

# Incentive Guidelines

## Investment Aid Tax Credits 2014 - 2020



**MALTA**ENTERPRISE

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## **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 as well as, the expansion and development of existing businesses.

The Investment Aid provided under these guidelines calculated as a percentage of qualifying expenditure incurred may take the form of tax credits and/or cash grants.

### **1.2 Duration of the scheme**

These incentive guidelines shall be affective from 1st January 2018 and unless reviewed or updated shall remain in force until 31st 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.

### **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, Chapter 463 of the Laws of Malta 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 17th 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) as amended by Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs.

### **1.4 Designated Authority**

This incentive is administered by Malta Enterprise Corporation.

### **1.5 Transitional provisions**

Any complete application received for support under this measure prior to the date when this version of these Incentive Guidelines become effective, shall be processed under the previous version of these Incentive Guidelines.

Application for tax credits in relation to projects where the 'Start of Works' was prior to 1st January 2018 shall be processed under the previous version of these Incentive Guidelines.

## 2. Definitions

For the purposes of this Incentive Guidelines, the following definitions shall apply:

### 2.1 Small and Medium Sized Enterprises (SMEs)

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.

### 2.2 Family Business

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

### 2.3 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.

### 2.4 Wage Costs

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 and maternity leave contributions.

### 2.5 Undertaking in Difficulty

‘Undertaking in Difficulty’ means an undertaking in respect of which at least one of the following circumstances occurs:

- a. In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, ‘limited liability company’ refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU (1) and ‘share capital’ includes, where relevant, any share premium.
- b. In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has

disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

- c. Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
- d. Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.
- e. In the case of an undertaking that is not an SME, where, for the past two years:
  - i. the undertaking's book debt to equity ratio has been greater than 7,5;  
and
  - ii. the undertaking's EBITDA interest coverage ratio has been below 1,0.

## 2.6 Relocation

"Relocation" means a transfer of the same or similar activity or part thereof from an establishment in one contracting party to the EEA Agreement (initial establishment) to the establishment in which the aided investment takes place in another contracting party to the EEA Agreement (aided establishment). There is a transfer of the product or service in the initial and in the aided establishments serves at least partly the same purposes and meets the demands or needs of the same type of customers and jobs are lost in the same or similar activity in one of the initial establishments of the beneficiary in the EEA.

## 2.7 Fundamental Change

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.

## 2.8 Diversification Change

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.

## 2.9 Net increase in the number of employees

"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.

## 3 Eligibility

### 3.1 Eligible Undertakings

Eligible undertakings are small and medium-sized enterprises in terms of Annex I of Commission Regulation (EU) No 651/2014, as well as large undertakings.

To be eligible for aid through this incentive, an undertakings must operate from Malta and be incorporated in the European Union as a partnership en nom collectif, en commandite or a limited liability company, co-operative, family business or similar set-up.

A legal entity shall only be supported in respect of eligible investments in one or more of the qualifying activities (as described in Section 4 of these Incentive Guidelines) and as long as that single entity does not engage in disqualifying activities (as described in Section 5 of these Incentive Guidelines).

### 3.2 Eligible Projects

Initial Investment Projects shall be considered for support if:

- a) The investment is related to the development of a Qualifying Economic Activity.
- b) The underlying Qualifying 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, after completion of the investment.
- c) The beneficiary provides 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.
- d) The applicant confirms that it has not carried out a relocation to the establishment in which the initial investment for which aid is requested is to take place, in the two (2) years before aid application and commits that it will not carry out a relocation up to a period of two years after completion of the investment for which aid is requested.

### 3.3 Eligible Initial Investment Projects 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 resulting in;
  - i) The setting-up of a new establishment.
  - ii) The extension of the capacity of an existing establishment.
  - iii) A fundamental change in the overall production process of an existing establishment.
  - iv) A diversification of the output of an establishment into products not previously produced in the 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 (nevertheless the sole acquisition of the shares of an undertaking is excluded).

### 3.4 Eligible Initial Investment Projects 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).

An 'initial investment in favour of a new economic activity or activities' means:

- 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. (Nevertheless the sole acquisition of the shares of an undertaking is excluded).



## 4 Qualifying Economic Activities

Investment Aid shall be awarded to an undertaking in respect to an Initial Investment Project resulting in a qualifying activity as defined in this section. Any Tax Credits awarded may only be utilised as long as the beneficiary is still active in the resulting qualifying activity as defined in this Section 5.

In order to determine that an undertaking is carrying out a Qualifying Economic Activity the Corporation:

- a) shall analyse the Memorandum and Articles of Association to confirm that the main objects related only to activities that are listed as eligible activities and that none of the objects allow for the carrying out of activities deemed as disqualifying; and
- b) shall conduct onsite visits to confirm that any relevant entity is engaged solely in eligible activities and is not carrying out any disqualifying activities; and
- c) may request any relevant permits and documentation as the Corporation deems necessary to conduct its determination.

### 4.1 Manufacturing

Production, manufacture, improvement, assembly, preservation and processing of goods, materials, commodities, equipment, plant and machinery. The activity carried out should result in product(s) that are clearly distinct from the materials and components utilised.

### 4.2 Repair, overhaul or maintenance

The repair, overhaul or maintenance of:

- a) any water craft not covered by the definition of shipbuilding as provided for in the Framework on state aid for shipbuilding as published in the Official Journal C364 of 14.12.2011, p.9-13;
- b) aircraft;
- c) industrial engines or electromechanical equipment.

### 4.3 Industrial Services

The provision of services requiring the operation of mechanical and/or electrical equipment, that is analogous and/or coincidental to manufacturing.

### 4.4 Laundry and Dry cleaning

Laundering and dry cleaning, pressing of clothing and textiles.

### 4.5 Information Technology

- a) Computer Programming: Developing, writing, modifying, testing of software to create and implement: systems software (including updates and patches); software applications (including updates and patches); databases systems; online solutions. This activity includes:
  - i) customising software; specifically modifying and configuring an existing application so that it is functional within the clients' information system environment.
  - ii) publishing of ready-made (non-customised) software following translation or adaptation of that software for a particular market (operating system, business or other application).

- b) Data Processing and hosting facilities: The hosting of data for public or private third parties such as web hosting, streaming services, application hosting, application service provisioning, and general time-share provision of mainframe (or computing) facilities,
- c) Data Processing services: Activities for processing of digital/electronic data supplied by third parties or collected for third party sources.
- d) Electronic and mobile platforms: The operation of mobile and electronic platforms that enable clients to conduct commerce, financial transactions and electronic payments with third parties.

#### **4.6 Call Centre Activities**

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 that are awarded tax credits for investing in the provision of this activity may only claim any accumulated tax credits in relation to this investment if the number of full time equivalent employment for the year in review is at least equal to twenty (20) Full Time Equivalent Employees (FTEs).

#### **4.7 Research and Development, and Innovation**

Carrying out on a continuous cycle activities focused on design, development, testing or technical analysis of products and/or processes.

#### **4.8 Eco-innovation, waste treatment and environmental solutions**

- a) Waste Treatment: the operation of physical, thermal, chemical or biological processes which change the characteristics of the waste in order to reduce the volume or the hazardous nature of waste so as to facilitate its handling or enhance recovery.
- b) The sorting of waste so as to facilitate its handling or recovery.
- c) 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.

#### **4.9 Biotechnology:**

- a) The carrying out of 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 carrying out of 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.

#### **4.10 Pharmaceuticals**

The carrying out of the following activities under a Good Manufacturing Practice certificate issued by the Medicines Authority in Malta that are engaged in one or more of the following:

- 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 of pharmaceuticals, medical devices and related goods.

#### **4.11 Facilities for Filming and Audiovisual productions**

- a) The production (through scriptwriting, casting, shooting, directing and editing) of audiovisual productions consisting of feature films, television films, advertisements and documentaries.
- b) The operation and provision of facilities and equipment required in the production of audio and audio visual products and service.
- c) The development of digital video games.

#### **4.12 Provision of Education**

The provision of education, tuition and training services that leads to recognised qualifications and/or the acquisition of specialised skills (related to languages, crafts, technology, creativity and innovation). The aid shall only be granted in respect to new investment projects or expansions to be implemented within a thirty-six (36) month period and if the total investment based on eligible costs excluding land is of at least EUR 1 million.

#### **4.13 Provision of private health care services**

The provision of human health services insofar that the benefits granted through the eligible investment in the form of tax credits may only be utilised if the number of full time equivalent employees for the year in review is at least equal to ten (10) FTEs.

The aid shall only be granted:

- a) for the expansion or diversification of existing faculties already providing private health care services where the total investment based on eligible costs after excluding cost of land is of at least EUR 500,000;
- or
- b) in respect to new investment projects to be implemented within a thirty-six (36) month period and where the total investment based on eligible costs after excluding cost of land is of at least EUR 2 million.

#### **4.14 Freeport Operation**

The carrying out the activities set out in Article 10 of the Malta Freeports Act, Chapter 334 of the Laws of Malta and duly licensed as provided for under the same Article.

#### **4.15 Logistics Support**

The provision of supply chain management and operations through temporary storage and warehousing of any third party goods, materials, commodities, equipment, plant or machinery, which activity may also

include other related operation such as mixing, blending, sorting, labelling, packaging, exhibiting such any third party goods, materials, commodities, equipment, plant or machinery.

The aid shall only be granted in respect to new investment projects to be implemented within a thirty-six (36) month period and if the total investment based on eligible costs after excluding cost of land is of at least EUR 2 million.

#### **4.16 Industrial Packaging**

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.

#### **4.17 Hotels, guest houses, and similar tourist accommodation facilities.**

The operation of hotels, guest houses and similar tourist accommodation facilities and related amenities, as licensed by the Malta Tourism Authority.

#### **4.18 Knowledge intensive business services**

The provision of shared knowledge intensive services requiring the employment of persons holding qualifications of Level 6 or higher as defined by the National Commission for Further and Higher Education (NCFHE) . To this effect it is expected that for the activity to be eligible at least 60% of the employees must be in possession of a qualification of Level 6 or higher as defined by the NCFHE.

Aid shall only be granted in respect to new investment projects with a total investment based on eligible costs of at least EUR 1 million after excluding the cost of land. Where the new investment is carried out by an undertaking already active in the same or related markets the undertaking shall be required to provide evidence that the new investment will not result in a mere expansion of the current activities and that the new setup will be as a self standing operation.

Eligible undertakings that are awarded tax credits for investing in the provision of this activity may only claim any accumulated tax credits in relation to this investment if the number of full time equivalent employment in Malta for the year in review is at least equal to thirty (30) FTEs. When part of the activity is based in Gozo any FTE job stationed in Gozo will be counted as one point five (1.5) FTEs.

#### **4.19 Cultural Restoration**

Activities leading to the restoration and/or preservation of works of art and antiques.

#### **4.20 Cultural and sports facilities**

The operation of facilities used for housing cultural or sport facilities that are open to the general public.

Aid shall only be granted in respect to new investment projects with a total investment based on eligible costs after excluding the cost of land of at least EUR 1 million.

## 5 Disqualifying Activities

Any entity (legal person) in possession of tax credits awarded under this measure that as part of its activities also carries out those hereunder shall lose its entitlement to those tax credits. The carrying out of these activities within another entity in the same undertaking will not result in such loss of benefit.

### 5.1 Sale by Retail

- a) An entity shall be deemed to sell by retail when it sells goods or services directly to the consumer, unless the sales of such goods or services are made to another entity:
  - i) through which the goods or services are either resold;
  - ii) that uses those goods or services for the purpose of carrying out an economic activity;
  - iii) (or natural person) through online transactions effected by means of a secure payment system without other interaction between the parties.
- b) This disqualifying activity shall not apply to:
  - i) micro sized undertaking that sells solely goods manufactured by that same undertaking.
  - ii) entities engaged directly in the operation of tourist accommodation facilities, as licensed by the Malta Tourism Authority (MTA).
  - iii) entities engaged in information technology as defined in Section 4.3 that provide Software as a Service (SaaS) solutions or similar online solutions.
  - iv) entities engaged in operating Cultural and/or sports facilities.

### 5.2 Catering

An entity shall be deemed to be engaged in catering if its trade or business includes the preparation or production of food (or beverages) which is directly supplied to the final consumer.

This disqualifying activity shall not apply when such processes are carried out as part of the operation of tourist accommodation facilities, as licensed by the MTA or as part of the operation of entities engaged in operating Cultural and/or Sports Facilities.

### 5.3 Gambling

An entity shall be deemed to be engaged in gambling activities when it generates revenues which are related to chance.

## 6 Qualifying Expenditure

Eligible expenditure shall be considered to be tangible and intangible assets as described in this section that are incurred as a result of an eligible Initial Investment Project.

The value of qualifying expenditure is calculated either as the value of qualifying assets acquired in relation to an initial investment project or the value of wage costs for jobs directly created by the initial investment project. In any case all figures used shall be taken before any deduction of tax or other charge (unless such taxes or charges are otherwise recoverable).<sup>1</sup>

### 6.1 Qualifying tangible assets

For the purpose of this incentive, 'Qualifying tangible assets' means assets consisting of land, buildings and plant, machinery and equipment.

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.

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, after completion of the investment. 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.

- a) Land, buildings or structures shall be considered in adherence to the following parameters:
- i) Only buildings and structures which are duly licensed and where a qualifying economic activity is carried out shall be considered;
  - ii) The procurement of land shall be considered as eligible when eligible industrial buildings and structures are constructed thereon. The value shall be adjusted to deduct the cost of any areas in excess of the requirements of the supported investment and qualifying activity as shall be established by a competent professional.
  - iii) Costs related to the construction of showrooms, and similar facilities shall not be supported. When such costs are incorporated in an eligible investment the value of land, buildings or structures shall be accordingly adjusted through the establishment by a competent professional.
  - iv) Costs incurred in relation to finishing eligible buildings and structures as required for the eligible business activity shall be considered eligible. These costs may include plastering, rendering, cabling, and other costs incurred as part of an initial investment, carried out after the acquisition date.
  - v) Costs related to the lease of land and buildings shall be considered as eligible if the lease shall 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. Only new lease agreements required for an initial investment or an initial investment in favour of a new economic activity shall be considered eligible and irrespective of the

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<sup>1</sup> Any taxes and charges such as Value Added Tax (VAT) which can be recovered should not be considered as real costs and therefore should not be considered as eligible.

lease period the aid shall be limited to the first ten (10) years as established in the original lease agreement.

- vi) Procurement of land to be operated as quarry or a landfill shall not be considered eligible.
- b) Acquisition of tangible assets (excluding buildings, land and other similar structures) shall be considered in adherence to the following parameters:
  - i) Only assets that are directly related to the eligible economic activities of the undertaking shall be considered eligible.
  - ii) The costs for the acquisition of motor vehicles shall be considered ineligible with the exception of those vehicles procured as part of an initial investment project and that are required for the carrying out of the qualifying activity.
  - iii) The costs for the acquisition of works of art, antiques and collectables shall be considered ineligible.
  - v) Costs related to the lease of tangible assets may be taken into account under the following conditions:
    - The acquisition of tangible assets through a financial lease that contains an obligation for the beneficiary of the aid to purchase the asset upon expiry of the term of the lease shall be considered as eligible.

## 6.2 Qualifying Intangible Assets

For the purpose of this incentive, 'Qualifying Intangible assets' means assets that do not have a physical or financial embodiment such as patents, licences, know-how or other intellectual property. Costs for the procurement of Qualifying Intangible Assets shall be considered only if the assets are:

- a) used exclusively in the undertaking receiving the aid;
- b) regarded as amortizable assets;
- c) purchased under market conditions from third parties unrelated to the buyer
- d) included in the assets of the undertaking receiving the aid and must remain associated with the project for which the aid is granted for at least five years or three years in the case of SMEs.

For large undertakings, costs of intangible assets are eligible only up to a limit of 50 % of the total eligible investment costs for the initial investment.

## 6.3 Qualifying assets when acquiring the assets of an establishment.

In the case of acquisition of the assets belonging to an establishment that has closed or would have closed had it not been purchased the following rules shall be applicable:

- a) Only the costs of assets purchased from third parties unrelated to the buyer shall be taken into consideration. The transaction shall take place under market conditions.

- b) 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.
- c) 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.
- d) The acquisition of shares does not constitute initial investment and hence does not constitute a qualifying expenditure.

#### 6.4 Calculating the value of investment on the basis of Jobs created

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 aid shall be calculated as the estimate of the wage costs arising from job creation as a result of an initial investment, calculated over a period of two (2) years and actual disbursement of support will be in relation to actual wage costs incurred.

In establishing the number of jobs created as a result of an initial investment project, the following parameters shall be taken into consideration:

- a) There shall be a net increase in the number of employees<sup>3</sup> in the undertaking concerned, when compared with the previous twelve (12) months, meaning that any job lost shall be deducted from the apparent created number of jobs during that period.
- b) Each post shall be filled within three years of completion of works.
- c) New employees should be employed as replacements of other employees<sup>4</sup> within the undertaking when an existing employee is transferred to fulfil a job created as a result of the Initial investment Project.
- 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).
- e) An individual (employed in jobs created as a result of an initial investment project) whose employment is for whatever reason terminated is to be replaced within six (6) months of the termination date of employment of the individual. If the employment is not replaced any aid disbursed shall be refunded by the beneficiary.

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<sup>3</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>4</sup> Malta Enterprise will consider the increase of employment at group level.



- f) Each job created must be maintained in Malta for a period of three (3) years if the beneficiary is an SME or otherwise for five (5) years. If the job created is not maintained any aid disbursed shall be refunded by the beneficiary.

## 7. Aid Intensity

The Investment Aid provided under these guidelines calculated as a percentage of qualifying expenditure incurred may take the form of tax credits and/or cash grants.

### 7.1 Applicable Aid Intensity

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. Hotels are eligible to, 10% of the eligible expenditure in the case large undertakings, and 15% in the case of small and medium undertakings.
- d. 10% of the qualifying expenditure for an undertaking which qualifies as a 'Large' undertaking;

*Projects with a 'start of works' prior to 01/01/2018 shall be processed in accordance with the transitional provisions defined in Section 1 of these Incentive Guidelines.*

### 7.2 Limitation of Aid for 'Large Investment Projects'

For 'Large Investment Projects' meaning initial investment projects with value of eligible costs exceeding EUR 50 million, the applicable maximum permissible aid shall be adjusted according to the following formula:

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

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;

A is the initial EUR 50 million of eligible costs

B is the part of eligible costs between EUR 50 million and EUR 100 million;

and

C is the part of eligible costs above EUR 100 million.

Any initial investment started by the same undertaking (at group level) within a period of three (3) years from the date of start of works on another aided investment in the same level 3 region of the Nomenclature of Territorial Units for Statistics shall be considered to be part of a single investment project. Where such single investment project is a large investment project, the total aid amount for the single investment project shall not exceed the adjusted aid amount for large investment projects.

## 8. Benefiting from Investment Aid

In order to benefit from Investment Aid, an application must be submitted to the Corporation for each initial investment project. The application shall be required to determine that the project is eligible within the parameters established in these Guidelines and should be submitted on the appropriate application form. The Corporation shall review any application received and communicate the outcome of such review to the beneficiary.

### 8.1 Application for Fiscal support (Tax Credits)

Fiscal aid under this measure is non-discretionary. Applications for fiscal support may be submitted either prior to start of works or later when actual costs is available. The Corporation will not accept any application:

- a) for a project having a 'start of works' after 31<sup>st</sup> December 2020;
- b) submitted after one (1) year from the 'start of works' of the project in review.

### 8.2. Application for Financial support (Cash Grants)

In principle this is a fiscal measure yet at the discretion of Malta Enterprise, a cash grant may be awarded in respect to initial investment projects that provides significant growth to the Beneficiary. Any such grant must be approved in writing by Malta Enterprise before the start of works.

### 8.3 Project Approval

On being satisfied that an undertaking satisfies the conditions set out in these Guidelines and the Regulations, the Corporation will provide the applicant with a notification of project approval. The approval will be issued subject to terms and conditions as may be imposed by the Corporation. The approval shall not remain valid if the entity does not abide by such terms and conditions.

In instances where aid is awarded prior to commencement of the qualifying economic activity, any award shall be conditional to the fact that the beneficiary shall conduct a qualifying economic activity once the investment project is completed.

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

### 8.4 Claims

Tax credit or cash grants awarded under this incentive may be claimed in line with the conditions specified in the Corporation's approval. When submitting a claim the following documentation shall be requested:

- a) A breakdown of the eligible costs submitted in the format requested by the Corporation.
- b) A confirmation from a Certified Public Accountant or by a designated signatory as the Corporation may deem fit, that the costs claimed:
  - i) are in relation to new assets (or first used in Malta if the beneficiary is an SME) and that such costs have been incurred as part of the approved Initial Investment Project; and
  - ii) have not been incurred as a replacement of existing assets;
  - iii) may not be reimbursed or otherwise recovered through other sources unless within the rules of cumulation as provided in Section 9.3 of these Incentive Guidelines and the General Block Exemption Regulation.

- c) Where the aid is calculated on the bases of Jobs created the Corporation will require employment contracts and other relevant documentation in respect of the employees engaged.
- d) The Corporation may also require the beneficiary to submit:
  - i) An electronic copy of the Nominal Ledger containing details as to the capital expenditure on which investment claimed.
  - ii) Original VAT invoices and receipts (an original fiscal receipt is required unless a VAT invoice is presented together with a copy of the invoice).
  - iii) Proof of payment. Copies of the encashed cheques or original bank advice documents showing all payments effected in relation to the claimed costs.

Once the Corporation verifies the claim documentation it will issue a Tax Credit Certificate in favour of the beneficiary. This certificate will entitle the beneficiary to utilise the tax credit awarded, as provided for Section 8.5 below.

## 8.5 Utilisation of Tax Credits

Any tax credits awarded may only be utilised in respect of revenue generated from qualifying activities as approved by the Corporation.

No tax credit shall be due to (utilised by) an undertaking for a year of assessment unless:

- a) The beneficiary is in possession of an Incentive Entitlement Certificate issued by the Corporation in terms of Article 24 of the Malta Enterprise Act Chapter 463 of the Laws of Malta, determining that the beneficiary is carrying out an eligible economic activity.
- b) Submits the annual returns to the Corporation within a period not exceeding one (1) month after the relative tax return date.

Any tax credit that is not absorbed in a particular year of assessment may be carried forward to the following year of assessment.

## 8.6 Annual Return

For every year in which the Beneficiaries may utilise a tax credit certificate, the beneficiary shall submit an annual report to the Corporation by not later than one (1) month after the beneficiary submits the income tax return to the Inland Revenue Department (IRD). The report shall include:

- a) 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 enterprise is not disqualified from benefiting from the incentives provided by these Guidelines;
- b) Copies of relevant section of the Income tax return (TRA 86).

Following the submission of the annual reports, the Corporation will review documentation submitted to verify that the beneficiary is compliant to the parameters of the applicable Regulations and Incentive Guidelines. Should the beneficiary be deemed to be in breach, the Corporation shall have the right to revoke any aid granted, request the beneficiary to reimburse any benefits and bar the beneficiary from receiving any future support unless the situation is rectified.

## 9. Monitoring and Review

### 9.1 Monitoring

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

- a) this applicable Regulations and Incentive Guidelines;
- b) the terms and conditions of the Incentive Entitlement Certificate;
- c) any applicable state aid obligations and regulations.

In this respect the Corporation may request any documentation it deems relevant and conduct site visits at the applicant's place of business.

### 9.2 On-Site Visits

The Corporation may carry out or commission third 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.

### 9.3 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, the Corporation 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 granted by Malta illegal and incompatible with the internal market shall be excluded from this Incentive.

## 10. State Aid Rules and Obligations

### 10.1 Applicable State Aid

The terms and conditions set out in these guidelines are in line with the [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](#) and [Commission Regulation \(EU\) No 2017/1084 of 14 June 2017 amending Regulation \(EU\) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation \(EU\) No 702/2014 as regards the calculation of eligible costs.](#)

### 10.2 Eligible Economic Activities

A project may only be assisted if it results in a qualifying activity as outlined in Section 4. Moreover, the supported activity should also result in an economic activity described under one of the following NACE categories in order to be considered eligible.

Sector	NACE Code
Manufacturing	C
Water supply, sewerage, waste management and remediation	E
Removal Services	H49.42
Warehousing and support activities for transportation	H52
Postal and courier activities	H53
Accommodation and food service activities	I
Information and Communication	J
Financial and Insurance Activities	K
Professional, Scientific and Technical Activities	M
Administrative and support service activities	N
Education	P
Human Health and Social Work Activities	Q
Creative, Arts and Entertainment Activities	R90
Libraries, Archives, Museums, and Other Cultural Activities	R91
Sports Activities and Amusement and Recreation Activities	R93
Other Services	S

Although an economic activity might be described under the above NACE categories, the project may only be considered as eligible if it results in a qualifying activity and addresses the parameters outlined in Section 4. Furthermore a project that results in an activity described under the above NACE categories and results in a qualifying activity as describe in Section 4 will still be considered ineligible if support for the project or undertaking is prohibited by 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 and Commission Regulation (EU) No 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs.

The incentive is not applicable to the following:

- a. Activities listed down in Articles 1 (1), (2), (3), (4) and (5) of Commission Regulation No 651/2014 of 17 June 2014.
- b. Activities listed down in Article 13 of Commission Regulation No 651/2014 of 17 June 2014.
- c. Undertakings in difficulty defined in terms of the Commission Regulation (EU) No 651/2014 of 17 June 2014. Such firms are excluded from benefiting from assistance under this incentive.

Furthermore assistance may not be granted if the aid is:

- i. 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. contingent upon the use of domestic in preference to imported goods.
- iii. in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by Malta illegal and incompatible with the internal market should be excluded from the scope of this measure.

### 10.3 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 17th 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.

#### **10.4 Transparency Obligations**

For any individual aid awarded in excess of EUR 500 000, the details of the beneficiary, the aid awarded, and the project details shall be published as provided for in Article 9 of the 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.



## 11. 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  
Ċentru Joseph Grech  
2nd Floor, Cobalt House  
Notabile Road  
Mrieħel, B'Kara, BKR 3000  
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)