



Incentive Development Unit

MALTA ENTERPRISE ACT

INCENTIVE GUIDELINES

Thematic: National Regional Development Aid –
Investment Aid

Regulation: Investment Aid Regulations

**Title of
Incentive:** INVESTMENT AID

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1. Introduction

1.1 Scope and Background

National Regional Investment aid is designed to assist in Malta's development by supporting investment and job creation. This aid promotes the expansion and diversification of undertakings located in Malta and to encourage other entities to set up new establishments.

Investment aid promotes investment and job creation. This incentive provides tax credits expressed as a percentage of the investment in qualifying expenditure.

This measure is effectively a transposition of Regulation 5 of the Business Promotion Regulations, Chapter 325 of the Laws of Malta with alignment to the **Guidelines on National Regional Aid for 2007-2013** issued by the EU Commission on 4th March 2006 (2006/C 54/08).

1.2 Duration of the scheme.

This incentive comes into force in fiscal year commencing on 1st January 2008 and will apply to expenditure incurred on or after 1st January 2008 and will be reviewed after 31st December 2013.

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

1.3 Legal Basis

These Guidelines are issued pursuant to Article 8(3)(a) of the Malta Enterprise Act, Chapter 463 of the Laws of Malta

The Legal Notice entitled 'Investment Aid Regulations' provides the parameters of the aid awarded under this scheme.

The aid intensities for investment aid and the general conditions are in line with the *Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to National Regional Investment aid (Block Exemption Regulation for Regional Aid – Official Journal L 302 of 01.11.2006, p. 29)*.

This Aid Scheme has been registered by the Commission under the Regional Aid Block Exemption Regulation (EC 1628/2006) with reference XR10/2008.

1.4 Designated Authority

This incentive is administered by Malta Enterprise Corporation.

2. Eligibility

2.1 Eligible Activities:

Companies which carry on a trade or business which consist **solely** in one or more of the activities eligible for this incentive as defined in the eligible activities listed as per Regulation 3 under the Investment Aid Regulations, 2008 (Legal Notice 68 of 2008) with the following additional criteria under Guideline 2.2 below.

2.2 Additional criteria on eligible activities

Companies carrying out the **activities set out under paragraphs (b) to (i) below** shall only qualify for the tax credits provided by these Guidelines if their project is approved a priori by the Corporation in writing. In giving its approval, the Corporation may impose such conditions it may deem fit. Provided that Companies engaged solely in software development are deemed eligible to this incentive.

a) **Manufacturing:**

Applications for an Incentive Entitlement Certificate by companies whose trade or business consists of the production of motor vehicles, require prior approval by the State Aid Monitoring Board. Refer also to guideline 7.2 for other specific restrictions.

b) **Information and Communication Technology:**

Companies engaged in Information Technology (I.T.) require to carry out significant developmental activities to be considered for eligibility.

Companies operating in the following activities are not deemed as eligible:

- i. Gaming companies
- ii. Telecommunications

c) **Research and Development, and Innovation;**

The definition of Research and development and Innovation shall be that prescribed under the Legal Notice providing incentives for R&D.

d) **Eco-innovation, waste treatment and environmental solutions:**

“Eco-innovation” means an innovation resulting in significant and demonstrable progress towards the goal of sustainable development, through reducing impacts on the environment or achieving a more efficient and responsible use of resources, including energy.

“waste treatment” means physical, thermal chemical or biological processes, including sorting, which change the characteristics of the waste in order to reduce its volume or

hazardous nature, facilitate its handling or enhance recovery, and shall include waste management.

"Environmental Solutions" means any solutions implemented to prevent or reduce the environmental impacts of an activity, or a product at any stage of its life cycle .

e) Biotechnology:

Biotechnology comprises the production or development of intellectual property or goods or the rendering of services where such products, development or rendering of services result from, or relate to, the study, research, discovery, application, modification or development of living organisms or materials derived from them.

f) Facilities for Filming and Audiovisual productions shall include:

(i) the production of audio visual productions consisting of feature films, television films, advertisements and documentaries, as may be approved by the Corporation.

(ii) the provision of film studio and film sets, editing facilities and filming equipment required in the production of feature films, television films, advertisements and documentaries, as may be approved by the Corporation.

Furthermore, companies engaged in the above mentioned activities need to have their project pre-approved by the Malta Film Commission to ensure that the applicant satisfies the minimum standards in the sector.

g) Provision of Tertiary Education in the fields of 'science and technology':

Companies need to provide recognised degrees in applied sciences as required by industry, as may be approved by Malta Enterprise.

h) Provision of private health care services:

Where health care services entail the setting up of new projects, as may be approved by Malta Enterprise, carrying out an initial investment of not less than 2.5 million Euros in medical equipment, excluding any investment in land or building.

i) Logistics operations by large undertakings

Logistics means logistics operations, as may be approved by Malta Enterprise, that create more than 50 new jobs (FTE), and that include part-transformation that adds value to the product. Mere warehousing operations are not deemed eligible.

2.3 Pre-conditions to be satisfied by the applicant

Applicants must comply with the following additional conditions in order to be eligible:

- be duly incorporated under the Company's Act, Chapter 386 of the Laws of Malta being a partnership *en nom collectif*, *en commandite* or a limited liability company;

or

- any body of persons constituted, incorporated or registered outside Malta, and of a nature similar to the above;

or

- be duly registered as a Cooperative under the Co-operatives Societies Act, Chapter 442 of the Laws of Malta.

3. Incentive Description

3.1 Details of Incentive

The following rules and conditions shall apply when implementing this support measure:

1. **Investment Aid** shall be awarded to a qualifying company in respect to an **initial investment** project in relation to qualifying expenditure.
2. **'Qualifying expenditure'** shall mean expenditure incurred in acquiring or developing **tangible** and **intangible** assets where such expenditure is incurred on or after 1st January 2008, relating to an initial investment project comprising of any of the following:
 - i. the setting up of a new establishment;
 - ii. extension of an existing establishment;
 - iii. diversification of the output of an establishment into new, additional products;
 - iv. a fundamental change in the overall production process of an existing establishment;
 - v. the acquisition by an independent qualifying company of capital assets directly linked to an establishment which has closed or which would have closed had it not been purchased.

(1) **'Tangible assets'** shall mean land, industrial buildings or structures, and plant and machinery.

Provided that:

- (i) Land, buildings or structures exclude showrooms;
- (ii) The term 'Plant and machinery' shall have the meaning attributed to it for the purposes of the Income Tax Acts but exclude motor vehicles, except for such specialised motor vehicles as may be approved by the Corporation; works of art and antiques. Except in the case of SMEs, such assets acquired should be new and in any case, first used in Malta
- (iii) Assets shall remain in the establishment receiving the investment aid for at least five years or three years in the case SMEs.

Provided further that:

- (i) Immovable property held by title of emphyteusis; and
- (ii) Any asset acquired under a contract of hire which stipulates that ownership of the asset shall or may pass to the lessee when a specified amount has been paid, shall, for the purposes of this definition, be deemed to be assets acquired by the company.

(2) '**Intangible assets**' means assets acquired through the acquisition of patent rights, licences, know-how or unpatented technical knowledge.

Provided that:

For SMEs, the full costs of investments in intangible assets through the transfer of technology by the acquisition of patent rights, licences, know-how or unpatented technical knowledge is considered eligible for investment.

Provided further that:

For large companies, such costs of investments in intangible assets are eligible costs only up to a limit of 50% of the total eligible investment expenditure for the project.

Provided further that:

In all cases, **intangible assets** must satisfy the following conditions:

- i. they must be used exclusively in the region of Malta;
- ii. they must be regarded as amortizable assets;
- iii. they must be purchased from third parties under market conditions;
- iv. they must be included in the assets of the company receiving the aid and remain in the establishment receiving the investment aid for at least five years or three years in the case SMEs.

3. The acquisition of assets directly linked to an establishment may also be regarded as initial investment provided the establishment has closed or would have closed had it not been purchased and is bought by an independent investor.

Provided that:

- i. Only the costs of buying assets from third parties should be taken into consideration.
- ii. All aid awarded in the past shall be deducted.

Provided further that:

- i. The transaction must take place under market conditions;
- ii. The sole acquisition of the shares of the legal entity of an enterprise does not qualify as initial investment

4. **Investment aid** is calculated either in reference to tangible and intangible investment costs resulting from the initial investment project or to the value of wage costs for jobs directly created by the initial investment project as per rule 8 below.

Provided that:

The total amount of investment aid that may be awarded in terms of these regulations for a given investment project shall:

- i. in the case of a company which qualifies as a 'Small' enterprise, never exceed 50% of the eligible expenditure;
- ii. in the case of a company which qualifies as a 'Medium' enterprise, never exceed 40% of the eligible expenditure;
- iii. in the case of a company which qualifies as a 'Large' enterprise, never exceed 30% of the eligible expenditure.

Provided further that:

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

Where a '**Large Investment Project**' shall mean an initial investment above Euro50million and shall have the meaning assigned to it in section 4.3 of the EU '*Guidelines on National Regional Aid for 2007-2013*'.

Such large projects need to be approved in writing by Malta Enterprise before work commences on the project.

5. The investment aid provided under these regulations will take the form of **tax credits**.

Provided that:

For projects that provide a significant contribution to the development of the Maltese economy, the entitlement of aid under these regulations may be exceptionally converted to other forms of aid, at the discretion of Malta Enterprise.

Provided further that:

Any conversions from tax credits shall be pre-approved by Malta Enterprise Corporation. Any aid granted in any form except tax credits must be pre-approved in writing before works commences on the project.

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

7. For the purposes of this incentive, investment aid based on **job creation** shall be based on a percentage of the wage cost for the first twenty-four month period of the employment of an individual in respect of whom the job was created.

8. When calculating aid on the basis of **wage costs**, the following provisos will apply:

i. '**Job creation**' means a net increase in the number of employees directly employed in a particular establishment compared with the average over the previous twelve months. Any jobs lost during that twelve month period must therefore be deducted from the apparent number of jobs created during the same period.

ii. A job is deemed to be directly created by an investment project if the job is directly connected with the activity to which the investment relates and is created within three years from the completion of the investment. Jobs created shall also include additional employment following an increase in the utilisation rate of the capacity created by the investment.

iii. Where the aid is calculated on the basis of wage costs, the posts must be filled within three years of the completion of the works. Each of the jobs created through the assisted investment must be maintained in Malta for a period of five years from the date the post was first filled.

Provided that:

In the case of SMEs, the jobs created are maintained for a minimum period of three years.

iv. An enterprise shall be considered to have created a job as a result of an investment project for those individuals who are employed by the company and not in replacement of another individual.

v. 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 by such part-time employees by one thousand, seven hundred and sixty.

Provided that:

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

Provided further that:

The amount of investment aid provided to a company in the form of a tax credit shall be based on the wage cost incurred by that company in the accounting period ending in the year preceding that year of assessment.

- vi. For the purpose of determining whether an individual has been employed by a company for the required period as specified in (iii), it shall be deemed that the date of commencement of employment of an individual who has been employed by that establishment in replacement of another individual whose employment was terminated for whatever reason, shall be the date of commencement of employment of the individual whose employment was replaced, provided that any such individual is employed within six months of the date of termination of employment of the individual whose employment is replaced.
9. Any tax credits awarded under this incentive shall not give rise to a right of any tax refund (not applicable to any tax overpaid). Any tax credit that is not absorbed in a particular year of assessment may be carried forward and shall be increased at the rate established as the applicable 'reference rate' for Malta as calculated by the EU Commission in accordance with Commission notice on the method for setting the reference and discount rates. The applicable rates are provided in appendix A.
10. Where, for a year of assessment, an undertaking qualifies for a tax credit under the provisions of these rules, it shall avail itself of any tax credit awarded under the Business Promotion Act before any set-off is made in respect of the tax credit due under these rules.
11. No tax credit shall be due to an undertaking for a year of assessment unless:
- i. it is claimed in the appropriate section of a tax return submitted by electronic means;.
 - ii. it submits the annual returns to Malta Enterprise as set out in Guideline 4.1 within a period not exceeding one month after the relative tax return date.

4. Application Process

4.1 Application form(s) and documentation required

4.1.1 All application forms and documents may be downloaded from:

First time applicants may submit an application for determination of eligibility under this incentive at any time of the year (**refer to Section 5**). Companies will be required to download the relevant application form(s) from the Malta Enterprise website incentives.maltaenterprise.com or otherwise by contacting Malta Enterprise.

4.1.2 Annual returns required

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

i). **Audited financial accounts**

ii). **Income Tax Return**

iii). Returns must be accompanied by a **statement by the auditor** of the company for the accounting period in question, confirming that, to the best of his knowledge and belief, the declaration referred to in (iv) below is correct

iv). **Declaration**, signed by all the directors of the company or by the company secretary where such declaration is approved by the Board of Directors of the company, confirming that throughout the relevant accounting period the company's trade or business consisted solely of the activities eligible for the incentives provided by this Guideline and that the company is not disqualified from benefiting from the incentives provided by this guideline by virtue of any of the disqualifying activities listed under the proviso to Regulation 3(1) of the Legal Notice giving rise to these Guidelines. Where the declaration is signed by the company secretary it shall also state:

- whether all the directors of the company were present at the meeting approving the declaration and, if not all the directors were present, whether the meeting was properly convened as required by the company's memorandum and articles;

-whether the declaration was unanimously approved by all the directors present at the meeting and, if approval was not unanimous, the number of votes against and the number of votes for the motion.

v). In the case of personnel costs the enterprise must backup these claims through the official Final Settlement System **FSS forms** and time sheets where applicable.

Malta Enterprise may require other relevant documents to verify the claims under this incentive.

4.2 General Information

The completed form(s) and any relevant documentation should be submitted by hand or posted to:

Malta Enterprise
Enterprise Centre,
Industrial Estate,
San Gwann
SGN3000

5. Entitlement to Aid

5.1 Determination

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

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

All complete applications meeting the terms and conditions of participation and compliant with the rules and conditions of this incentive will be assessed by Malta Enterprise. Applicants need to submit:

- **memorandum and articles of association** of the company
- latest **financial statements**, where applicable
- **SME Declaration form**
- **A statement** declaring that the trade and business of the company consists solely of one of the eligible activities

Malta Enterprise will consider applications from enterprises that meet the eligibility criteria and that demonstrate a potential positive contribution to the regional development of Malta. Provided that companies that had already received a determination under Regulation 4 of the Business Promotion Regulations (Chapter 325 of the Laws of Malta) need not apply again unless there is a change in their trade or business.

5.2 Notification of results

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

6. Further Information

For the full definition of SME, see the “Official Journal of the European Union (L124/36) dated 20th May 2003 – Commission Recommendation of 6th May 2003 concerning the definition of micro, small and medium-sized enterprise”.

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

7. State Aid Rules and Obligations

7.1 Applicable State Aid

Investment Aid is regulated by the Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (Block Exemption Regulation for Regional Aid – Official Journal L 302 of 01.11.2006, p. 29) and by the applicable Acquis on State aid.

This Aid Scheme has been registered by the Commission under the Regional Aid Block Exemption Regulation (EC 1628/2006) with reference XR10/2008.

7.2 State Aid Conditions

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

1. The fisheries and aquaculture sector;
2. The shipbuilding sector;
3. The coal industry;
4. The steel industry;
5. The transport sector;
6. The synthetic fibres sector.

It also does not apply to activities linked to the primary production of agricultural products listed in Annex I to the Treaty. Yet it shall apply to the processing and marketing of agricultural products to the exclusion of the manufacture and marketing of products which imitate or substitute for milk and milk products, as referred to in Article 3 (2) of Regulation (EEC) No 1898/87.

Furthermore assistance may not be granted if the:

- a.) aid is related to export activities towards third countries or Member States, namely aid directly linked to quantities exported, to the establishment and operation of a distribution network or to the other current expenditure linked to export activity;
- b.) aid is contingent upon the use of domestic in preference to imported goods.

7.3 Rules on cumulation of aid

- The aid ceilings laid down in sections 3.1 (paragraph 4) shall apply to this incentive.
- 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.

8. General Rules and Conditions

8.1 Monitoring

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

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

8.2 On-Site Visits

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

8.3 Sanctions and recovery of aid

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

9. Contact Details

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

Postal Address:

Malta Enterprise
Enterprise Centre
Industrial Estate
San Gwann
SGN 3000
Malta

Tel: +356 2542 0000

Fax: +356 2542 3401

Websites: www.maltaenterprise.com
support.maltaenterprise.com

Email: customer.relations@maltaenterprise.com

Appendix A

The rate established as the applicable 'reference rate' for Malta as calculated by the EU Commission can be found at:

http://ec.europa.eu/comm/competition/state_aid/legislation/reference_rates.html .

The reference rate is calculated in accordance with with Article 10 of Commission Regulation (EC) No 794/2004 of 21 April 2004 (OJ L 140, 30.4.2004, p. 1).

The changes in the 'reference rate' for Malta are listed below:

Date Effective	Rate
1 st May 2004	7.00%
1 st January 2008	5.19%
1 st July 2008	4.59%
1st October 2008	5.36%