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Incentive Guidelines

Investment Aid Tax Credits



MALTAENTERPRISE

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Contents

1.	Introduction	2
1.1	Scope and Background	2
1.2	Duration of the scheme.	2
1.3	Legal Basis	2
1.4	Designated Authority	2
2.	Eligibility	3
2.1	Eligible Undertakings	3
2.2	Eligible Investments	3
2.3	Eligible Activities	3
2.4	Disqualifying Activities	8
3.	Incentive Description	9
3.1	Details of Incentive	9
3.2	Qualifying Expenditure	9
3.3	Utilisation of Tax Credits	12
3.4	Additional Provisions	12
4.	Application Process	13
4.1	Application forms and documents	13
4.2	Determination	13
4.3	Notification of results	13
4.4	Annual returns	14
5.	State Aid Rules and Obligations	15
5.1	Definition of Small and Medium Sized Enterprises	15
5.2	Applicable State Aid	15
5.3	State Aid Conditions	15
5.4	Rules on cumulation of aid	16
6	General Rules and Conditions	17
6.1	Monitoring	17
6.2	On-Site Visits	17
6.3	Sanctions and recovery of aid	17
7.	Contact Details	18

1. Introduction

1.1 Scope and Background

National Regional Investment Aid is designed to sustain Malta's development by supporting investment and job creation. This incentive primarily grants tax credits to encourage the setting up of new establishments and the expansion and diversification of businesses located in Malta. The value of this aid equates to a percentage of the qualifying expenditure incurred for an eligible investment project.

1.2 Duration of the scheme.

This incentive came into force in fiscal year commencing on 1st January 2008.

Version 1 of the Incentive Guidelines for Investment Aid Tax Credits came into force on 1st January 2008. This version (Version 2) of the Incentive Guidelines comes into force in fiscal year commencing on 1st January 2012.

Unless reviewed or updated these guidelines are applicable till 30th June 2014.

The incentive may be reviewed in line with any revisions of the Guidelines on National Regional Aid or other relevant state aid regulations.

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 Regulations as subsidiary legislation 463.02 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 are in line with **Article 13 – Regional investment and employment aid of Section 1 - Regional Aid** of Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation). The State Aid number of the Investment Aid Scheme is **SA 34221 (2012/X)**.

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

Investment Aid shall be awarded in relation to expenditure incurred by the 30th June 2014 in respect to an initial investment project comprising of any of the following:

- a. The setting up of a new establishment.
- b. The extension of an existing establishment.
- c. The diversification of the output of an establishment into new, additional products.
- d. A fundamental change in the overall production process of an existing establishment.
- e. The acquisition by an independent qualifying company of capital assets directly linked to an establishment which has closed or which would have closed had it not been purchased.

Large investment projects¹, having a total investment exceeding Euro 50 Million may only benefit if approved in writing by Malta Enterprise before work on the project commences.

2.3 Eligible Activities

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

Except for undertakings carrying out the activities set out in Guideline 2.3.1, an undertaking shall only qualify for the tax credits provided by these Guidelines if their project is approved a priori in writing by the Corporation.

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:
 - i. the resultant product(s) should be clearly distinct from the materials and components utilised.
 - ii. undertakings engaged in the production of motor vehicles require prior approval.
- b. the rendering of an industrial service analogous to the activities referred to in (a) above.

¹ Where a Large Investment Project shall have the meaning assigned to it in section 4.3 of the Commission Guidelines on national regional aid for 2007-2013 (2006/C 54/08) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:054:0013:0044:EN:PDF>

- c. the repair, overhaul or maintenance of:
 - i. pleasure crafts and yachts not having more than thirty berths;
 - ii. aircraft;
 - iii. engines or electromechanical equipment incorporated or used in the above.

Proviso: An undertaking whose activities include 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 Information Technology (I.T.) carrying out significant developmental activities and/or providing infrastructure service for I.T. developmental activities. Provided that undertakings engaged in gaming² and in the provision of telecommunications services³ 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.

Proviso: Eligible undertakings may only benefit from this incentive and/or claim any accumulated tax credits if the number of full time equivalent employment for the year in review is at least equal to twenty-five.

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 processes that are at the leading edge of the applicable market.

2.3.5 Eco-innovation, waste treatment and environmental solutions

Undertakings engaged in:

- a. "waste treatment" meaning the operation of physical, thermal, chemical or biological processes, including sorting, which change the characteristics of the waste in order to reduce its volume or hazardous nature, 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" means 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, including energy.

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;

² Enterprises falling under NACE rev. 2 Class 92.0

³ Enterprises falling under NACE rev. 2 Class 60.0 and 61.0

- 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 manufacturing of pharmaceuticals licensed for use as medications;
- b. preparation and packaging of pharmaceuticals licensed for use as medications.

2.3.8 Facilities for Filming and Audiovisual productions shall include

Undertakings engaged solely 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.

Proviso: Undertakings engaged in broadcasting of audiovisual content to live audiences through any media channels and/or engaged in programming and broadcasting activities⁴ are not considered eligible.

2.3.9 Provision of Tertiary Education

Undertakings engaged solely in the provision of tuition leading to qualifications classified by the Malta Qualifications Council as Level 5 or higher. To be considered eligible an undertaking should carry out a new investment project, that within a 24 month period:

- a. constitutes an investment of at least 2 million Euro in educational and teaching resources (I.T. equipment, multimedia equipment, laboratory equipment, software, literature).
or
- b. comprises an investment in educational and teaching resources and results in the creation of at least 25 direct new full-time equivalent jobs.

2.3.10 Provision of private health care services

Eligible companies should undertake a new investment project for the provision of private health care in Malta that:

⁴ Enterprises falling under NACE rev. 2 Class 60.0.

- a. constitutes an investment of at least Euro 5 million in medical equipment (diagnostic equipment⁵, therapeutic equipment⁶, life support equipment⁷ and medical monitors⁸) within a 24 month period.

or

- b. comprises an investment in medical equipment and results in the creation of at least 25 direct new full-time equivalent jobs within a 24 month period.

Proviso: Undertakings qualifying through the creation of employment may only benefit from this incentive and/or claim accumulated tax credits if the number of full time equivalent employees for the year in review is at least equal to twenty-five.

2.3.11 Logistics operations by large undertakings

Large undertakings that create more than 50 new direct full-time equivalent jobs and carry out in the region of Malta an activity which includes both:

- a. the management of the flow of third party goods;

and

- b. the part-transformation that adds value to such goods;

Mere warehousing, transportation, inventory management, material handling and packaging operation are ineligible.

Proviso: Undertakings may only benefit from this incentive and/or claim accumulated tax credits if the number of full time equivalent employees for the year in review is at least equal to fifty.

2.3.12 Freeport Activities

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.

2.3.13 Hotels, resort hotels, suite/apartment hotels or guest houses

Undertakings whose economic activity consists mainly in the operation or management of a licensed hotel or group of licensed hotels, that invests in the development or upgrading of a licensed hotel, apartment hotel or guest house for the purpose of providing short term hospitality, shall be deemed eligible for this incentive provided that the investment aid intensity shall not exceed 15% of the qualifying expenditure incurred.

2.3.14 Shared regional and global management and services linked to established manufacturing activities

Undertakings established in Malta after 1st January 2012 that:

- a. are linked to an existing undertaking that has:
 - i. been considered eligible for the aid provided through these (or previous versions of these) guidelines for at least the preceding two years;

and

 - ii. for the past twenty four (24) months had an employment total equivalent to at least fifty (50) full-time employees.

and

⁵ Diagnostic equipment such as ultrasound and MRI machines, PET and CT scanners, and X-ray machines.

⁶ Therapeutic equipment includes infusion pumps, medical lasers and LASIK surgical machines.

⁷ Life support equipment (such as medical ventilators, anesthetic machines, heart-lung machines and dialysis machines) that is used to maintain a patient's bodily function.

⁸ Medical monitors measure a patient's medical condition such as vital signs, ECG, EEG and blood pressure.

- b. creates at least thirty (30) direct new full time equivalent jobs during the first twelve months from commencement of operations, that results in a net increase in the number of employees within linked companies operating in Malta;
- and
- c. provide solely one or more of the following shared services for the purpose of consolidation and vertical integration of existing operations:
 - i. marketing, sales and business development;
 - ii. legal services;
 - iii. financial services;
 - iv. back office services;
 - v. corporate services;
 - vi. logistical services.

Where such shared 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 enterprise directly or indirectly connected with the said undertaking.

Proviso: Undertakings may only benefit from this incentive and/or claim accumulated tax credits if the number of full time equivalent employees for the year in review is at least equal to thirty.

2.3.15 Knowledge intensive business services

An undertaking established in Malta after 1st January 2012 that:

- a. is solely engaged in the provision of one of the following shared knowledge intensive services:
 - i. treasury management;
 - ii. international market research and public opinion polling;
 - iii. architectural and engineering and technical design services;
 - iv. human resource recruitment, provision and management;
 - v. strategic and organisational planning, decision making, operational control and operations management of linked and partnered enterprises.
 - vi. where 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 enterprise directly or indirectly connected with the said undertaking.
- and
- b. creates at least thirty (30) direct full-time equivalent jobs within 12 months from commencement of operations within a services centre based in Malta or twenty (20) direct full-time equivalent jobs within a services centre that is based in Gozo. Where such employment results in a net increase within linked companies operating in Malta.
- and
- c. is not related directly or indirectly to banks and other credit institutions, audit firms, fiduciary services, insurance firms and other enterprises engaged in financial services.

Proviso: Eligible undertakings may only benefit from this incentive and claim accumulated tax credits if:

- a. the number of direct full time equivalent employment for the year in review is at least equal to thirty (30) when the services centre is based in Malta or twenty (20) when the services centre that is based in Gozo.
and
- b. At least 60% of the employees have at least a qualification of level 6 or higher⁹ as defined by the Malta Qualifications Council.

2.4 Disqualifying Activities

Irrespective of whether an undertaking is carrying out eligible activities, any undertaking shall not qualify for any of the benefits provided if it carries out any of the activities listed below.

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 out 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.

2.4.2 Non value adding processes

Non value adding processes are defined as:

- a. dividing, sorting, packaging, 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.
- b. Unless such processes are carried out as part of a Manufacturing activity as defined by Guideline 2.3.1.
- c. the assembly of any goods where:
 - i. 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
 - ii. the components and parts from which the good is assembled are such that the good is nearly complete.

The work and the supervision of such assembly work almost exclusively require the employment of unskilled workers, such that the assembly operation is of a spurious nature when considered in the light of manufacturing activities.

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.

9 Bachelor's Degree or higher

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 years or three years in the case where the beneficiary is an SME. The Investment Aid provided under these regulations will take the form of tax credits calculated as a percentage of qualifying expenditure incurred.

At the discretion of Malta Enterprise the entitlement of aid may be exceptionally converted to other forms of aid in respect to initial investment projects that provide a significant contribution to the development of the Maltese economy. Any such conversions must be pre-approved in writing by Malta Enterprise before work on the project commences.

3.1.1 Initial Investment Project

An Initial Investment Project shall entail the acquisition or development of tangible and intangible assets for:

- a. the setting up of a new establishment;
- b. extension of an existing establishment;
- c. diversification of the output of an establishment into new, additional products;
- d. a fundamental change in the overall production process of an existing establishment;
- e. the acquisition by an independent qualifying company of capital assets directly linked to an establishment which has closed or which would have closed had it not been purchased.

3.1.2 Applicable Aid Intensity

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 for jobs directly created by the initial investment project. The total amount of investment aid that may be awarded in terms of these regulations for a given investment project shall not exceed:

- a. 50% of the qualifying expenditure for an undertaking which qualifies as 'Small' undertaking;
- b. 40% of the qualifying expenditure for an undertaking which qualifies as a 'Medium-sized' undertaking;
- c. 30% of the qualifying expenditure for an undertaking which qualifies as a 'Large' undertaking;
- d. 15% of the eligible expenditure in the case of hotels.

In the case of large investment projects (exceeding €50 million), investment aid shall never exceed 15% of the eligible investment for the part in excess of EUR50 million and 10.2% of the eligible investment for the part exceeding EUR100 million.

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 project¹⁰.
or
- b. the value of wage costs for jobs directly created by the initial investment project.

¹⁰ Where the aid is calculated on the basis of tangible or intangible investment costs, or of acquisition costs, the beneficiary must provide a financial contribution of at least 25% of the eligible costs, either through its own resources or by an external financing, in a form which is free of any public support.

3.2.1 Qualifying tangible assets

For the purpose of the incentive 'Qualifying Tangible assets' means land, industrial buildings or structures, and plant and machinery related to an initial investment programme.

Provided that:

- a. Investment in Land, buildings or structures are preapproved by Malta Enterprise and exclude cost related to the construction of showrooms;
- b. The term 'Plant and machinery' shall have the meaning attributed to it for the purposes of the Income Tax Acts , Chapter 123 of the Laws of Malta but shall exclude:
 - i. motor vehicles, except for such specialised motor vehicles as may be approved by the Corporation;
 - ii. works of art and antiques;
 - iii. any asset that is not directly related to the eligible economic activities of the undertaking.
- c. Except in the case of SMEs, any 'Plant and machinery' acquired should be new and in any case, first used in Malta.
- d. With the exception of plant or equipment which has become outdated due to rapid technological change, tangible assets must be kept by the undertaking for at least five years or three 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 years or three years in the case where the beneficiary is an SME.
- e. Expenditure incurred on the improvement or extension of immovable property held by title of emphyteusis or contracted on a lease of not less than five years, shall be deemed as assets acquired by the company;
- f. The acquisition of tangible assets under a contract of hire which stipulates that ownership of an asset shall or may pass to the lessee when a specified amount has been paid, shall be deemed as acquired by the company.
- g. The acquisition of tangible assets directly linked to an establishment that has closed or would have closed had it not been purchased may also be regarded as an initial investment if:
 - i. such assets are bought by an independent undertaking;
 - ii. only the costs of buying assets from third parties should be taken into consideration;
 - iii. all aid awarded in the past is deducted;
 - iv. the transaction takes place under market conditions.
- h. The sole acquisition of the shares of an undertaking does not qualify as initial investment.

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 from third parties under market conditions without the acquirer being in a position to exercise control on the seller or vice versa¹¹;
- iv. included in the assets of the company receiving the aid and remain in the establishment receiving the investment aid for at least five years or three 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 years of the completion of the investment project shall be considered. The value of investment is calculated as the qualifying wage costs incurred in the first twenty-four month period of employment of an individual recruited to fulfill a new job directly created by an investment project.

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

- a. A net increase in the number of employees directly employed in a particular establishment over the previous twelve months is registered. Thus any jobs lost during that twelve month period shall be deducted from the apparent number of jobs created during the same period;
- b. New employees are employed by the undertaking in relation to the investment and not as replacements of other employees.
- 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 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.
- d. 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).¹²
- e. Qualifying wage costs, entail the wages covering the first 24 months of employees recruited within three years from the completion of the investment to:
 - i. fulfil jobs directly created by an investment project;
 - or
 - ii. address an increase in jobs directly created through additional productive capacity generated by the investment project.
- f. Each job must be maintained in Malta for a period of three years if the beneficiary is an SME or otherwise for five 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 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 months of the termination date of employment of the individual.

¹¹ Vide Article 3 of Council Regulation (EC) No 139/2004 – OJ L 29, 29.1.2004, p. 1.

¹² Where the accounting period ending in the year preceding a year of assessment is more or less than twelve months, the number of hours worked by part-time employees shall be divided by an amount which shall be arrived at by dividing the amount of one thousand seven hundred and sixty by three hundred and sixty-five and then multiplying the result by the number of days comprised in that accounting period.

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 Guideline 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/reference-rates>.

Where, for a year of assessment, an undertaking qualifies for a tax credit under the provisions of these rules, it shall avail itself of any tax credit awarded under the Business Promotion Act before any set-off is made in respect of the tax credit due under these rules.

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 Process

4.1 Application forms and documents

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

4.2 Determination

An undertaking shall be eligible to qualify for the benefits provided by this Guideline if it has been determined that it is so eligible by the Corporation.

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. Applicants need to submit:

- a. the Memorandum and Articles of Association;
- b. latest financial statements, where applicable;
- c. the official application form which can be downloaded from <http://www.maltaenterprise.com/en/support/investment-aid-tax-credits> which should include:
 - i. the SME Declaration form, which can be downloaded from <http://www.maltaenterprise.com/en/support/docs/enterprise-size-declaration>;
 - ii. A statement declaring that the trade and business of the company consists solely of one or more of the eligible activities.

Malta Enterprise will consider applications from enterprises that meet the eligibility criteria and that demonstrate a potential positive contribution to the regional development of Malta.

4.2.1 Undertakings deemed eligible under Regulation 4 of the Business Promotion Regulations

Undertakings that had already received a determination under Regulation 4 of the Business Promotion Regulations (Chapter 325 of the Laws of Malta) need not apply again unless there is a change in their trade or business.

4.2.2 Undertakings deemed eligible under previous versions of these Incentive Guidelines

Undertakings that had already received a determination under other versions of this incentive guideline need not apply again unless there is a change in their trade or business.

4.3 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.

4.4 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. Audited Financial Statements;
- 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 (iv) 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.

In the case of limited liability companies, the declaration as approved by the Board of Directors may be signed by the company secretary. In such cases the declaration shall state:

- i. whether all the directors were present at the meeting approving the declaration and whether the meeting was properly convened as required by the company's memorandum and articles;
 - ii. whether the declaration was unanimously approved by all the directors present at the meeting and, if approval was not unanimous, the number of votes against and the number of votes for the motion.
- e. The official Final Settlement System FSS forms are required:
 - iii. where the qualifying expenditure is calculated on the value of jobs created;
 - iv. where the applicable qualifying activities requires a minimum employment level
 - f. Malta Enterprise may specify any other requirements in the Incentive Entitlement Certificate and may also request other relevant documents that may be considered necessary to verify the claims under this incentive.

4.4.1 Determining the value of investment in relation to job created

Beneficiary opting to calculate the qualifying expenditure on the value of jobs created should request approval prior to the submission of the relative claim for the tax credit. Beneficiaries should submit their request for approval by not later than three months from the end of the relative financial year for which the assistance is being sought. 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;
- b. the details of the jobs created.

5. State Aid Rules and Obligations

5.1 Definition of Small and Medium Sized Enterprises

The full definition of SME, can be found in Annex I of Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation)

These Guidelines are pursuant to the “Guidelines on National Regional Aid for 2007-2013” issued by the EU Commission. For the full text of these Guidelines, see the Official Journal of the European Union dated 4th March 2006 (2006/C 54/ 08).

5.2 Applicable State Aid

This Incentive Guideline is in line with Commission Regulation (EC) No. 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation).

[<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:214:0003:0047:EN:PDF>]

5.3 State Aid Conditions

The terms and conditions of this scheme are in line with the General Block Exemption Regulation for Regional Aid. Therefore, the scheme does not apply to:

- a. The fisheries and aquaculture sector;
- b. The shipbuilding sector;
- c. The coal industry;
- d. The steel industry;
- e. The transport sector;
- f. The synthetic fibres sector.
- g. Activities linked to the primary production of agricultural products:
 - i. Products listed in Annex 1 of the EC Treaty.
 - ii. Products falling under CN codes 4502, 4503 and 4504 (cork products).
 - iii. 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 to the processing and marketing of agricultural products.
- h. Firms in difficulty defined in terms of Community Guidelines on State aid for rescuing and restructuring firms in difficulty, Official Journal C244, 01.10.2004. Such firms are excluded from benefiting from assistance under this incentive.¹³

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;
- j. aid is contingent upon the use of domestic in preference to imported goods.

¹³ [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)



5.4 Rules on cumulation of aid

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.

6 General Rules and Conditions

6.1 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;
- c. any applicable state aid obligations and regulations.

6.2 On-Site Visits

Malta Enterprise may undertake on-site checks during the implementation period in order to verify the implementation of the investment project, consistency with the submitted documentation and the actual works carried out.

6.3 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.



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 Malta Enterprise during office hours.

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Pieta`, MEC 0001
Malta.

Tel: +356 144

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

Email: info@maltaenterprise.com