

INCENTIVE GUIDELINES



Thematic:

Research, Development and Innovation

Regulation:

Assistance for Research and Development and Innovation Regulations, 2009

Title of Incentive:

Research and Development - Tax Credits

- i. Industrial Research Projects;
- ii. Experimental Development Projects;
- iii. Intellectual Property Rights Costs (for Small and Medium-Sized Enterprises).

This incentive forms part of a group of R&D&I incentives under the measure entitled Assistance for Research and Development and Innovation State aid No N 604/2007.

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www.maltaenterprise.com

<http://incentives.maltaenterprise.com>

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1. Introduction

1.1 Scope

Advances in technologies, new regulations and changes in market demands require businesses to continually innovate in order to improve their market position. As a result, enterprises that are able to successfully research, innovate and develop ideas into new products and services will be in a better position to sustain growth and compete effectively.

This incentive has the scope of:

- providing assistance to enterprises investing in Industrial Research and Experimental Development to develop innovative products and solutions.
- supporting Small and Medium-sized Enterprises (SMEs) in protecting the knowledge gained from Industrial Research and Experimental Development projects.
- encouraging cooperation between firms by providing additional assistance for collaborative Industrial Research and Experimental Development.

1.2 Duration of the incentive

These *Incentive Guidelines* will remain active until 31st December, 2013. Malta Enterprise may review, update and amend these *Incentive Guidelines*.

1.3 Pre-Approval

Enterprises should seek approval of any R&D project prior to commencement. Tax Credits may only be provided on allowable expenditure that is pre-approved in the *Incentive Entitlement Certificate* issued by Malta Enterprise.

1.4 Legal Basis

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

The Legal Notice entitled *Assistance for Research and Development and Innovation Regulations, 2009*, issued under the *Malta Enterprise Act*, provides the legal basis of this incentive.

1.4 Designated Authority

This incentive is administered by Malta Enterprise.

2. Eligibility

2.1 Eligible Enterprises

Enterprises planning to carry out *Industrial Research* and *Experimental Development* projects are eligible to apply for assistance under this incentive.

In order to be eligible, applicants must additionally satisfy the following criteria. They must be either:

- a partnership constituted under the Companies Act¹, being a partnership *en nom collectif*, *en commandite* or a limited liability company;

or

- a body of persons constituted, incorporated or registered outside Malta and of a nature similar to the aforesaid partnerships and registered as an oversea company in accordance with the Companies Act;

or

- be duly registered as a co-operative society under the Co-Operative Societies Act²,

2.2 Exclusions

Assistance under the incentive cannot be granted to:

- i. Research organisations³;
- ii. Firms in difficulty in terms of *Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty*, Official Journal C244, 01.10.2004.

¹ Chapter 386 of the Laws of Malta

² Chapter 442 of the Laws of Malta.

³ A research organisation is:

- an entity such as university or research institute, irrespective of its legal status (organised under public law or private law) or way of financing, whose primary goal is to conduct fundamental research, industrial research or experimental development and to disseminate their results by way of teaching, publication or technology transfer; all profits are reinvested in these activities, the dissemination of their results or teaching; undertakings that can exert influence upon such an entity, in the quality of, for example, shareholders or members, shall enjoy no preferential access to the research capacities of such an entity or to the research results generated by it.

3. Incentive Description

This incentive is awarded to enterprises carrying out Industrial Research and Experiential Development projects leading to the development of new or significantly improved products, processes or services. Additionally, SMEs may benefit from tax credits in relation to costs incurred for registering Intellectual Property which was the result of their Industrial Research and Experiential Development efforts.

3.1 Details of Incentive

Through this incentive Malta Enterprise may provide assistance **in the form of Tax Credits**. These tax credits may be granted on eligible costs incurred by an:

- 1) enterprise in running:
 - a. **Industrial Research** Projects;
 - b. **Experimental Development** Projects.

Any Research and Development (R&D) projects supported shall be completed within three consecutive years from the date of approval.

- 2) SME in registering **intellectual property** (obtaining and validating patents as well as other industrial property rights) attained through Industrial Research and Experimental Development projects.

All costs must be incurred within two consecutive years from when the Industrial Research and Experimental Development projects is finalised.

3.2 Definitions

The following definitions shall apply

1) 'Industrial Research' means planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components of complex systems, which is necessary for the industrial research, notably for generic technology validation, to the exclusion of prototypes as covered by 'experimental development' (see below);

2) 'Experimental Development' means acquiring, combining, shaping and using of existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services. These may also include, for example, other activities aiming at the conceptual definition, planning and documentation of new products, processes and services. The activities may comprise producing drafts, drawings, plans and other documentation, provided that they are not intended for commercial use.

The development of commercially usable prototypes and pilot projects is also included where the prototype is necessarily the final commercial

product and where it is too expensive to produce for it to be used only for demonstration and validation purposes. In case of a subsequent commercial use of demonstration or pilot projects, any revenue generated from such use must be deducted from the eligible costs.

The experimental production and testing of products, processes and services are also eligible, provided that these cannot be used or transformed to be used in industrial applications or commercially.

Experimental development does not include the routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements.

3) For the full **definition of SME**, refer to *Annex I of Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)*.

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

3.3 Collaborations

A higher percentage of aid may be provided to enterprises that enter into a formal collaboration agreement with other enterprises or research organisations.

1) Collaboration between enterprises:

To benefit from these collaboration bonuses, the project must involve effective collaboration between at least two enterprises that are independent⁴ of each other. The following conditions must also be fulfilled:

- a. No single enterprise must bear more than 70% of the eligible costs of the collaboration project;
- b. The project must involve collaboration with at least one SME;

or

The project must be cross-boarder, that is, the research and development activities are carried out in at least two different European Union Member States.

2) Collaboration between an enterprise and a research organisation:

To benefit from these collaboration bonuses the following conditions must be fulfilled:

- a. The collaboration agreement between partners must be provided at application stage;

⁴ Two enterprises are considered as independent if no more than 25% of the capital or voting rights of an enterprise are owned or controlled by the other enterprise.

- b. The research organisation must bear at least 10% of the eligible project costs;
- c. Any transfer of funds from the enterprise (beneficiary) to the research institute must be agreed to in the collaboration agreement and must reflect market prices.
- d. Any assistance granted must not be transferred to the research institute.
- e. The research organisation shall have the right to publish the results of the research project insofar as they stem from research implemented by the organisation.

3.3 Eligible costs and the applicable aid intensity

3.4.1 Eligible Expenditure - Industrial Research and Experimental Development.

The following costs are considered as eligible as long as they are incurred in relation to an approved Industrial Research or Experimental Development project.

- (A) **Personnel costs**
Wages of researchers and technicians, to the extent and for the duration that they are directly engaged in the research project;
- (B) **Instruments and equipment**
Costs of instruments and equipment to the extent and for the duration of the research project. If such instruments and equipment are not used for their full life for the research project, only the depreciation costs corresponding to the life for the research project, as calculated on the basis of good accounting practices shall be considered as eligible.
- (C) **Costs for building**
Depreciation costs of buildings calculated on the basis of good accounting practice corresponding to the duration of and direct use in the research project.
- (D) **Material, supplies and similar products**
The costs of material, supplies and similar products, bought specifically for the research project and incurred directly as a result of the research activity.
- (E) **Contractual research, technical knowledge and patents**
Costs of contractual research, technical knowledge and patents bought or licensed from outside sources at market prices (where the transaction

has been carried out at arm's length and there is no element of collusion involved), as well as costs of consultancy and equivalent services used exclusively for the research activity.
These costs may not exceed 25% of the total project costs.

(F) **Additional overheads**

Additional overheads incurred directly as a result of the research project.
These costs may not exceed 10% of the total project costs.

3.4.2 Eligible Expenditure - Registration of Industrial Property Rights - SMEs.

The following cost items incurred by an SME for obtaining and validating patents and other intellectual property rights in relation to an **approved** Industrial Research or Experimental Development project shall also be eligible:

(G) **Costs preceding grant of IP rights**

Costs preceding the grant of the right incurred for:

1. the preparation, filing and prosecution of the application of the right in the first legal jurisdiction
2. renewing the application before the right has been granted.

(H) **Translation costs**

Translation costs incurred in order to obtain or validate the IP right in other legal jurisdictions;

(I) **Costs incurred in defending the validity of the right**

Costs incurred in defending the validity of the right during the official prosecution of the application and possible opposition proceedings, even if such costs occur after the right is granted.

3.4.3 Maximum Aid Intensity

The maximum levels of assistance that may be provided under this incentive are found in the table below.

Research and Development	Small Enterprise	Medium Enterprise	Large Enterprise
Industrial Research Projects	70%	60%	50%
Experimental Development Projects	45%	35%	25%
Collaborative Industrial Research Projects (as per section 3.3 of these Incentive Guidelines)	80%	75%	65%
Collaborative Experimental development Projects (as per section 3.3 of these Incentive Guidelines)	60%	50%	40%
Additional incentives for SMEs			
Industrial property costs related to Industrial Research projects.	70%	60%	Not Applicable
Industrial property costs related to Experimental Development projects	45%	35%	

3.4 Additional Provisions

The following additional provisions shall apply to any costs that may be supported through this incentive:

- i. The summation of costs incurred in relation to *contractual research, technical knowledge and patents* [(E) above] and *additional overheads* [(F) above] must not exceed 25% of the total project cost.
- ii. Any Tax Credit must be claimed on costs incurred by the applicant after the aid is approved.
- iii. All transactions relevant to the approved project must be accounted for separately;
- iv. Subcontracting is not considered to be effective collaboration.

4. Application Process

Instructions to applicants and application forms may be downloaded from the Malta Enterprise website: <http://incentives.maltaenterprise.com/RD/taxcredit>.

It is recommended that potential applicants contact Malta Enterprise prior to submitting their application. Malta Enterprise staff will support prospective applicants:

- i. to understand the objectives of the incentive;
- ii. by explaining details relevant to this guideline document;
- iii. to address any problems that might be encountered when completing their application.

The complete application as described must be submitted to Malta Enterprise either by hand in a sealed envelope or by registered post. The application must be addressed to:

R&D Tax Credits
Malta Enterprise
Enterprise Centre,
Industrial Estate,
San Gwann SGN 3000

5. Evaluation and Entitlement of Aid

Aid under this incentive is subject to pre-approval by Malta Enterprise.

5.1 Evaluation and Entitlement

1. For a project to be assisted it must satisfy the definitions of Industrial Research and Experimental Development as defined in Section 3.2.
2. All applications will be assessed by Malta Enterprise in line with the terms and conditions set out in these Incentive Guidelines. The main evaluation criteria will be based the sustainability of the project to add value in terms of turnover, employment and investment.
3. In the case of collaborations Malta Enterprise will also assess the contractual collaboration agreement between partners and the expected benefits to be attained by the applicant.

5.2 Notification of results

Applicants will be notified in writing of the outcome of their application.

Once an R&D project is approved, an Incentive Entitlement Certificate will be issued in line with Section 28 of Part VI of the Malta Enterprise Act and will include such terms and conditions as may be set by the Corporation.

Details of the enterprise, the value of the aid granted and other non-confidential details of successful applicants may be published by Malta Enterprise.

6. Claiming Tax Credits

An enterprise shall claim tax credit on the allowable expenditure as approved in the *Incentive Entitlement Certificate* issued by Malta Enterprise.

The tax credit available under this incentive shall be due and may be claimed in the tax return from the year of assessment immediately following the year in which the relative expenditure is incurred.

Tax credits may be claimed on eligible expenditure as defined in section 3 of these guidelines. Any expenditure claimed shall meet all the following conditions:

- I. The expenditure is actually incurred by the enterprise and is not reimbursed to or otherwise recoverable by it;
- II. The expenditure satisfies all the conditions that may have been made applicable to the project in the *Incentive Entitlement Certificate*;
- III. The expenditure was incurred during the approved project period;
- IV. Details on the expenditure have been accurately, clearly and separately recorded/maintained along with supporting documentary evidence.
- V. Where the beneficiary may benefit from any other State Aid in respect of expenditure incurred in the carrying out the approved project, the beneficiary must ensure that any rules governing the cumulation⁵ of aid are respected.
- VI. Tax Credits must be calculated at the applicable intensity level as set in this *Incentive Entitlement Certificate*.

The beneficiary shall substantiate the eligible expenditure on which a tax credit is being claimed, by submitting an annual progress report to Malta Enterprise not more than one month after the beneficiary submits the income tax return to the Inland Revenue Department (IRD). The annual progress report must contain:

- I. a complete set of its audited financial statements as submitted to the IRD ;
- II. the income tax return as submitted to the IRD;
- III. The total amount of allowable expenditure broken-down by eligible cost item as defined in Sections 3.4.1 and 3.4.2.
- IV. The original fiscal documents (either a fiscal invoice or a fiscal receipt with a copy of the invoice) Expenditure should be presented as net of VAT;
- V. Proof of payment of the invoice. Copies of the encashed cheques or original bank advice documents showing all payments effected in relation to the claimed costs.
- VI. Justification of tax credits claimed:
 - a. For personnel costs the beneficiary must back these claims through the official Final Settlement System FSS forms and time sheets showing the time the person(s) spent directly engaged on the research project.

⁵ Refer to Section 8.2 **Cumulation**.

- b. Costs of instruments and equipment that are not used for their full life for the research project, the beneficiary must provide an explanation of how the depreciation costs corresponding to the life for the research project were calculated.
- c. Costs for the purchase of material, supplies and similar products the beneficiary must provide justification why these were required and how they were utilised.
- d. Costs related to the depreciation cost of buildings should be backed by a statement from an architect confirming the value of the claim.
- e. Overhead costs the beneficiary should provide justification for incurring these overhead costs and their relation to the project.
- f. The beneficiary should demonstrate that any contracted research, technical knowledge and patents was acquired at its market value.

6.1 Project Completion

Once the approved project is realised, applicants must submit a signed statement of completion to Malta Enterprise together with documentation and evidence of completion. Such documentation must be submitted within 60 days from the completion date of the project. Malta Enterprise shall review the documentation submitted and notify the applicant as well as the Inland Revenue Department of conformance.

- I. The statement of completion must highlight the following aspects:
 - a. The completion date of the project;
 - b. That all the conditions stated in the Incentive Entitlement Certificate have been observed.
- II. The statement of completion should also include the final annual report of the project (inline with the requirements set above).
- III. Malta Enterprise may at its discretion forward the certificate of completion and any documentation submitted in conjunction with the certificate to the Commissioner of Inland Revenue. The Commissioner may thereafter request an independent opinion from any other competent technical person or entity.

6.2 Unutilised Tax Credits

Any tax credits granted through this incentive shall not give rise to a right of any tax refund (not applicable on 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.

The applicable rates are provided in Appendix A.

7 State Aid Rules and Obligations

7.1 State Aid Regime:

The terms and conditions set out in these guidelines are in line with the *Community Framework for State Aid for Research and Development and Innovation OJ C 323 of 30.12.2006* (R&D&I Framework)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_323/c_32320061230en00010026.pdf]

This incentive forms part of a group of R&D&I incentives under the measure entitled Assistance for Research and Development and Innovation State aid No N 604/2007.

7.2 Cumulation

The aid ceilings fixed under R&D&I Framework shall apply regardless of whether the support for the aided project is financed entirely from State resources or is partly financed by the Community, except in the specific and limited context of the conditions established for Community funding under the RTD Framework Programmes, adopted respectively in accordance with *Title XVIII of the EC Treaty* or *Title II of the Euratom Treaty*.

Where the expenditure eligible for aid for R&D&I is eligible in whole or in part for aid for other purposes, the common portion will be subject to the most favourable ceiling under the applicable rules. This limitation does not apply to aid granted in accordance with the Community guidelines on State Aid to promote risk capital investments in SME⁶.

Aid for R&D&I shall not be cumulated with *de minimis* support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in the R&D&I Framework.

⁶ OJ C 194, 18.8.2006, p. 2.

8. Other Conditions

8.1 Changes to Approved Assistance

Any modification to an approved project must be immediately notified to Malta Enterprise. A written request describing the proposed changes and including comprehensive arguments justifying the changes must be submitted. Malta Enterprise will evaluate the proposed amendments and will inform the applicant in writing of the outcome pursuant to the evaluation. The outcome of such evaluation may lead to any of the following:

- i. A change in the amount of aid and/or activities supported.
- ii. A request for further information on the proposed changes.
- iii. A recommendation to reconsider the proposed amendments.
- iv. An approval of the proposed changes.
- v. A revocation or modification of the Incentive Entitlement Certificate.

Failure to notify Malta Enterprise of any changes to the project as approved may result in Malta Enterprise revoking the Incentive Entitlement Certificate and claiming back any support received by the beneficiary.

8.2 Monitoring

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

- i. the terms and conditions of the Incentive Entitlement Certificate;
- ii. these Incentive Guidelines and Assistance for R&D&I Regulations 2009;
- iii. any applicable State aid obligations and regulations.

8.3 On-Site Visits

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

8.4 Sanctions and recovery of aid

Malta Enterprise Act, 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*.

9. Contact Details

Further information on the scheme, as well as information and guidance on the filling in of the application form can be obtained by contacting Malta Enterprise on:

Postal Address: Malta Enterprise
Enterprise Centre
Industrial Estate
San Ġwann SGN 3000
Malta

Tel: +356 2542 3419
Fax: +356 2542 3401

Websites: www.maltaenterprise.com

Email: customer.relations@maltaenterprise.com

Appendix 1

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 Commission Regulation (EC) No 794/2004 of 21 April 2004 (OJ L 140, 30.4.2004, p. 1).
INCLUDE LINK

The applicable reference rates for Malta are listed below:

Date Effective	Rate
1 st January 2009	4.99%
1 st March 2009	3.47%
1 st April 2009	2.74%