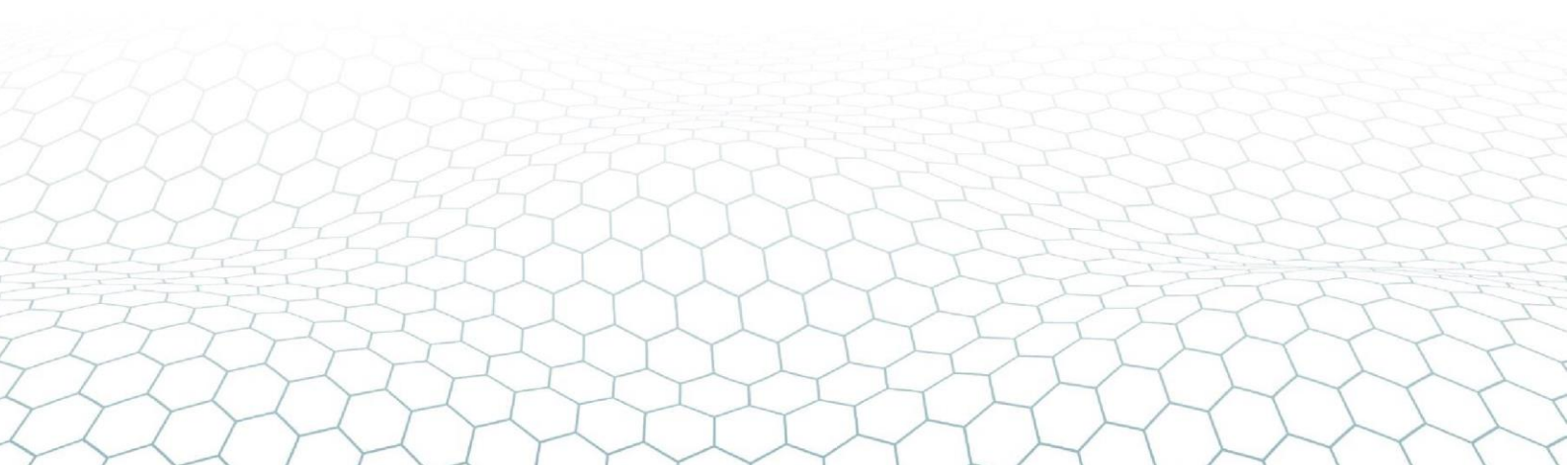




MALTA ENTERPRISE

**INCENTIVE GUIDELINES**

# **Investment Aid 2021**



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# 1. Introduction

## 1.1 Scope and Background

- 1.1.1 The Investment Aid Scheme aims 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.
- 1.1.2 The aid awarded under these guidelines shall amount to a percentage of qualifying expenditure incurred and may take the form of tax credit (which may be claimed against future tax bills) and/or cash grant.

## 1.2 Duration of the Scheme

- 1.2.1 The Guidelines shall be applicable as from 1<sup>st</sup> January 2021 and unless reviewed or updated shall remain in force until 31<sup>st</sup> December 2021.
- 1.2.2 These guidelines provide a fiscal successor scheme to the measure enabled through the Investment Aid Tax Credits 2014 – 2020 Guidelines which cover projects that had a Start of Works not later than 31<sup>st</sup> December 2020.
- 1.2.3 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

- 1.3.1 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.
- 1.3.2 The Investment Aid 2021 Regulations as subsidiary legislation 463.XX 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.
- 1.3.3 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, and by Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments, and as may be subsequently amended [herein after referred to as the General Block Exemption Regulation].

## 1.4 Designated Authority

- 1.4.1 This incentive is administered by Malta Enterprise Corporation.

## 2. Definitions

For the purposes of these 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 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.

### 2.3 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 seven (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<sup>1</sup> 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.

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<sup>1</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

- 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 (2) 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.

## 2.4 The Same or a Similar Activity

“The same or a similar activity” means 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.

## 3. Eligibility

### 3.1 Eligible Undertakings

- 3.1.1 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.
- 3.1.2 To be eligible for aid through this incentive, an undertaking 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 or similar set-up. To benefit from tax credit partnerships are required to register under Article 27(6) of the ITMA to be treated as a company.
- 3.1.3 In line with the Commission Regulation (EU) No 651/2014 of 17 June 2014, aid in favour of an undertaking 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.

### 3.2 Eligible Projects

- 3.2.1 Cash grants may only be awarded to eligible projects for which an application is submitted and approved before Start of Works and during the validity of the scheme.
- 3.2.2 Projects starting before 1<sup>st</sup> January 2021 or having a start of works prior to the approval of the Corporation may only be awarded aid in the form of tax credits. Such projects shall only be considered where the activity was covered by the scheme implemented on the basis of the Investment Aid (July 2014) Regulations (S.L. 463.10).
- 3.2.3 Eligible investment projects may only be awarded aid in respect of projects commencing after 31<sup>st</sup> December 2021 but in no case later than 31<sup>st</sup> December 2023 or later if the Start of Works was delayed due to factors outside the control of the aid beneficiary as shall be determined by the Corporation, as long as the beneficiary submits an application for assistance and the aid in respect of such projects is approved by the Corporation during the validity of the scheme which in no case shall be later than 31<sup>st</sup> December 2021.
- 3.2.4 Initial Investment Projects shall be considered for support if:
- a) The investment shall result in the: development; expansion; diversification or a fundamental change in the carrying out of a Qualifying Economic Activity. A project shall still be excluded if the activity is related to gambling (thus requiring a licence from the Malta Gaming Authority) or the provision of financial services (thus requiring a licence from the Malta Financial Services Authority).
  - b) The investment and the 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 project. This shall not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the relevant minimum period.
  - c) The beneficiary provides a financial contribution of at least twenty-five percent (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 (as defined below) to the establishment in which the initial investment for which aid is requested is to take place, in the two (2) years preceding the application for aid and gives a commitment that it will not do so up to a period of two (2) years after completion of the initial investment for which aid is requested is completed.

3.2.5 Aid for research infrastructures (as defined in the General Block Exemption Regulation) and aid for energy generation, distribution and infrastructure, shall not be granted.

3.2.6 "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.

### 3.3 Eligible Projects rules for SMEs

3.3.1 Investment Aid shall be awarded to **SMEs** in respect of an '*initial investment*' in tangible and intangible assets resulting in:

- a) the setting-up of a new establishment.
- b) the extension of the capacity of an existing establishment.
- c) a fundamental change in the overall production process of an existing establishment, where for an investment to constitute 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.
- d) A diversification of the output of an establishment into products not previously produced in the establishment whereby 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.

3.3.2 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 shall also be considered as an eligible investment. Nevertheless, the sole acquisition of the shares of an undertaking is excluded and not considered to constitute an eligible project.

### 3.4 Eligible Projects rules for Large Enterprises

3.4.1 Investment Aid shall be awarded to **large enterprises** in respect to '*initial investments in favour of a new economic activity or activities*' which must consist of:

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

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.

3.4.2 A **large enterprise** may carry out an '*initial investment in favour of a new economic activity or activities*' even if such activity falls within the same class - four-digit numerical code - of the NACE Rev. 2 as other activities carried out in the region, if the new investment results in an establishment that is self-standing (having a distinct operational and management structure that is independent from other establishments owned or controlled by the undertaking in the region).



3.4.3

When a **large enterprise** carries out an investment through the acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, such an investment shall be considered eligible if:

- a) The acquired assets shall not be used for the same or a similar activity to the activity performed in the establishment prior to the acquisition.
- b) The investor (the large enterprise carrying out the investment) is unrelated to the seller.
- c) The investment shall not include the acquisitions of the shares of the undertaking that has closed or would have closed had it not been purchased.

### 3.5 Qualifying Economic Activities

- 3.5.1 **Manufacturing**, meaning the 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.
- 3.5.2 The **Maintenance, Repair and Overhaul** 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;  
or
  - b) aircraft;  
or
  - c) industrial engines or electromechanical equipment.
- 3.5.3 **Industrial Services** analogous and/or coincidental to manufacturing that require the operation of mechanical and/or electrical equipment (NACE 33.2 Installation of industrial machinery and equipment) including industrial **laundry and dry cleaning** services.
- 3.5.4 **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 customising software; specifically modifying and configuring an existing application so that it is functional within the clients' information system environment.
- 3.5.5 **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 computing facilities, including the processing of digital/electronic data supplied by third parties or collected for third party sources.
- 3.5.6 **Call Centre** activities, meaning the operation of an inbound and/or outbound communications centre providing a services to unrelated third parties which may include: receiving customer orders; providing product information; dealing with customer requests for assistance; addressing customer complaints; selling or marketing goods or services to potential customers; carrying out market research or public opinion polling; and other similar activities.
- 3.5.7 Activities of **Research, Development and Design** conducted through a continuous cycle of research, design, development, testing and/or technical analysis of products and/or processes. The investment project supported through this scheme must be used solely for the beneficiary's own purposes.
- 3.5.8 The **Treatment of Waste** through 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. ( NACE 38.2 Waste treatment and disposal and NACE 38.3 Materials recovery).
- 3.5.9 The operation of "**Environmental Solutions**" that significantly prevent, reduce or reverse the negative impacts of human activities on the environment. (NACE 39.0 Remediation activities and other waste management services).
- 3.5.10 The carrying out of activities related to **Life Sciences** focused on research, development, quality assurance, validation (including clinical trials) of products (such as medical devices and organic tissue) and processes (such as tissue transplantation procedures). The investment project supported through this scheme must be used solely for the beneficiary's own purposes.
- 3.5.11 The carrying out of the **Pharmaceutical Activities** under a Good Manufacturing Practice Certificate issued by the Medicines Authority in Malta 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 (batch release).
  - c) Logistics operations of pharmaceuticals, medical devices and related goods.
- 3.5.12 Activities for the production of feature films, television films, advertisements, documentaries and similar **audio-visual productions** including: the operation and provision of immovable property (such as sound stages and studios) specifically designed and equipped for the production of audio and audio visual products; and the provision for lease and rental of equipment, services and machinery for the production of audio and audio visual products.
- 3.5.13 Activities for the production of **audio recording** in specifically designed structures.
- 3.5.14 Design and development of **digital video games** including the running of multiuser platforms for such games.
- 3.5.15 **Education and Tuition** organised by licensed institutions that lead to recognised qualifications and certifications. (Such qualifications and certification shall not be limited to those recognised by the Malta Qualifications Recognition Information Centre (MQRIC) but shall include widely accepted certifications considered to be industry standards in the respective sector).
- 3.5.16 The operation of an immovable structure providing **human inpatient and/or day care services** (this includes hospitals, homes for elderly persons and day care clinics) duly licenced to conduct such services.
- 3.5.17 **Freeport Operations:** The carrying out of 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.
- 3.5.18 The operation of a **Logistics** facility of at least 2000sqm specifically designed for 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.
- 3.5.19 **Industrial Packaging:** Packaging activities on an industrial scale through the use of automated systems.
- 3.5.20 The operation of **Hotels and Guest Houses** and their amenities as licensed by the Malta Tourism Authority.
- 3.5.21 The provision of **Knowledge Intensive Services** that rely on proprietary information technology solutions for their provision where 60% of the persons engaged are required to hold a degree at MQF6 or higher.
- 3.5.22 The **Restoration** and/or preservation of works of art and antiques.
- 3.5.23 The operation of temporary or permanent facilities used for **cultural events, trade shows, concerts, festivals, exhibitions or sporting activities and film projection.**

### 3.6 Qualifying Economic Activities in terms of NACE rev 2.0

Only economic activities listed in Section 3.5 are considered qualifying, yet activity which falls under the below NACE categories and result in a qualifying activity as described in Section 3.5 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, and by Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments, and as may be subsequently amended.

A project may only be assisted if it results in a qualifying activity as outlined in Section 3.5. 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.

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

## 4. Eligible Project Expenditure

- 4.0.1 Eligible project expenditure shall be the acquisition of Qualifying Tangible and Intangible Assets required for the implementation of an eligible Initial Investment Project, or the estimated wage costs arising from job creation as a result of an initial investment, as detailed further below.
- 4.0.2 Any taxes (such as Value Add Tax) or Government induced charges (such as customs charges and vehicle registration costs) shall not be considered to be part of the eligible expense related to the asset.
- 4.0.3 Costs related to services incidental to the procurement of the asset (such as shipping, installation and commissioning) shall be considered as an integral part of the eligible cost if this is allowed within the applicable accounting standards and evidence is provided that such costs are directly related to the investment project.

### 4.1 Qualifying Tangible Assets

- 4.1.1 For the purpose of this incentive, 'Qualifying Tangible Assets' means assets consisting of land, buildings (including fittings and furnishings), plant, machinery and equipment.
- 4.1.2 The assets acquired shall be new except:
- a) for SMEs which may also acquire used assets as long as such assets had not previously been used in Malta and proof is provided that such equipment is compliant to the latest environmental standards;
  - b) for the acquisition of an establishment.
- 4.1.3 Only the procurement of assets required for the implementation of the initial investment project required for carrying out of the qualifying economic activity may be supported. The acquisition of works of art, antiques, collectables and similar items shall be considered ineligible.
- 4.1.4 The costs for the acquisition of motor vehicles shall be considered ineligible except for special purpose vehicles considered part of the initial investment project and an integral part of the qualifying economic activity.
- 4.1.5 Costs related to the lease of tangible assets (except land and buildings) may be taken into account if the lease agreement contains an obligation for the beneficiary of the aid to purchase the asset upon expiry of the term of the lease. In such cases, the lease must take the form of financial leasing.
- 4.1.6 Costs related to land, buildings and immovable structures shall be considered in adherence to the following parameters:
- a) Only buildings and structures which are duly licensed and where a qualifying economic activity is carried out shall be considered.
  - b) The procurement of land shall be considered as eligible as long as the industrial buildings and structures forming part of the initial investment project are constructed thereon.
  - c) Costs incurred for the purchase of land and other eligible preparatory works made for the purpose of the project shall be considered only if incurred in less than twenty-four (24) months before the Start of Works.
  - d) The value of land and buildings shall be adjusted to deduct the cost of any areas in excess of the requirements of the supported investment project and qualifying activity as shall be established by a competent professional.
  - e) Costs related to the construction of showrooms, retail outlets, restaurants, cafeterias and similar permanent facilities directly serving the general public shall not be supported unless such investments are an integrated amenity of a hotel investment project or part of permanent facilities used for cultural events, trade shows, concerts, festivals, exhibitions or sporting activities, film projection, Cultural Events. When such costs are incorporated in an eligible investment, the value

of land, buildings or structures shall be accordingly adjusted as shall be established by a competent professional. When these costs are incurred as part of a hotel investment project or part of a permanent facility used for cultural events, trade shows, concerts, festivals, exhibitions or sporting activities, film projection, the eligible costs shall be capped at ten percent (10%) of the value of the approved investment project.

- f) Costs incurred in relation to the finishing of eligible buildings and structures as required for the eligible business activity, shall be considered as eligible. These costs may include plastering, rendering, cabling, and other costs incurred as part of an initial investment, carried out after the acquisition date.
- g) Costs related to the lease of land and buildings shall be considered as eligible if the lease covers a period which extends for at least three (3) years or five (5) years in the case of large undertakings beyond the expected completion date of the investment project. Only new lease agreements required for an initial investment or an initial investment in favour of a new economic activity shall be considered eligible. Irrespective of the lease period the aid shall be limited to the first ten (10) years. The eligible lease value shall be capped at the rate established in the original lease agreement, and any amendments made thereafter to increase the lease value shall not be considered.
- h) Procurement of land to be operated as a quarry or a landfill shall be considered as ineligible.

## 4.2 Qualifying Intangible Assets

4.2.1 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 amortisable assets;
- c) purchased under market conditions from third parties unrelated to the buyer;
- d) included in the assets register of the undertaking receiving the aid and must remain associated with the project for which the aid is granted for at least three (3) years or five (5) years in the case of large enterprises.

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

## 4.3 Qualifying assets when acquiring the assets of an establishment

4.3.1 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.

## 4.4 Calculating the value of investment on the basis of jobs created

- 4.4.1 The value of qualifying expenditure may be calculated by considering the wage costs of jobs directly created by the initial investment project. When opting to calculate the qualifying expenditure by considering wage costs, the beneficiary would still be required to implement an investment project through the acquisition of tangible and/or intangible assets.
- 4.4.2 For calculating the value of qualifying investment on the basis of jobs 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 jobs created as a result of an initial investment, calculated over a period of two (2) years.
- 4.4.3 Disbursements of support will be calculated on the gross wage before tax and compulsory contributions such as social security costs. Only increases as stipulated in the employment contract and the annual cost of living adjustment as stipulated by the Government shall be considered.
- 4.4.4 In establishing the number of jobs created as a result of an initial investment project, the following parameters shall be taken into consideration:
- a) The investment shall lead to a net increase of the number of employees in the establishment concerned, compared with the average over the previous twelve (12) months, meaning that any posts lost during that period must be deducted from the apparent created number of jobs. The number of persons employed full-time, part-time and seasonal has to be considered with their annual labour unit fractions.
  - b) Each post shall be filled within three (3) years of completion of works, as established in the Approval.
  - c) New employees should be employed as replacements of other employees (at group level) within the undertaking when an existing employee is transferred to fulfil a job created as a result of the Initial Investment Project.
  - d) Each job created must be maintained in Malta for a period of three (3) years or five (5) years in case of large enterprises. If the job created is not maintained any aid disbursed shall be refunded by the beneficiary.

## 5. Aid Intensity

- 5.0.1 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.
- 5.0.2 The amount of investment aid that may be awarded in terms of these regulations for a given investment project shall not exceed the lower applicable intensity specified below:
- 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. 15% in respect to initial investment project carried out by 'Small' and 'Medium-sized' undertakings in the development of hotels, guest houses and their amenities as licensed by the Malta Tourism Authority.
  - d. 10% of the qualifying expenditure for an undertaking which qualifies as a 'Large' undertaking;
- 5.0.3 For 'Large Investment Projects' meaning initial investment projects with value of eligible costs exceeding EUR 50 million, calculated at prices and exchange rates on the date of granting the aid, 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.

5.0.4 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.



## 6. Benefiting from Investment Aid

6.0.1 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.

6.0.2 In reviewing an application, the Corporation:

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

### 6.1 Application Process

6.1.1 Fiscal aid under this measure is non-discretionary and shall be awarded to any project that meets the eligibility criteria.

6.1.2 While in principle this is a fiscal measure, yet upon request of an applicant and at the discretion of Malta Enterprise, a cash grant may be awarded in respect to initial investment projects that provide significant growth to the Beneficiary and that might not be feasible should the aid be of a fiscal nature. Any such grant must be approved in writing by Malta Enterprise before the Start of Works.

6.1.3 Applications for support must be submitted to the Corporation by 31st October 2021.

### 6.2 Project Approval

6.2.1 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.

6.2.2 In instances where aid is awarded prior to commencement of the qualifying economic activity, any award shall be conditional to the fact that the resultant investment shall result in the beneficiary conducting one or more qualifying economic activities.

6.2.3 The approval of the Corporation shall establish the maximum support to be awarded in support of the Project.

### 6.3 Project Changes

6.3.1 The Corporation understands that beneficiaries may need to revise their plans during the implementation of a project. In such instances, the beneficiary will be required to submit a comprehensive list of changes supported by a full justification for these changes, based on which a review of the project will be carried out and an updated letter of approval shall be issued. Where a cash grant has been approved only additional eligible expenditure incurred after the updated letter of approval is issued shall be considered as eligible.

## 6.4 Claims

- 6.4.1 Tax credits or cash grants awarded under these guidelines may be claimed in line with the conditions specified in the Corporation's approval. When submitting a claim, the beneficiary shall provide copies of documentation confirming that transactions meeting all the legal requirements in respect to the applicable fiscal regulations and must also provide evidence that any transaction was conducted through a licensed financial intermediary (such as a bank).
- 6.4.2 Claims may be made against actual costs incurred, hence for assets financed through a lease agreement, claims shall be submitted *pari passu* with the lease payments even if these extend beyond the project completion date.
- 6.4.3 Where the aid is calculated on the basis of jobs created as a result of the approved project, the Corporation will additionally (to the above) require employment contracts and copies of employment forms as registered with Jobsplus. Evidence of the transactions related to wage costs as conducted through a licensed financial intermediary (such as a bank) must also be provided.
- 6.4.4 Once the Corporation verifies the claim documentation, it will notify the beneficiary of the amount of tax credits that have been awarded or issue a reimbursement if the aid has been awarded in the form of a cash grant.

## 6.5 Utilisation of Tax Credits

- 6.5.1 Any tax credits awarded may only be utilised by the beneficiary as long as the activity supported is still being carried out at the establishment. The applicant shall give consent in his tax return to the Commissioner for Revenue Department to extract tax credits data from the Corporation. The Corporation shall annually provide the beneficiary with a statement of any tax credit balance until all allocated tax credits are utilised.
- 6.5.2 All documentation must be kept available for at least ten (10) years from the date on which the project is completed.

## 6.6 Monitoring

- 6.6.1 Beneficiaries will be subject to monitoring to ensure that the approved investment project is implemented and maintained in accordance to:
- a) the applicable Regulations and Incentive Guidelines;
  - b) the terms and conditions of the Approval Letter issued by the Corporation;
  - c) any applicable state aid obligations and regulations.
- 6.6.2 Monitoring shall entail the verification of the documentation related to the investment project and the visual confirmation of the works carried out. In conducting this review, the Corporation may request any documentation it deems relevant and conduct site visits at the applicant's place of business. The Corporation may also commission third parties to carry out verifications and on-site checks on its behalf.

## 6.7 Sanctions and Recovery of Aid

- 6.7.1 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 approved aid and apply penalties or request recovery of aid in the case of breach of these Guidelines or the conditions set down in the approval documentation and any relevant regulations.

## 7. State Aid Rules and Obligations

7.0.1 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, and by Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments, and as may be subsequently amended.

7.0.2 The incentive is not applicable to the following:

- a) Activities listed down in Articles 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, unless the undertaking was not in difficulty on 31 December 2019 but became an undertaking in difficulty in the period from 1 January 2020 to 30 June 2021.

7.0.3 Furthermore assistance may not be granted if the aid is:

- a) 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.
- b) contingent upon the use of domestic in preference to imported goods.
- c) 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.

### 7.1 Rules on Cumulation of Aid

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

### 7.2 Transparency Obligations

7.2.1 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.

## 8. Contact Details

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**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.**

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