published in the Official Journal C364 of 14.12.2011, p.9-13;
- ii. aircraft;
- iii. engines or electromechanical equipment incorporated or used in the above.

Provided that an undertaking whose activities includes the installation, commissioning or assembly of goods on site, is only considered eligible if the goods have been manufactured by the same undertaking.

### 2.3.2 Information Technology

Undertakings engaged in:

- a. computer programming activities as defined under section 62.01 of NACE rev. 2.
- b. the provision of data processing, hosting and related activities such as defined under section 63.11 of NACE rev. 2.

Provided that undertakings engaged in gambling and in the provision of telecommunications services are not deemed as eligible.

### 2.3.3 Call Centre Activities

Undertakings engaged in inbound or out bound call centre services that receive customer orders, provide product information, deal with customer requests for assistance, address customer complaints, sell or market goods or services to potential customers, undertake market research or public opinion polling and similar activities for clients.

Eligible undertakings may only claim any accumulated tax credits if the number of full time equivalent employment for the year in review is at least equal to twenty Full Time Equivalent Employees (FTEs).

The provision of reception services is not considered to be an eligible activity.

### 2.3.4 Research and Development, and Innovation

Undertakings engaged in the design, development, testing and technical analysis of new products and/or processes that are at the leading edge of the applicable market or when such activity is undertaken on an industrial scale.

### 2.3.5 Eco-innovation, waste treatment and environmental solutions

Undertakings engaged in:

- a) "waste treatment" meaning the operation of physical (including sorting,), thermal, chemical or biological processes which change the characteristics of the waste in order to reduce the volume or hazardous nature of waste so as to facilitate its handling or enhance recovery.



b) the operation of "Eco-innovation" services and "Environmental Solutions" that significantly prevent, reduce or reverse the negative impacts of human activities on the environment.

"Eco-innovation" shall mean an innovation resulting in significant and demonstrable progress towards the goal of sustainable development, through reducing impacts on the environment or achieving a more efficient and responsible use of resources.

Projects that result in the generation and/or production of energy are not considered eligible.

### 2.3.6 Biotechnology:

Undertakings engaged in:

- a. The research, development, quality assurance (including clinical trials and validation) and/ or production of, products and services requiring the use of bio-technologies for their modification, synthesis or exploitation.
- b. The research, development, validation and commercialisation (introducing a new product, service or production method to the market) of human tissue programmes (stem cells, tissue transplantation etc).
- c. The production, quality assurance and clinical validation of new medical devices based on research in life sciences.
- d. The development and application (including knowledge transfer) of research in life sciences within industry.

### 2.3.7 Pharmaceuticals

Undertakings holding a Good Manufacturing Practice certificate issued by the Medicines Authority in Malta that are engaged in the:

- a. Formulation, development and/or manufacturing of pharmaceuticals licensed for use as medications.
- b. Preparation and packaging of pharmaceuticals licensed for use as medications.
- c. Logistics operations.

### 2.3.8 Facilities for Filming and Audiovisual productions

Undertakings engaged in:

- a. the production (through scriptwriting, casting, shooting, directing and editing) of audiovisual productions consisting of feature films, television films, advertisements and documentaries.

and/or

- b. the operation and provision of facilities and equipment (such as film studios, audiovisual editing facilities and filming equipment) required in the production of feature films, television films, advertisements and documentaries.

and/or

- c. The operation of a sound studio.

and/or

- d. The development of digital audiovisual media and digital games.

Undertakings engaged in broadcasting of audiovisual content to live audiences through any media channels and/or engaged in programming and broadcasting activities are not considered eligible.

### 2.3.9 Provision of Tertiary Education

Undertakings engaged in the provision of :

- a. Tuition leading to qualifications classified by the Malta Qualifications Council. Insofar that, the investment results in the provision of one or more tertiary degrees.

or

- b. Specialised , industry recognised, training and/or tuition focusing on crafts, creativity, maritime, aviation, and/or innovative technical skills.

The aid shall be available in respect to new investment projects that includes an investment for at least EUR 2 million and which should be implemented within a 36 month period.

### 2.3.10 Provision of private health care services

Undertakings engaged in the provision of human health services insofar that the eligible investment shall be limited to a new investment project for the provision of private health care in Malta in either:

- a. An initial investment project which should constitute at least Euro 5 million in building and medical equipment (diagnostic equipment, therapeutic equipment, life support equipment and medical monitors) and should be implemented within a 36 month period.

or

- b. Comprises in an initial investment project in medical equipment and results in the creation of at least 25 direct new full-time equivalent jobs within a 24 month period from completion of the investment project. Eligible undertakings may only claim any accumulated tax credits if the number of full time equivalent employment for the year in review is at least equal to 25 FTEs.

Undertakings engaged solely in the provision of residential care shall not be deemed eligible under this Scheme.

### 2.3.11 Freeport and Logistics Operation

- a. Undertakings licensed under and carrying out the activities set out in Article 10 of the Malta Freeports Act, Chapter 334 of the Laws of Malta.
- b. Undertakings engaged in the provision of storage, warehousing and related activities. Insofar that the eligible investment shall be a new investment project:
  - i. Of at least Euro 5 million for the provision of storage and warehousing facilities in a port (air / sea) area.or
  - ii. That shall result in the creation of a minimum of fifty (50) FTEs jobs with 24 months of completion of works. Eligible undertakings may only claim any accumulated tax credits if the number of full time equivalent employment for the year in review is at least equal to fifty (50) FTEs.

Such investment should be implemented within a 36 month period.

### 2.3.12 Hotels, resort hotels, suite/apartment hotels or guest houses

Undertakings that may not be solely engaged in the operations listed under this section carrying out an investment project related to a licensed hotel and its amenities.

Provided that the tax credits shall remain available as long as the supported investment project (hotel) remains within direct ownership of the undertaking awarded the tax credit and as long as the supported investment project (hotel) remains in operation.

This will entail that the income on which the tax credit is utilised, might be from sources other than the operation of the hotel.

### 2.3.13 Knowledge intensive business services

Undertakings solely engaged in the provision of one or more of the following shared knowledge intensive services related to:

- a) Treasury and Financial management.
- b) International market research and public opinion polling.
- c) Architectural and engineering and technical design services.
- d) Human resource recruitment, provision and management.
- e) Strategic and organisational planning, decision making, operational control and operations management.

Such undertakings shall be eligible for Investment Aid Tax Credits insofar that the eligible investment shall be limited to a new investment project required for the provision of the service.

Such investment should results in the creation of at least thirty (30) direct full-time jobs when services centre is based in Malta or twenty (20) direct full-time jobs for a services

centre based in Gozo. The jobs need to be created within twenty-four (24) months from the date the undertaking is registered with the Registrar of Companies.

Provided that:

- i. Eligible undertakings may only claim any accumulated tax credits if the number of full time equivalent employment within the supported centre for the year in review is at least thirty (30) FTEs when the services centre is based in Malta or twenty (20) FTEs when the services centre based in Gozo.
- ii. At least 60% of the employees have a qualification of level 6 or higher as defined by the Malta Qualifications Council.
- iii. Such services do not consist of solely or mainly the mere expansion, duplication or replacement of a trade or business formerly carried on or carried out in Malta by any person or undertaking directly or indirectly connected with the said undertaking.
- iv. The undertaking must not require a licence from the Malta Financial Services Authority to operate in Malta.
- v. Investment Aid shall be limited to the value of wages covering the first twenty-four (24) months of the new jobs created within three (3) years from the date the undertaking is registered with the Registrar of Companies.
- vi. In establishing the total number of jobs created any reduction in the number of employees engaged with linked undertakings will be taken into consideration.

#### 2.3.14 Cultural Restoration

Undertakings engaged in the restoration of Works of Art and Antiques. This excludes the restoration of buildings, and other structures.

#### 2.3.15 Large Scale cultural, creative and trade facilities

Undertakings carrying out an initial investment in a facility that can house cultural, creative and trade events that accommodates at least one thousand (1000) persons. Tax credits will remain available as long as the facility is used for the indicated activities.

#### 2.3.16 Industrial Packaging

Undertakings carrying packaging activities on an industrial scale which require some form of automation and where such activities are not a mere preparation for direct retail sales.

### 2.4 Disqualifying Activities

This section defines actions and activities that irrespective of any other condition (including the carrying out of eligible activities, as defined in section 2.3 above) would disqualify an undertaking from assistance under this incentive.

### 2.4.1 Sale by Retail

The undertaking sells by retail and, for this purpose, an undertaking shall be deemed not to sell by retail if:

- a) the sales of goods or services are made to an undertaking and the goods or services are either resold or used by such undertaking in carrying of an economic activity;
- b) the sales of goods or services are made to an undertaking who uses those goods or services for the purpose of carrying out an economic activity;
- c) the sales of goods or services are made to a person or undertaking through e-commerce activities resulting in online transactions effected by means of a secure payment system;
- d) such undertaking is a micro sized undertaking that sells solely goods manufactured by that same undertaking;
- e) such undertaking is engaged in the operation and management of a hotel, resort hotel, apartment hotel or guest house operation as defined by Guideline 2.3.12.

### 2.4.2 Non value adding processes

Non value adding processes are defined as activities:

- a. employing less than one hundred (100) FTEs where the main activity is dividing, sorting, mixing without changing the character of the good, drying, labelling, or other similar processes or any combination of such processes to goods which are acquired in bulk merely to prepare those goods for sale or distribution. Unless such processes are carried out as an integral part of an eligible activity as defined in these Guideline.
- b. any assembly considered of a spurious nature when considered in the light of manufacturing activities of any goods where:
  - the final assembled good is clearly recognisable from the individual components or parts from which it is assembled without regard being taken to any exterior casing of the good;and
  - the components and parts from which the good is assembled are such that the good is nearly complete.

### 2.4.3 Catering

The undertaking's trade or business includes the preparation or production of "food in the course catering" which is directly supplied to the final consumer by the beneficiary to these regulations. Unless such processes are carried out as part of hotel, resort hotel, suite/apartment hotel or guest house operation as defined by Guideline 2.3.13.

## 3. Incentive Description

### 3.1 Details of Incentive

Investment Aid shall be awarded to a qualifying company in respect to an Initial Investment Project. The investment must remain in the region of Malta for at least five (5) years or three (3) years in the case where the beneficiary is an SME. The Investment Aid provided under these guidelines will take the form of tax credits calculated as a percentage of qualifying expenditure incurred<sup>2</sup>.

#### 3.1.1 Applicable Aid Intensity<sup>3</sup>

Investment aid is calculated either in reference to tangible and intangible investment costs resulting from the initial investment project or to the value of wage costs<sup>4</sup> for jobs directly created by the initial investment project.

##### **A) Applicable Aid intensities for project where the 'start of works' is on or after 01/07/2014 and before 31/12/2017**

The total amount of investment aid that may be awarded in terms of these regulations for a given investment project shall not exceed:

- a. 35% of the qualifying expenditure for an undertaking which qualifies as a 'Small' undertaking;
- b. 25% of the qualifying expenditure for an undertaking which qualifies as a 'Medium-sized' undertaking;
- c. 15% of the qualifying expenditure for an undertaking which qualifies as a 'Large' undertaking;
- d. 15% of the eligible expenditure in the case of hotels.

##### **B) Applicable Aid intensities for projects where the 'start of works' is on or after 01/01/2018 and before 31/12/2020**

The total amount of investment aid that may be awarded in terms of these regulations for a given investment project shall not exceed:

- a. 30% of the qualifying expenditure for an undertaking which qualifies as a 'Small' undertaking;
- b. 20% of the qualifying expenditure for an undertaking which qualifies as a 'Medium-sized' undertaking;
- c. 10% of the qualifying expenditure for an undertaking which qualifies as a 'Large' undertaking;

---

<sup>2</sup> The aid beneficiary must provide a financial contribution of at least 25% of the eligible costs, either through its own resources or by external financing, in a form, which is free of any public support.

<sup>3</sup> For the purposes of calculating aid intensity and eligible costs, all figures used shall be taken before any deduction of tax or other charge.

<sup>4</sup> For the purposes of this Incentive, 'wage cost' means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising over a defined period of time the gross wage before tax and compulsory contributions such as social security, child care and parent care costs.

- d. Hotels are eligible to, 10% of the eligible expenditure in the case large undertakings, and 15% in the case of small and medium undertakings.

### **C) Start of Works**

'Start of Works' means the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible.

Buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered 'start of works'.

For take-overs, 'start of works' means the moment of acquiring the assets directly linked to the acquired establishment;

### **D) Large Investment Projects**

For 'large investment projects' that is undergoing an initial investment as previously described and with eligible costs exceeding EUR 50 million, the applicable maximum permissible aid shall be adjusted according to the following formula:

$$\text{maximum aid amount} = R \times (50 + 0.50 \times B + 0 \times C)$$

where: R is the maximum aid intensity applicable in the area concerned established in an approved regional map and which is in force on the date of granting the aid, excluding the increased aid intensity for SMEs; B is the part of eligible costs between EUR 50 million and EUR 100 million; C is the part of eligible costs above EUR 100 million.

Any initial investment started by the same beneficiary (at group level) within a period of three (3) years from the date of start of works on another aided investment shall be considered to be part of a single investment project.

## **3.2 Qualifying Expenditure**

The value of qualifying expenditure is calculated either as the value of:

- a. qualifying tangible and intangible assets acquired in relation to an initial investment project;
- or
- b. the value of wage costs for jobs directly created by the initial investment project.

### **3.2.1 Qualifying tangible assets**

For the purpose of this incentive, 'Qualifying Tangible assets' means land, industrial buildings or structures, and plant and machinery.

## **A ) Land, industrial buildings or structures**

In respect to land, industrial buildings or structures the following conditions shall apply:

- a. Investment in land, buildings or structures is only eligible in relation to industrial property which is duly licensed and excludes the cost related to the construction of showrooms and similar facilities.
- b. Investment costs for the acquisition of land, buildings or structures and the construction thereof for the provision of office space is excluded.
- c. Investment costs for the acquisition and refurbishment of land, buildings or structures required for the provision of accommodation facilities required for hospitality services as defined within this Incentive Guideline is eligible for funding.

## **B) Plant and Machinery**

- a. The term 'Plant and Machinery' will:
  - i. Exclude motor vehicles, except for such special purpose vehicles and vehicles registered under category N1.
  - ii. Exclude works of art and antiques.
  - iii. Exclude any asset that is not directly related to the eligible economic activities of the undertaking.
- b. The assets acquired shall be new except for SMEs and for the acquisition of an establishment. In any case, the assets need to be first time used in Malta.
- c. Costs related to the lease of tangible assets may be taken into account under the following conditions:
  - i. For land and buildings, the lease must continue for at least five (5) years after the expected date of completion of the investment project for large undertakings or three (3) years in the case of SMEs.
  - ii. For plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the beneficiary of the aid to purchase the asset upon expiry of the term of the lease.
- d. In the case of acquisition of the assets of an establishment only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration. The transaction shall take place under market conditions. If aid has already been granted for the acquisition of assets prior to their purchase, the costs of those assets shall be deducted from the eligible costs related to the acquisition of an establishment.

Where a member of the family of the original owner, or an employee, takes over a small enterprise, the condition that the assets be bought from third parties unrelated to the buyer shall be waived. The acquisition of shares does not constitute initial investment.

- e. With the exception of plant or equipment which has become outdated due to rapid technological change, the tangible assets must be kept by the undertaking for at least five (5) years or three (3) years in the case SMEs. In any case the underlying economic activity



shall be retained in Malta for the minimum period of at least five (5) years or three (3) years in the case where the beneficiary is an SME.

### 3.2.2 Qualifying Intangible Assets

For the purpose of this incentive, 'Qualifying Intangible Assets' means assets entailed by the transfer of knowledge through the acquisition of patent rights, licences, know-how or unpatented technical knowledge.

Provided that:

- a. For SMEs, the full expenditure in qualifying intangible assets is considered.
- b. For large undertakings, the value of qualifying expenditure in intangible assets is limited to 50% of the total qualifying investment.
- c. Qualifying intangible assets must be:
  - i. used exclusively in the undertaking receiving the aid;
  - ii. regarded as amortizable assets;
  - iii. purchased under market conditions from third parties unrelated to the buyer and without the acquirer being in a position to exercise control on the seller or vice versa<sup>5</sup> ;
  - iv. included in the assets of the company receiving the aid and remain in the establishment receiving the investment aid for at least five (5) years or three (3) years in the case SMEs.

### 3.2.3 Calculating the value of investment in relation to Job Creation

For calculating the value of qualifying investment on the basis of job creation, the qualifying wage costs covering new employment created within three (3) years of the completion of the investment project shall be considered.

The value of investment is calculated as the estimated wage costs arising from job creation as a result of an initial investment, calculated over a period of two (2) years.

'Job creation' entails jobs created as a result of an investment project, provided that:

- a. There shall be a net increase in the number of employees<sup>6</sup> in the establishment concerned, compared with the average over the previous twelve (12) months, meaning that any job lost shall be deducted from the apparent created number of jobs during that period.
- b. New employees are employed by the undertaking in relation to the investment and not as replacements of other employees<sup>7</sup>.

---

<sup>5</sup> Vide Article 3 of Council Regulation (EC) No 139/2004 – OJ L 29, 29.1.2004, p. 1.

<sup>6</sup> A 'net increase in the number of employees' means a net increase in the number of employees in the establishment concerned compared with the average over a given period in time, and that any posts lost during that period must therefore be deducted and that the number of persons employed full-time, part-time and seasonal has to be considered with their annual labour unit fractions.

<sup>7</sup> Malta Enterprise will consider the increase of employment at group level.

Investment Aid Tax Credits 2014 – 2020

Version 2

- c. A job is deemed to be directly created by an investment project if the job is directly connected with the economic activity to which the investment relates and is created within three years (3) from the completion of the investment.

Jobs created shall also include additional employment following an increase in the utilisation rate of the capacity created by the investment.

For the purposes of determining whether jobs have been created, individuals who are employed by the company on a part-time basis shall be deemed to be a number of full-time employees as is produced by dividing the number of hours worked per annum by such part-time employees by one thousand, seven hundred and sixty (1760).

Qualifying wage costs, entail the wages covering the first twenty-four (24) months of employees recruited within three (3) years from the completion of the investment to fulfil jobs directly created by an investment project;

Each role must be maintained in Malta for a period of three (3) years if the beneficiary is an SME or otherwise for five (5) years.

For the purpose of determining whether a job has been maintained for the required period specified above:

- i. It shall be deemed that the commencement date of employment of an individual employed in replacement of another individual that had be recruited as a result of the investment project shall be the commencement date of employment of the individual whose employment was replaced.
- ii. An individual whose employment is for whatever reason terminated is replaced within six (6) months of the termination date of employment of the individual.

### 3.3 Utilisation of Tax Credits

No tax credit shall be due to an undertaking for a year of assessment unless it:

- a. Is claimed in the appropriate section of a tax return submitted by electronic means.
- b. Submits the annual returns to Malta Enterprise as set out in Section 4 within a period not exceeding two months after the relative tax return date.

### 3.4 Additional Provisions

Any tax credits awarded under this incentive shall not give rise to a right of any tax refund (not applicable to any tax overpaid).

Any tax credit that is not absorbed in a particular year of assessment may be carried forward and shall be increased at the rate established as the applicable 'reference rate' for Malta as calculated by the EU Commission in accordance with Commission notice on the method for setting the reference and discount rates. The applicable rates are provided at <http://www.maltaenterprise.com/en/support/docs/referance-rates>

## 4. Application Process

### 4.1 Application for Entitlement as an Eligible Undertaking

First time applicants may submit an application for determination of eligibility under this incentive at any time of the year.

### 4.2 Determination

An undertaking shall be eligible to qualify for the benefits provided by the Investment Aid Regulations and these Guidelines if it has been determined that it is so eligible by the Corporation. Such determination would allow the undertaking to claim tax credits on an annual basis.

For the purpose of making such a determination the Corporation shall consider whether, given its activities, the undertaking satisfies the conditions set out in these Guidelines and the applicable Regulations. The Corporation may also request such information and explanations as it deems fit and may visit the premises of the company during the application process or subsequent to the issue of the Incentive Entitlement Certificate.

All complete applications meeting the terms and conditions of participation and compliant with the rules and conditions of this incentive will be assessed by Malta Enterprise. These checks that will be carried out to ensure the applicant is carrying out an eligible activity shall entail:

- a. The verification of the official NACE code of the applicant where this is available.
- b. A review of the Memorandum and Articles of Association.
- c. A review of the latest financial statements, where applicable.
- d. A review of the actual activities carried out.
- e. A review of the requirement permits where applicable. (MTA licence for Hotels and GMP certificate for Pharmaceutical industries).
- f. The SME Declaration form, which can be downloaded from the Malta Enterprise website.

### 4.3. Application for the preapproval of significant projects.

Malta Enterprise will consider applications for the pre-approval of projects that are considered significant to the investor. Such projects should exceed:

- EUR 50,000 in the case of Micro and Small Enterprises.
- EUR 100,000 in the case of Medium Enterprises.
- EUR 250,000 in the case of Large Enterprises.

The aid intensity and the maximum aid (tax credit value) for these projects shall be established at approval stage. Since the award of tax credits is non-discretionary these parameters shall be based on the parameters established in these Guidelines.

These applications will have to be submitted on the appropriate application form before work on the project or activity starts (start of works). The application shall include:

- (a) the exact name of the applicant;
- (b) the size of the applicant;
- (c) a description of the project, including its start and end dates;
- (d) the location of the project; and
- (e) list of project costs.

In principle this is a fiscal measure yet at the discretion of Malta Enterprise, a cash grant may be exceptionally awarded in respect to initial investment projects that provides a significant contribution to the development of the Maltese economy. Any such grant must be pre-approved in writing by Malta Enterprise on the bases of an application submitted in accordance with the condition set in this section and shall be awarded before the start of works. (Any project that received a grant for which the start of works is at any point identified as prior to the grant award shall be considered ineligible and any aid disbursed shall be recovered).

Applicants should submit the relevant application form(s) which may be downloaded from the Malta Enterprise website <http://www.maltaenterprise.com/en/support/investment-aid-tax-credits>

#### 4.4 Notification of results

On being satisfied that an undertaking satisfies the conditions set out in these Guidelines and the Regulations, the Corporation will provide the said company with an Incentive Entitlement Certificate that will be issued in line with Part VI of the Malta Enterprise Act. The Certificate will be issued subject to terms and conditions as may be imposed by the Corporation. The benefits entitled by such certificate will not remain valid if the company does not abide by such terms and conditions and if its trade or business do not remain solely in one or more of the activities eligible for this incentive.

#### 4.5 Annual returns

An undertaking shall only be entitled to benefit from the investment tax credits if for every year of assessment in respect of which it claims such tax credits, it submits:

- a. Auditor's Financial Statements (including schedules to the Income Statement);
- b. Income Tax Return;
- c. A statement by the auditor of the company for the accounting period in question, confirming that, to the best of his knowledge and belief, the declaration referred to in (d) below is correct;
- d. A declaration, signed by all the directors of the undertaking confirming that throughout the relevant accounting period the undertaking's trade or business consisted solely of the activities eligible for the incentives provided by this Guideline and that the company is not disqualified from benefiting from the incentives provided by this guidelines;
- e. Declaration of the directors as to the computation of tax credits;

- f. Declaration of total assistance awarded to Company;
- g. Nominal Ledger containing details as to the capital expenditure on which investment tax credits are claimed;
- h. Enterprise Size Declaration;
- i. Latest licence issued by the Malta Tourism Authority (in case of hotels); and
- k. any other document which may be required by the Corporation in order to effectively process the tax credits utilised/claimed.

#### 4.6 Calculating the value of tax credits on the basis of jobs created

Unless otherwise approved, an applicant opting to calculate the qualifying expenditure on the value of jobs created should inform Malta Enterprise by not later than three (3) months prior to the submission of the relative claim for the tax credit highlighting the investment carried out (or being carried out) and clearly specifying the commencement of work, the eligible cost items, and the completion (or expected completion) date.

The request should be submitted on the applicable form and should include:

- a. the details and value of the investment as a consequence of which the jobs had been created; and
- b. the details of the jobs created.

## 5. Claims

### 5.1 Claim Submission

For projects approved as provided for in Section 4.3 an enterprise shall claim the eligible costs as approved by Malta Enterprise in the Incentive Entitlement Certificate.

Tax credit awarded under this incentive shall be due and may be claimed in the tax return from the year of assessment immediately following the year in which the relative expenditure is incurred. Approved cash grants may be claimed in line with the conditions specified in the Incentive Entitlement Certificate. In both cases any expenditure claimed shall meet all the following conditions:

- a. The expenditure is actually incurred by the enterprise and is not reimbursed to or otherwise recoverable through other sources.
- b. The expenditure satisfies all the conditions that may have been made applicable to the project in the Incentive Entitlement Certificate.
- c. The expenditure was incurred during the approved project period.
- d. Transaction details should be accurately and clearly be recorded under a separate accounting code;
- e. 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<sup>8</sup> of aid are respected.
- f. Tax Credits and/or Cash Grants must be calculated at the applicable intensity level as approved by Malta Enterprise.

### 5.2 Annual Reports

In addition to the annual return as specified in Section 4.5 all beneficiaries shall submit to the corporation annual reports. When benefiting from Tax Credits, the beneficiary shall submit an annual report to Malta Enterprise by not later than one (1) month after the beneficiary submits the income tax return to the Inland Revenue Department (IRD) while beneficiaries claiming cash grants shall submit an annual report as specified in their Incentive Entitlement Certificate.

The report must contain:

- a. A breakdown of the eligible costs certified correct by a Certified Public Auditor. This should be submitted in structure electronic format<sup>9</sup> and should include the VAT number of the supplier, the invoice number, the invoice date, the value and the date it was settled by the beneficiary.
- b. The review of an independent Certified Public Auditor confirming that project accounting has been carried in accordance with the applicable accounting standards.
- c. The Corporation may also request the beneficiary to submit:

---

<sup>8</sup> Refer to Section 6.4 Rules on Cumulation of aid.

<sup>9</sup> Spreadsheet or a delimited text file

- i. Original VAT invoices and receipts (an original fiscal receipt is required unless a VAT invoice is presented together with a copy of the invoice).
    - ii. Proof of payment. Copies of the encashed cheques or original bank advice documents showing all payments effected in relation to the claimed costs.
    - iii. FS3s of the employees.
  - d. Beneficiaries that have been awarded tax credits should also submit:
    - i. A complete set of its audited financial statements as submitted to the IRD.
    - ii. The income tax return as submitted to the IRD.

### 5.2.1 Submission of Annual Reports

All reports should be submitted to Business First and according to the terms and conditions set out in the Incentive Guideline unless stated otherwise in the Letter of Approval and/or Incentive Entitlement Certificate issued by Malta Enterprise.

### 5.2.3 Processing of Annual Reports

Following the submission of the annual and final reports, Malta Enterprise will review documentation submitted:

- a) If the project had been awarded aid in the form of tax credits any tax credit claimed which is found not to respect these Guidelines and the Incentive Entitlement Certificate shall be reversed.
- b) For projects awarded cash grants, such aid will be awarded if the documentation submitted respects the conditions set in these Guidelines and the Incentive Entitlement Certificate.

Any required documentation not submitted with the annual report may render the whole project or one or more cost items as ineligible. In this case any tax credits and cash grants already awarded may be recovered.

All documentation must be kept available for at least ten (10) years from the date on which the aid is granted.

## 6. State Aid Rules and Obligations

### 6.1 Definition of Small and Medium Sized Enterprises

The definition of SME used for the purpose of this incentive shall be that provided in Annex I of Commission Regulation (EU) No 651/2014 of 17 June 2014.

### 6.2 Applicable State Aid

The Investment Aid Scheme 2014-2020 and these Incentive Guideline shall be in line with the applicable parameters and criteria of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187/1, 26.6.2014.

### 6.3 State Aid Conditions

The terms and conditions of this scheme are in line with the provisions of Commission Regulation (EU) No 651/2014 of 17<sup>th</sup> June 2014.

In line with the excluded sectors identified in the said Commission Regulation, the scheme shall in particular not apply to the following sectors:

- The fisheries and aquaculture sector.
- The shipbuilding sector. .
- The energy sector
- The synthetic fibres sector.
- The transport sector.
- Activities linked to the primary production of agricultural products.
- Products listed in Annex 1 of the EC Treaty.
- Products falling under CN codes 4502, 4503 and 4504 (cork products).
- Products intended to imitate or substitute milk and milk products as referred to in Council Regulation No 1234/2007 of 22 October 2007.
- Yet it shall apply in certain situations to the processing and marketing of agricultural products.

Undertakings in difficulty as defined in terms of Commission Regulation (EU) No 651/2014 of 17 June 2014 are excluded from benefiting from assistance under this incentive.

A beneficiary that has closed down the same or a similar activity in the European Economic Area in the two (2) years preceding its application for regional investment aid or which, at the time of the aid application, has concrete plans to close down such an activity within a period of up to two (2) years after the initial investment for which aid is requested is completed in the area concerned shall not be eligible.

Furthermore assistance may not be granted if the:

- i. Aid is related to export activities towards third countries or Member States, namely aid directly linked to quantities exported, to the establishment and operation of a distribution network or to the other current expenditure linked to export activity.



- ii. Aid is contingent upon the use of domestic in preference to imported goods.

#### 6.4 Rules on cumulation of aid

Rule on cumulation of aid shall be in line with Article 8 of Commission Regulation (EU) No 651/2014 of 17<sup>th</sup> June 2014.

Aid granted under this incentive may only be cumulated with other aid under any other incentive(s), 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 the most favourable intensity ceiling under the applicable rules.

Investment Aid shall not be cumulated with de minimis support in respect of the same eligible item of expenditure.

## 7 General Rules and Conditions

### 7.1 Monitoring

Successful applicants will be subject to monitoring to ensure that the investment project is being implemented according to:

- a. the terms and conditions of the Incentive Entitlement Certificate;
- b. this Guideline and the Regulation relevant to the incentive; and
- c. any applicable state aid obligations and regulations.

### 7.2 On-Site Visits

Malta Enterprise may carry out or commission 3<sup>rd</sup> 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.

### 7.3 Sanctions and recovery of aid

In terms of Part VII and Part VIII of the Malta Enterprise Act, Chapter 463 of the laws of Malta, Malta Enterprise may revoke, amend or modify the Incentive Entitlement Certificate and apply penalties or request recovery of aid in the case of breach of these Guidelines or the conditions set down in the Incentive Entitlement Certificate and any relevant regulations.

In line with the Commission Regulation (EU) No 651/2014 of 17 June 2014, aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market shall be excluded from this Incentive.

## 8. 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.

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

Tel: 144

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

The official Incentive Guidelines are published at <http://www.maltaenterprise.com/en/support/investment-aid-tax-credits>

[www.businessfirst.com.mt](http://www.businessfirst.com.mt)

Email: [info@businessfirst.com.mt](mailto:info@businessfirst.com.mt)

## Annex I – Amendments to the Incentive Guidelines

The following amendments have been made to the Incentive Guidelines version 1 issued 1<sup>st</sup> July 2014:

### 2.3.13 Knowledge intensive business services

Undertakings solely engaged in the provision of one or more of the following shared knowledge intensive services related to:


- a) Treasury and Financial management.
- b) International market research and public opinion polling.
- c) Architectural and engineering and technical design services.
- d) Human resource recruitment, provision and management.
- e) Strategic and organisational planning, decision making, operational control and operations management.

Such undertakings shall be eligible for Investment Aid Tax Credits insofar that the eligible investment shall be limited to a new investment project required for the provision of the service.

Such investment should results in the creation of at least thirty (30) direct full-time jobs when services centre is based in Malta or twenty (20) direct full-time jobs for a services centre based in Gozo. The jobs need to be created within twenty-four (24) months from the date the undertaking is registered with the Registrar of Companies.

Provided that:

- i. Eligible undertakings may only claim any accumulated tax credits if the number of full time equivalent employment within the supported centre for the year in review is at least thirty (30) FTEs when the services centre is based in Malta or twenty (20) FTEs when the services centre based in Gozo.
- ii. At least 60% of the employees have a qualification of level 6 or higher as defined by the Malta Qualifications Council.
- iii. Such services do not consist of solely or mainly the mere expansion, duplication or replacement of a trade or business formerly carried on or carried out in Malta by any person or undertaking directly or indirectly connected with the said undertaking.
- iv. The undertaking must not require a licence from the Malta Financial Services Authority to operate in Malta.
- v. Investment Aid shall be limited to the value of wages covering the first twenty-four (24) months of the new jobs created within three (3) years from the date the undertaking is registered with the Registrar of Companies.

- 
- vi. In establishing the total number of jobs created any reduction in the number of employees engaged with linked undertakings will be taken into consideration.