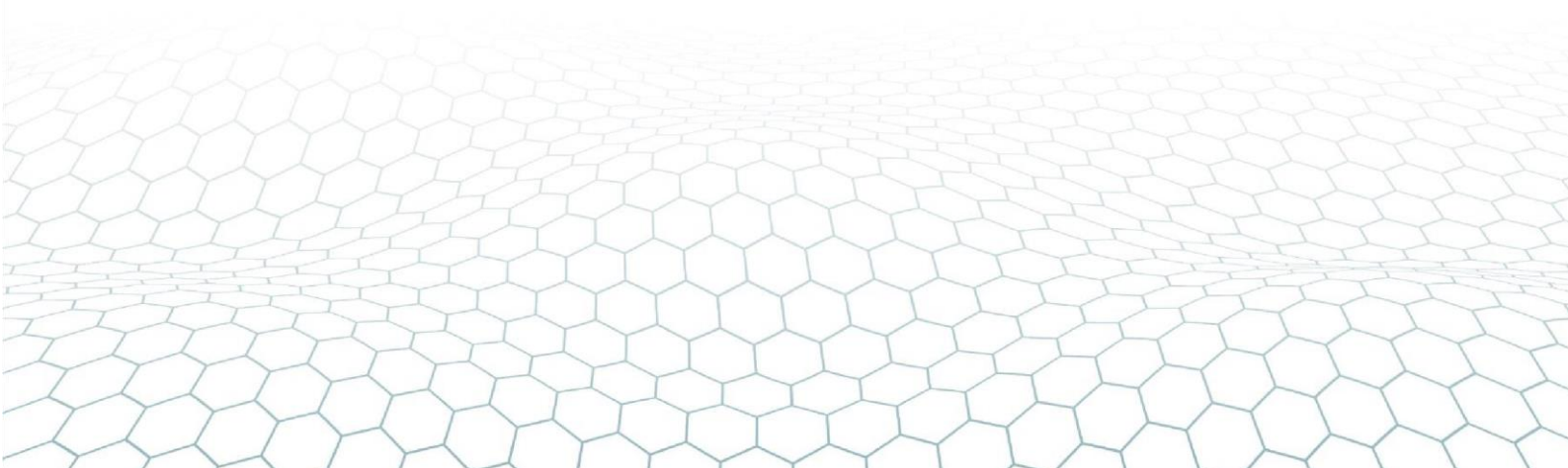


INCENTIVE GUIDELINES

BUSINESS DEVELOPMENT AND CONTINUITY SCHEME



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<https://www.maltaenterprise.com/support>

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1. Introduction

1.1 The Business Development & Continuity Scheme is intended to facilitate value adding projects that are expected to contribute to the regional development of Malta and to support existing undertakings sustain operations during restructuring. The scheme may support various activities such as the initial development phase of undertakings establishing an operational base in Malta, expansion projects, consolidation of activities and the reorganisation of activities. Supported initiatives should lead to the development of new business or to ensuring the continuity of current operations.

1.2 Duration of the incentive.

1.2.1 This incentive is available till 31st December 2020.

1.3 Legal Basis

1.3.1 Malta Enterprise is enabled to issue and publish official Incentive Guidelines in terms of Article 8(3)(a) of the Malta Enterprise Act, Chapter 463 of the Laws of Malta.

1.3.2 The *Enterprise Support Incentives Regulations Subsidiary Legislation 463.04 (Malta Enterprise Act, Chapter 463 of the Laws of Malta)* provides the legal basis of this incentive.

1.4 Designated Authority

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

1.5 Budget

1.5.1 This incentive has an annual budget of five million and five hundred thousand euro (€5,500,000) with an overall budget of thirty million euro (€30 million). The support shall be primarily awarded in the form of tax credit yet the Corporation may approve that the support is provided in full or partially as a cash grant.

2. Definitions

- 2.1 An **Applicant** is an Undertaking that has submitted a complete application for support under this scheme to the Corporation.
- 2.2 For the purpose of these Incentive Guidelines an **Undertaking** shall mean any legal person established to carry out an economic activity. This includes self-employed persons, partnerships and co-operatives.
- 2.3 A **Beneficiary** is an Undertaking that is in possession of a Letter of Approval issued by the Corporation.
- 2.4 The terms **The Corporation** and **Malta Enterprise** shall mean Malta Enterprise Corporation as established by the *Malta Enterprise Act, Chapter 463 of the Laws of Malta*.
- 2.5 A **Letter of Approval** is a document establishing the support granted to an undertaking and stipulating any terms and conditions deemed appropriate by the Corporation.
- 2.6 For the purpose of these Incentive Guidelines, the term **Single Undertaking** shall be defined as per Commission Regulation EU No 1407/2013 of 18 December 2013 on the application of the Treaty on the Functioning of the European Union to de minimis aid.

Single Undertaking includes, for the purposes of this Regulation, all undertakings having at least one (1) of the following relationships with each other:

- a) one (1) undertaking has a majority of the shareholders' or members' voting rights in another undertaking;
- b) one (1) undertaking has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking;
- c) one (1) undertaking has the right to exercise a dominant influence over another undertaking pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association;
- d) one (1) undertaking, which is a shareholder in or member of another undertaking, controls alone, pursuant to an agreement with other shareholders in or members of that undertaking, a majority of shareholders' or members' voting rights in that undertaking.

Undertakings having any of the relationships referred to in points (a) to (d) above through one or more other undertakings shall also be considered to be a single undertaking.

The same Regulation states that a group of linked undertakings is considered as one single undertaking for the application of the de minimis rule, but that undertakings which have no relationship with each other except for the fact that each of them has a direct link to the same public body or bodies are not treated as being linked to each other. The specific situation of undertakings controlled by the same public body or bodies, which may have an independent power of decision, is therefore taken into account¹

- 2.7 A **Tax Credit Certificate** is a certificate issued by the Corporation establishing the value that may be deducted by the Beneficiary from Income Tax due, commencing from the year of assessment specified within the certificate itself.

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

3. Eligibility

3.1 Eligible Undertakings

3.1.1 The support available through this measure may be awarded to undertakings following an evaluation by the Corporation.

3.1.2 The Corporation may periodically issue calls for application to address specific national targets. These calls may be addressed to specific group of enterprises or all activities not specifically excluded by these Guidelines. In each call the Corporation shall establish limits that fall within the parameters of these guidelines and which further limit the extent of support or the type of costs that may be covered. These calls shall be allocated a specific budget and shall be administered through competitive evaluation of the projects submitted.

3.1.3 Undertakings that are engaged in the following sectors may submit an application to the Corporation for support under this measure in relation to the carrying out development, restructuring or consolidation project even if no call for application has been issued. The requests shall be considered with the parameters established in these Guidelines:

- a) manufacturing;
- b) activities related to the management of waste;
- c) research and development activities;
- d) the provision of industrial solutions;
- e) maintenance, repair and overhaul of aircraft and other electromechanically equipment;
- f) artisanal operation;
- g) the provision of services that are mainly intended for the international market.

3.2 Exclusions

3.2.1 Public entities defined as: “Ministries, Departments, Entities, Authorities, Public Commissions, Public Sector Foundations and similar organisations that carry out a public or regulatory function which does not involve the carrying out of an economic activity, whether or not such organisations are established by law” and Commercial undertakings in which Government has a direct or indirect holding of more than 25%, are not eligible.

3.2.2 Undertakings engaged in activities specifically excluded under the de minimis Regulation (vide Section 8) are not eligible for this incentive.

3.2.3 Voluntary Organisations are not eligible unless they are engaged in a commercial activity on a continuous day-to-day basis.

3.3 Disqualifying Criteria

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

3.3.2 Applicants must not have dues related to VAT, Income Tax, and Social Security which are older than 12 months.

4. Incentive Description

4.0.1 The Corporation may award tax credits or cash grants of up to € 200,000 to undertakings that carry out a project aimed to expand their business operation or to consolidate their current operations.

4.0.2 The aid shall be awarded to support costs incurred following the formal approval of the Corporation. The extent of aid granted through this incentive will take into consideration the potential contribution of the project to the Maltese economy and the number of new jobs that will be created or maintained.

4.1 Aid Intensity

4.1.1 The aid may not exceed €200,000 over a period of three (3) rolling fiscal years.

4.2 Eligible Expenses

4.2.1 The approved financing shall be directly related to the operation of the undertaking and in any case shall be limited to:

4.2.2 Relocation Costs of Key Personnel:

Support may be awarded to cover the relocation of key personnel to be employed by the company and who are not resident in Malta at the time when the aid is awarded by the Corporation. At claim stage, the employees must be employed and resident in Malta and must have a contract of employment clearly indicating that the persons shall be engaged for at least one (1) year. At claim stage, a copy of the residence permit and documentation from Jobsplus confirming employment in Malta must be presented. The eligible costs shall be limited to costs paid for by the beneficiary covering:

- a) one way air travel (economy class or equivalent) of the employee and his immediate family from the employee's current area of residence;
- b) costs covering the shipping of personal items from the employee's current residence to his place of residence in Malta;
- c) Up to 3-month rental costs in a licensed short term apartment or residential unit. (Rented property must be licensed for short lets by the Malta Tourism Authority).

4.2.3 Payroll Costs:

Wage costs (excluding any overtime, allowances, share options, bonuses, insurances and the employer's national insurances contribution) of full time (excluding employees on reduced hours) employees covered by an employment contract of at least twenty-four (24) months. The Corporation will only accept claims after the person whose wages costs are claimed has been employed with the undertaking for at least six (6) months. Wage costs shall only be considered in respect of full pay periods. (If the Corporation approved aid starting from 24th May and the beneficiaries pay period is monthly, wages incurred in the month of May shall not be considered).

For the purpose of these Incentive Guidelines wages may only be claimed in relation to employees duly registered with Jobsplus.

4.2.4 **Lease and Rental of real estate:**

The Corporation may support the cost of leasing or renting an industrial or business property required for the carrying out of the supported business activity. The property must be leased from third parties under market conditions. Support may be approved on the basis of preliminary documentation indicating the property required and the estimated lease / rental costs. At claim stage the applicant will be required to present a rental agreement and documentation issued from the competent authorities confirm that the premises are duly licenced for the carrying out of the approved activity.

4.2.5 **Services directly related to the business operations:**

Legal, notarial, accounting and technical services provided through an agreement (or contract) which specifies a fixed hourly, weekly, monthly or overall fee.

Such services can be carried out by a: -

1. warranted professional; or
2. person accredited by an official body; or
3. competent person in the relevant areas of expertise as approved by the Corporation.

The services to be rendered need to be clearly defined in the application submitted to the Corporation and must be confirmed in the agreement specifying the terms of service entered into with the provider of the required services. At claim stage, a copy of the agreement between the service provider and undertaking receiving the aid must be presented detailing the service provided reflecting the funding approved by the Corporation.

4.2.6 **Rights and Licenses:**

Cost of acquiring licensing for the use of knowhow, software and other intangible assets.

4.2.7 **Relocation of tangible Assets:**

Relocation expenses related to the transportation of machinery, plant and equipment being relocated to Malta from other regions where the undertaking is currently operational. Any machinery, plant and equipment being transported must be certified by a competent professional to be compliant with the latest environmental and regulatory legislations.

4.2.8 **Procurement of Tangible Assets:**

Costs for the procurement of tangible assets required to carry out the operations of the undertaking. Support shall only be provided on equipment and machinery that is new or first used in Malta and confirmed by a competent professional to be compliant with the latest environmental and regulatory provisions.

4.2.9 **Utility Costs:**

Costs of Water and Electricity consumed in respect to the business activity of the applicant.

5. Application and Assignment of Aid

5.0.1 Aid under this incentive is subject to approval and is awarded at the sole discretion of the Corporation. Applicants should submit a request for support through the Corporation's client portal. When an application is submitted in respect to calls for application issued by the Corporation, the application must be declared as submitted on the client portal by the deadline for the submission of applications established in the call text.

5.0.2 Applicant has to submit a business plan or business case justification on how the requested support shall assist the undertaking in developing or consolidating its operations in Malta.

5.1 Evaluation and Assessment

5.1.1 In assigning aid under this incentive, the Corporation will examine the potential contribution of the project to the Maltese economy and the number of new jobs that will be created or maintained.

5.1.2 The Corporation will base its evaluation by various criteria that will include:

- a) **Feasibility:** Is the project undertaking seeking support based on a feasible business model and is it reasonably likely to remain (or become) feasible in the foreseeable future?
- b) **Track Record:** The investor's reputation (Is the undertaking listed on international stock exchanges? Does the undertaking have a leading position in the same line of business/industry? Has the investor successfully executed cross-border investments? Has the entrepreneur behind the business been able to maintain the business stable or increase its economic value over the year? Is the entrepreneur involved in other successful business ventures?)
- c) **Technology:** Will the technology used and the associated technological know-how expand local capabilities, potentially providing access to technology to other local undertakings through technology transfer?
- d) **Employment:** Will the project generate employment opportunities in areas where the required human capital is available be created or/and will it offer job opportunities for qualified or highly skilled personnel to be created?
- e) **Impact:** Will the investment support help maintain existing value chains or generate a positive impact on the productivity of other domestic companies through networking and clustering opportunities?
- f) **Sustainability:** Will the investment support assist the undertaking in the sustainability of the business?

5.1.3 In respect to application received under specific calls for application issued by the Corporation to address specific national targets additional evaluation parameters and criteria may be established in the call text.

5.2 Approval

5.2.1 Once a project is approved, a Letter of Approval shall be issued detailing the conditions of the award which may impose further restrictions beyond those specified in these Guidelines. The Letter of approval shall indicate the value of aid approved and whether the aid was awarded as a fiscal tax credit or a cash grant. The Corporation may also agree to disburse any cash grant awarded as an advance payment if the beneficiary increases the amount of paid up share capital in the company to an amount which is equivalent to the aid approved. Any such increase in share capital must be confirmed through a financial transaction confirmed through bank documentation.

5.3 Changes to Approved Assistance

5.3.1 Any modification to an approved project should be notified to and be approved by the Corporation. The Corporation shall reserve the right to re-evaluate the project on the basis of the proposed amendments and may, pursuant to the outcome of the evaluation, terminate further assistance.

6. Claim

6.1 Claim Submission

6.1.1

Undertakings shall claim the eligible costs as approved by the Corporation. All costs must be covered by the appropriate fiscal documentation and proof of payment. For each transition the beneficiary shall provide a copy of the encashed cheque image or a bank statement clearly identifying the bank transaction confirming the transfer of funds to the recipient. Any procurement must be covered by fiscal invoice/receipt as required by Maltese legislation and wage costs must be substantiated with monthly payslips.

6.2 Additional requirements

6.2.1

Any expenditure claimed shall meet all the following conditions:

- a) All costs claimed must exclude VAT and other recoverable taxes.
- b) The activity or expenditure supported may not be reimbursed to or otherwise recoverable through other sources.
- c) 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 of aid are respected.

6.3 Tax Credits

6.3.1

For aid awarded in the form of Tax Credits, the Corporation shall issue a Tax Credit Certificate which may be utilised by the undertaking as from the Year of Assessment following the year in which the tax credit certificate is issued. That is, for claims processed in 2017 a tax credit certificate which may be utilised against tax incurred as from Year of Assessment 2018 will be issued.

6.3.2

Any amount not absorbed by the tax payable for that year of assessment may be carried forward to be allowed as a tax credit for the subsequent years of assessment. In this respect, any Tax Credits not utilised shall be accumulated with any other tax credits awarded to the undertaking under the provision of the Investment Aid (July 2014) Regulations, as subsidiary legislation 463.10 to the Malta Enterprise Act, Chapter 463 of the Laws of Malta.

7. Monitoring

7.0.1

Applicants will be subject to monitoring to ensure that the project is being or was implemented according to:

- a) Incentive Guidelines.
- b) The terms and conditions set in the Letter of Approval issued by the Corporation.
- c) Commission Regulation (EU) No 1407/2013 of 18th December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis Aid, as may be amended.

7.0.2

The Corporation reserves the right to effect spot-checks at the support site. These spot checks may be administered by third parties entrusted by the Corporation to carry out such tasks.

7.0.3

If a Beneficiary is found to have breached the terms and conditions set in these Incentive Guidelines, the Regulation or the Letter of Approval, the Corporation reserves the right to revoke, suspend or recover any aid awarded.

8. State Aid Rules and Obligations

8.1 Applicable State Aid

- 8.1.1 These Incentive Guidelines are in line with the Commission Regulation (EU) No. 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (the de minimis Regulation), as may be amended.
- 8.1.2 The total amount of de minimis aid granted to a single undertaking shall not exceed the amount of €200,000 (or €100,000 in the case of single undertakings performing road freight transport for hire or reward) over any period of three consecutive fiscal years.
- 8.1.3 This aggregate maximum threshold applies in principle to all economic sectors with the exception of the agriculture and fisheries sectors for which different thresholds and criteria apply. The term 'undertaking' includes also all companies in a group (which fall under the direct or indirect ownership or control of the same ultimate parent company) and relevant partner and linked enterprises as defined in Annex I of Commission Regulation (EU No 651/2014 of 17th June 2014). This period covers the fiscal year concerned as well as the previous two fiscal years. 'Fiscal year' means the fiscal year as used for tax purposes by the undertaking concerned.
- 8.1.4 This maximum threshold would include all State aid granted under this aid scheme and any other State aid measure granted under the de minimis rule including that received from any entity other than Malta Enterprise. Any de minimis aid received in excess of the established threshold will have to be recovered, with interest, from the undertaking receiving the aid.
- 8.1.5 The de minimis declaration form must be filled in and submitted together with the application form. The de minimis Aid Declaration may be downloaded from the Corporation's website.

8.2 Applicability of the Aid

- 8.2.1 Assistance approved under this aid scheme is NOT:
- a. Aid granted to businesses active in the fishery and aquaculture sector, as covered by Council Regulation (EC) No. 104/2000;
 - b. Aid granted to businesses active in the primary production of agricultural products;
 - c. Aid granted to businesses active in the sector of processing and marketing of agricultural products, in the following cases:
 - i. Where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the businesses concerned;
 - ii. Where the aid is conditional on being partly or entirely passed on to primary producers;
 - d. Aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
 - e. Aid contingent upon the use of domestic over imported goods;
 - f. Aid for the acquisition of road freight transport vehicles granted to businesses performing road freight transport for hire or reward.

- 8.2.2 Where an undertaking is active in the sectors referred to in points (a), (b) and (c) above as well as in other sectors falling within the scope of the de minimis Regulation, the Corporation will ensure a separation of the activities or distinction of costs. Only those sectors eligible for assistance under the de minimis Regulation will be assisted. Activities in the sectors excluded from the scope of the de minimis Regulation will not benefit from assistance under this aid scheme.

8.3 Cumulation

- 8.3.1 In terms of Article 5 of the de minimis Regulation, de minimis aid granted under this incentive may be cumulated with de minimis aid granted in accordance with Commission Regulation (EU) No 360/2012 up to the ceiling laid down in that Regulation. It may be cumulated with de minimis aid granted in accordance with other de minimis regulations up to the relevant ceiling fixed in terms of these Incentive Guidelines.
- 8.3.2 De minimis aid approved under the Business Development and Continuity Scheme shall not be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measure, if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the European Commission. De minimis aid which is not granted for or attributable to specific eligible costs may be cumulated with other State aid granted under a block exemption regulation or a decision adopted by the Commission.

9. Contact Details

Further information on the scheme, as well as information and guidance on the filling in of the application form may be obtained by contacting Malta Enterprise during office hours.

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

Tel: 144

Websites: www.maltaenterprise.com

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

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