

**L.N. 98 of 2003**

**BUSINESS PROMOTION ACT  
(Cap. 325)**

**Business Promotion (Amendment No. 2) Regulations, 2003**

IN exercise of the powers conferred upon him by section 59 of the Business Promotion Act, hereinafter referred to as the “Act”, the Minister responsible for Economic Services has made the following regulations:-

**1.** (1) The title of these regulations is the Business Promotion (Amendment No. 2) Regulations, 2003, and shall be read and construed as one with the Business Promotion Regulations, 2001, hereinafter referred to as “the principal regulations”. Citation and commencement.  
L.N. 135 of 2001.

(2) These regulations shall be deemed to have come into force as follows:

(a) paragraph (a) of regulation 2, paragraphs (a) and (b)(ii) of regulation 3, regulation 4, paragraph (a) of regulation 5 and regulation 7 shall be deemed to have come into force on the 1st January 2003;

(b) paragraphs (b), (c) and (d) of regulation 2, paragraph (b) of regulation 5 and regulations 6, 8 and 9 shall be deemed to have come into force on the 1st November 2000;

(c) paragraph (e) of regulation 2 shall be deemed to have come into force on the 1st January 2002 and shall apply with respect to year of assessment 2003 and subsequent years of assessment;

(d) paragraph (b)(i) of regulation 3, and regulation 10 shall be deemed to have come into force on the 1st January 2003 and shall apply with respect to year of assessment 2004 and subsequent years of assessment.

**2.** Regulation 2 of the principal regulations shall be amended as follows: Amends regulation 2 of the principal regulation.

(a) for paragraph (c) of the definition of “Corporation” there shall be substituted the following:

“(c) for the purpose of regulations 4, 5, 6, 7, 8, 9 10, 12, subregulations (6) to (9) of regulation 14, regulations 18, 20, 28 and 30 to 39, the Malta Development Corporation;”;

(b) in paragraph (a) of the definition of “qualifying expenditure”, the words “plant and machinery; or” shall be deleted and substituted by “plant and machinery (including computer software); or”.

(c) after paragraph (b) of the definition of ‘qualifying expenditure’, and immediately preceding the words “where the investment project”, there shall be added the words:

“where the tangible and intangible assets referred to in paragraphs (a) and (b) are used in the production of the income derived from the activities referred to in the second proviso to subregulation 5(12); and”

(d) In paragraph (i) of the third proviso to the definition of “qualifying expenditure” the words “which are used” shall be deleted and substituted by the words “which are new or used”.

(e) In paragraph (ii) of the fourth proviso to the definition of “qualifying expenditure”, the word “other” shall be deleted.

Amends regulation 3 of the principal regulations.

**3.** Regulation 3 of the principal regulations shall be amended as follows:

(a) in the proviso to subregulation (5) thereof, for the words “the determination shall be made on the basis of a reliable estimate of the enterprise, which estimated is to be approved by the Corporation”, there shall be substituted the words “the determination of whether or not a company satisfied those conditions shall be made by the Corporation on the basis of information provided by the company and any other information available to the Corporation.”.

(b) immediately after subregulation (11) thereof, there shall be added the following new proviso:

“Provided that this subregulations shall not be applicable for the purpose of determining whether or not an enterprise is a small, medium-sized or micro enterprise in order to establish:

(i) the tax benefits such enterprise will be entitled to in year of assessment 2004 and subsequent years of assessments;

(ii) the other benefits such enterprises will be entitled to as from 1 January 2003.”.

**4.** In paragraph (a) of regulation 4(2) of the principal regulations, for the words “31 December 2002” there shall be substituted the words “30 April 2003”. Amends regulation 4 of the principal regulations.

**5.** Regulation 6 of the principal regulations shall be amended as follows: Amends regulation 6 of the principal regulations.

(a) in paragraph (a) of subregulation (2) thereof, for the words “31 December 2002”, there shall be substituted the words “30 April 2003”; and

(b) in the first proviso to subregulation (3) thereof, for the word “multiplying” there shall be substituted the word “dividing” and for the words “dividing the product thereof,” there shall be substituted the words “and multiplying the result thereof”.

**6.** In subregulation 22(2) of the principal regulations, for the words “by regulation 8”, there shall be substituted the words “by regulations 8 and 9” and after the words “by the Corporation”, there shall be added the words “and the company benefiting from these regulations shall be entitled to deduct the benefit accruing to it in an accounting period from its chargeable income of that accounting period”. Amends regulation 22 of the principal regulations.

**7.** In regulation 28(1) (b) of the principal regulations for the words “31 December 2002” there shall be substituted the words “30 April 2003”. Amends Regulation 28 of the principal regulations.

**8.** Immediately after subregulation 29(5) of the principal regulations, there shall be added the following new subregulation: Amends Regulation 29 of the principal regulations.

“(6) Notwithstanding the provisions of subregulation (3) hereof, the year of assessment referred to in article 11(5) of the Act shall be year of assessment 2001.”.

**9.** In regulation 30 of the principal regulations, immediately after subregulation (2)(b) thereof, there shall be added the following proviso: Amends Regulation 30 of the principal regulations.

“Provided that the provisions of this subregulation shall also apply where any assets, liabilities, rights and obligations, are for

the purpose of privatisation, transferred to the second company by any entity or corporation which is fully owned, directly or indirectly, by the Government, so long as the second company is entitled to the benefits provided by regulations 4 and 5 of these regulations.”.

Adds new regulation 31 et to the principal regulations.

**10.** Immediately after Regulation 30 of the principal regulations, there shall be added the following new regulations:

Tax credit for life company.

“31 (1) Where a qualifying company:

a) does not qualify as a small or medium-sized enterprise;

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b) (i) is entitled to any of the benefits provided by articles 4, 5 or 5A of the Act subsequent to year of assessment 2003 and waives, in terms of article 34(2) of the Act its right of entitlement to benefit from the provisions of these articles with effect from year of assessment 2004; or

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(ii) is entitled to any of the benefits provided by articles 18 or 20 of the Malta Freeports Act in any year of assessment subsequent to year of assessment 2003 and waives, in terms of article 27(5) of the said Act its right of entitlement to benefit from the said provisions of article 18 of that Act with effect from year of assessment 2004 and its right of entitlement to benefit from the provisions of article 20 of that Act with effect from 1st January 2003;

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c) (i) had waived its entitlement to the benefits provided by articles 4, 5 and 5A of the Act and as a result of such waiver became entitled to the benefits provided by regulations 4 and 5 of these regulations; or

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(ii) pursuant to a change in legislation is no longer entitled to benefit from the provisions of articles 4, 5 or 5A of the Act or of articles 18 or 20 of the Malta Freeports Acts, such company shall, subject to the approval of the Corporation, be entitled to the benefits provided by regulations 4 and 5 of these regulations and to utilise the tax credits provided by regulations 32 to 35, as reduced by regulation 36, in accordance with the provisions of regulation 37; and for the purpose of regulation 4 of these regulations, such company shall, for the years of

assessment in respect of which it can utilise the aforementioned tax credits in accordance with regulation 37, be deemed to be a company to which subregulation 4(2)(b) refers.

(2) A company shall be eligible to qualify for the benefits provided by any of the regulations referred to in subregulation (1) hereof if it has been determined that it is so eligible by the Corporation.

(3) On being satisfied that a company is eligible to any of the said regulations, the Corporation shall provide the said company with a certificate setting out therein the tax credits and their respective amounts to which the company is so entitled.

(4) A certificate issued by the Corporation in terms of subregulation (3) hereof shall, without prejudice to any other proof available to the company, be conclusive evidence of the matters stated therein.

(5) A company wishing to avail itself of the said regulations shall apply for a determination referred to in subregulation (2) hereof by submitting an application to the Corporation.

Cap. 334. (6) The provisions of article 25 of the Act shall, as far as is applicable, apply to the incentive provided by this regulation and to regulations 32 to 37 of these regulations.

Investment credits. 32. (1) A company which has been determined by the Corporation as having satisfied the conditions set out in subregulation 31(1) and in this regulation shall be entitled to an investment credit which shall be equal to a percentage of the expenditure incurred by such company on qualifying expenditure on or after the 1<sup>st</sup> January 1995 up to 31<sup>st</sup> December 2006 and for this purpose the qualifying expenditure incurred up to 31<sup>st</sup> December 2001 shall be multiplied by  $1.07^n$  (1.07 to the power of "n") where "n" is a number arrived at by deducting from 2002 the year in which the expenditure was incurred:

Provided that the qualifying expenditure shall be that which is incurred under a programme approved by the company by the 31<sup>st</sup> December 2002 and notified to the Corporation by such date as it shall determine.

(2) The percentage referred to in subregulation (1) hereof shall be:

(a) 75%, where the company was entitled to any of the benefits provided by articles 4, 5, or 5A of the Act or by articles 18 or 20 of the Malta Freeports Act on or before the 31<sup>st</sup> December 1999;

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(b) 50%, where the company became entitled to any of the benefits provided by articles 4, 5 or 5A of the Act or by articles 18 or 20 of the Malta Freeports Act on or after the 1<sup>st</sup> January 2000.

Research and development credits.

33. (1) A company which has been determined by the Corporation as having satisfied the conditions set out in regulation 31(1) and in this regulation shall be entitled to a research and development tax credit which shall be equal to a percentage of the eligible expenditure incurred by such company on or after 1<sup>st</sup> January 1995 up to 31<sup>st</sup> December 2002 and for this purpose the eligible expenditure incurred up to 31<sup>st</sup> December 2001 shall be multiplied by  $1.07^n$  ( $1.07$  to the power of “n”) where “n” is a number arrived at by deducting from 2002 the year in which the expenditure was incurred:

Provided that the eligible expenditure shall be that which is incurred under a programme approved by the company by the 31<sup>st</sup> December 2002 and notified to the Corporation by such date as it shall determine.

(2) The percentage referred to in subregulation (1) hereof shall be:

a) 75% where the expenditure has been incurred on fundamental research activities;

b) 60% where the expenditure has been incurred on industrial research activities;

c) 35% where the expenditure has been incurred on development activities;

d) 75% where the expenditure has been incurred on studies preparatory to industrial research activities;

e) 60% where the expenditure has been incurred on studies preparatory to development activities;

(3) In this regulation:

a) “fundamental research activities” means an activity or activities designed to broaden scientific and technical knowledge not linked to industrial or commercial objectives;

b) “industrial research activities” means an activity or activities consisting of critical investigation aimed at the acquisition of knowledge with the objective that such knowledge may be useful in developing new products, processes or services or in bringing about a significant improvement in existing products, processes or services;

c) “development activities” means an activity or activities consisting of the shaping of the results of industrial research into a plan, arrangement or design for new, altered or improved products, processes or services, whether they are intended to be sold or used - including the creation of initial prototypes which could not be used commercially and the conceptual formulation and design of products, processes or services and initial demonstration projects or pilot projects provided that such products cannot be converted or used for industrial applications or commercial exploitation - but excluding 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.

(4) The eligible expenditure shall consist of:

a) personnel expenses comprising all emoluments paid for services rendered by researchers, technicians and other employees attributable to such employees' time spent on the research activity and including the employer's share of social security contributions attributable to such emoluments;

b) the costs of instruments, plant and machinery and land and buildings used solely for the research activity;

c) the cost of renting instruments, plant and machinery and land and buildings for the period of time used for the research activity;

d) the cost of consultancy and equivalent services used exclusively for the research activity, including the research, technical knowledge and patents bought from outside sources;

e) additional overheads incurred directly as a result of the research activity;

f) other expenses, including costs of materials, supplies and similar products, incurred directly as a result of the research activity.

Training  
credits.

34 (1) A company which has been determined by the Corporation as having satisfied the conditions set out in regulation 31(1) and in this regulation shall be entitled to a training credit which shall be equal to a percentage of the eligible costs incurred by such company on or after 1<sup>st</sup> January 1995 up to 31<sup>st</sup> December 2006 and for this purpose the eligible costs incurred up to 31<sup>st</sup> December 2001 shall be multiplied by  $1.07^n$  (1.07 to the power of “n”) where “n” is a number arrived at by deducting from 2002 the year in which the expenditure was incurred:

Provided that the qualifying expenditure shall be that which is incurred under a programme approved by the company by the 31<sup>st</sup> December 2002 and notified to the Corporation by such date as it shall determine.

(2) The percentage referred to in subregulation (1) hereof shall be one of the percentages set out in paragraph (b) of subregulation 14(1) of these regulations depending on whether the training qualifies as general training.

(3) The eligible costs referred to in subregulation (1) hereof shall be the costs set out in subregulation 14(2) of these regulations.

(4) For the purpose of calculating the training credit provided by this regulation, the term “general training” shall have the meaning assigned to it by subregulation 14(3) of these regulations.

Environmental  
investment  
credits.

35 (1) A company which has been determined by the Corporation as having satisfied the conditions set out in regulation 31(1) and in this regulation shall be entitled to an environmental credit which shall be equal to 60% of the eligible expenditure incurred by such company on or after 1st January 1995 up to 31st December 2006 and for this purpose the eligible expenditure incurred up to 31st December 2001 shall be multiplied by  $1.07^n$  (1.07 to the power of “n”) where “n” is a number arrived at by deducting from 2002 the year in which the expenditure was incurred.

Provided that the eligible expenditure shall be that which is incurred under a programme approved by the company by the 31st December 2002 and notified to the Corporation by such date as it shall determine.

(2) The eligible expenditure shall consist of the expenditure set out in subregulation (3):

(a) where such expenditure is incurred for the purpose of reducing pollution and nuisances or to adopt production methods with a view to protecting the environment; and

(b) to the extent that the company did not incur such expenditure for the purpose of it complying with any applicable laws or regulations.

(3) The expenditure referred to subregulation (2) shall be:

(a) the acquisition of land which is strictly necessary to meet environmental objectives;

(b) the acquisition, development or construction of buildings or structures, plant and machinery;

(c) the acquisition or development of technology or know-how, which is

(i) a depreciable asset in accordance with generally accepted accounting principles;

(ii) acquired on market terms from a person in which the company has no direct or indirect control;

(iii) included in the assets of the company which retains ownership or use or both such ownership and use of the intangible asset for a period of five years or a shorter period if the intangible assets are technically out of date before the expiry of this five year period.

Provided that should such intangible assets be sold before the expiration of five years from the date of their acquisition or development completion the sales proceeds shall be deducted from the amount of the eligible expenditure.

Deductions  
from tax  
credits.

36. (1) The aggregate of the tax credits a company may be entitled to in terms of regulations 32 to 35 of these regulations shall be reduced by the benefits accruing to that company, on or after the 1<sup>st</sup> January, 2001, as a consequence of it having availed itself of any of the benefits provided by articles 5, 5A, 7, 16, 19, 20 or 24C of the Act or by regulations 5, 8, 9 or 14 of these regulations or by articles 18 or 20 of the Malta Freeports Act and the benefits accruing to such company shall be calculated as follows:

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a) in the case of an income tax benefit provided by articles 4, 5, 5A, 6 and 7 of the Act and by regulations 5 and 14 of these regulations and by article 18 of the Malta Freeports Act, the benefit accruing shall be the amount of income tax that would have been borne by the company for a year of assessment in the absence of the provisions of the above mentioned articles and regulations, less the amount of income tax actually borne by the company for that year of assessment and the result of this subtraction shall, for each year of assessment, be multiplied by  $1.07^n$  (1.07 to the power of "n") where "n" is a positive number arrived at by deducting from 2002 the year of assessment in which the benefit was availed of:

Provided that where the profits brought to charge to tax in year of assessment 2002 or 2003 relate to an accounting period which commenced prior to the 1<sup>st</sup> January 2001, the benefit accruing from the 1<sup>st</sup> January 2001 up to the end of that accounting period shall be determined by dividing the

result of the calculation hereinabove described for that accounting period by the total number of days comprised in that accounting period and multiplying the result by the number of days in that accounting period which are in 2001 and 2002 as applicable;

Cap. 334. b) in the case of a benefit provided by article 16 of the Act, the benefit shall be arrived at by multiplying the after-tax interest saved from the soft loan facility in each year up to 31<sup>st</sup> December 2002 by  $1.07^n$  (1.07 to the power of “n”) where “n” is a number arrived at by deducting from 2002 the year in which the after-tax interest saving was obtained and discounting the after-tax interest saving to be obtained in each year after 31<sup>st</sup> December 2002 by the discount factor  $1/1.07^n$  (1 divided by 1.07 to the power of “n”) where “n” is a number arrived at by deducting 2002 from the year in which the after-tax interest saving is to be obtained; and the after-tax interest saved shall be calculated by multiplying the interest saved by the percentage (100% - x%) where x% is the rate of income tax applicable to the company in the absence of the provisions of the articles and regulations referred to in paragraph (a) hereof;

Cap. 334. c) in the case of a grant provided by articles 19, 20 and 24C of the Act and by regulation 14 of these regulations, the benefit shall be the amount of the grant received in each year up to 31<sup>st</sup> December 2002, which amount shall be multiplied by  $1.07^n$  (1.07 to the power of “n”) where “n” is a number arrived at by deducting from 2002 the year in which the grant was received;

Cap. 334. d) in the case of the duty exemption provided by article 20 of the Malta Freeports Act, the benefit shall be the amount of duty exempted, which amount shall be multiplied by  $1.07^n$  (1.07 to the power of “n”) where “n” is a number arrived at by deducting from 2002 the year in which the exempted duty would have been payable;

e) In the case of a benefit provided by regulations 8 and 9 of these regulations, the benefit shall be arrived at by multiplying the tax-free benefit obtained in each year up to 31<sup>st</sup> December 2002 by  $1.07^n$  (1.07 to the power of “n”) where “n” is a number arrived at by deducting from 2002 the year in which the tax free benefit

was obtained and discounting the tax-free benefit to be obtained in each year after 31<sup>st</sup> December 2002 by the discount factor  $1/1.07^n$  (1 divided by 1.07 to the power of “n”) where “n” is a number arrived at by deducting 2002 from the year in which the tax-free benefit is to be obtained.

(2) Where the sum of the deductions set out in this regulation exceeds the amount of the tax credits calculated in accordance with the provisions of articles 32 to 35 of these regulations, the amount of the tax credits shall be deemed to be zero.

Cap. 334. (3) A deduction in respect of benefits availed of pursuant to articles 19 or 20 of the Act or regulation 14 of these regulations, shall only be made if the relevant company claims training credits pursuant to regulation 34 of these regulations.

Utilization of tax credits. 37. (1) With effect from year of assessment 2004, a company which is entitled to any of the benefits provided by regulations 32 to 35 as reduced by regulation 36 (hereinafter in this regulation collectively referred to as the “tax credits”) shall be entitled to utilise the tax credits only as described below:

Cap. 123. a) where the company became so entitled by virtue of it having been entitled to the incentive provided by article 4 of the Act, it shall be entitled to deduct from the amount of income tax which is due on its chargeable income, derived from its trade or business, for the consecutive years of assessment, forming part of the original ten consecutive years of assessment referred to in article 4(1) of the Act, subsequent to year of assessment 2003, the amount of the tax credits and with effect from year of assessment 2004 and subsequent years of assessment where the tax credits exceed such income tax payable by such a company for any of such years, the excess shall be increased by the percentage referred to in the first proviso to regulation 5(12) of these regulations and the amount so increased shall be the amount which the company shall be entitled to deduct from the amount of income tax which is due on its chargeable income, derived from its trade or business, for the remaining consecutive years of assessment above mentioned;

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b) where the company became so entitled by virtue of it having been entitled to the incentive provided by article 5 of the Act, it shall be entitled to deduct from the whole or a proportion of the amount of income tax due on its chargeable income, derived from its trade or business for the remaining years of assessment, the company is still entitled to benefit from the incentive provided by the said article 5 subsequent to year of assessment 2003, the amount of the tax credits and with effect from year of assessment 2004 and subsequent years of assessment where the tax credits exceed such income tax payable by such a company for any of such years, the excess shall be increased by the percentage referred to in the first proviso to regulation 5(12) of these regulations and the amount so increased shall be the amount which the company shall be entitled to deduct from the whole or a proportion of the amount of income tax which is due on its chargeable income, derived from its trade or business, for the remaining years of assessment above mentioned; and the “whole or a proportion of the amount of income tax due” shall be determined by multiplying the total income tax due on the company’s chargeable income, derived from its trade or business, by a percentage which shall be calculated by dividing the income tax due in any year of assessment, as may be determined by the company, between year of assessment 1995 and year of assessment 2003, in respect of which the company qualified for the incentive provided by article 5 of the Act, by the income tax that would have been payable by the company in the absence of that incentive:

Provided that where a company demonstrates to the satisfaction of the Corporation that the percentage as calculated in accordance with the above provisions is materially different from that which the company reasonably expects, the Corporation may approve a different percentage based on the evidence provided by the company;

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c) where the company became so entitled by virtue of it having been entitled to the incentive provided by article 5A of the Act, it shall be entitled to deduct from the whole or a proportion of the amount of income tax due on its chargeable income, derived from its trade or business for the remaining years of assessment, the

company is still entitled to benefit from the incentives provided by the said article 5A subsequent to year of assessment 2003, the amount of the tax credits and, with effect from year of assessment 2004 and subsequent years of assessment, where the tax credits exceed such income tax payable by such a company for any of such years the excess shall be increased by the percentage referred to in the first proviso to regulation 5(12) of these regulations and the amount so increased shall be the amount which the company shall be entitled to deduct from the whole or a proportion of the amount of income tax which is due on its chargeable income, derived from its trade or business, for the remaining years of assessment above mentioned; and the “whole or a proportion of the amount of income tax due” shall be determined by multiplying the total income tax due on the company’s chargeable income, derived from its trade or business, by a percentage which shall be calculated by dividing the income tax due in any year of assessment, as may be determined by the company, between year of assessment 1995 and year of assessment 2004, in respect of which the company qualified for the incentive provided by article 5A of the Act, by the income tax that would have been payable by the company in the absence of that incentive:

Provided that where a company demonstrates to the satisfaction of the Corporation that the percentage as calculated in accordance with the above provisions is materially different from that which the company reasonably expects, the Corporation may approve a different percentage based on the evidence provided by the company:

Provided further that the entitlement to the said deduction shall be conditional on the company satisfying the conditions set out in sub-article (1) of the said article 5A for that year of assessment;

d) For the purposes of paragraphs (b) and (c) hereof:

(i) a company which would have been entitled to benefit for the incentives provided by the said articles 5 and 5A in any year of assessment between year of assessment 1995 to year of assess-

ment 2003 but did not so benefit solely due to the fact that it did not have any chargeable income, shall be deemed to be a company which qualified for the incentive provided by article 5 or 5A as the case may require and its chargeable income for that year of assessment shall be deemed to be Lm100;

(ii) for the purpose of determining the percentage referred to therein, the income tax due in any of the years of assessment between year of assessment 1995 to year of assessment 2003 shall be calculated on the basis that the base period profits referred to article 5(2) of the Act are deemed to be zero;

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(iii) the remaining years of assessment in respect of which the company is entitled to benefit from the provisions of article 5 of the Act subsequent to year of assessment 2003 shall be consecutive years of assessment commencing from year of assessment 2004;

(iv) the remaining years of assessment in respect of which the company is entitled to benefit from the provisions of article 5A subsequent to year of assessment 2003 shall, in the case of a company to which paragraph (c)(ii) of subregulation 31(1) applies, be computed after deducting any years of assessment in respect of which such company benefitted from the provisions of regulations 4 or 5 of these regulations.

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e) where a company became so entitled by virtue of it having been entitled to the incentives provided by articles 18 or 20 of the Malta Freeports Act, it shall be entitled to deduct from:

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(i) the amount of any duty payable by it in terms of the Duty on Documents and Transfers Act on or after the 1<sup>st</sup> January 2003, and which duty would not have been payable in terms of article 20 of the Malta Freeports Act; and

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(ii) the amount of income tax due on its chargeable income, derived from its trade or business exercised in a freeport pursuant to the provi-

sions of article 11 of the Malta Freeports Act, for the years of assessment subsequent to year of assessment 2003,

the amount of the tax credits and where the tax credits, for year of assessment 2007 and subsequent years of assessment, exceed such duty and/or such income tax payable by such company in or for that year the excess shall be increased by the percentage referred to in the first proviso to regulation 5(12) of these regulations and the amount so increased shall be the amount which the company shall be entitled to deduct from the amount of such duty and/or such income tax payable by it in subsequent years of assessments:

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Provided that a company shall be entitled to the benefit provided by this paragraph for as long as it remains a company licensed to operate in a freeport in accordance with the Malta Freeports Act and provided that it satisfies the conditions, as set out in that Act, it would have been required to satisfy in order for it to qualify for the exemptions provided by the said articles 18 and 20 of the Malta Freeports Act;

f) the entitlement to set-off the tax credits against the income tax payable by the company in the manner provided herein, shall be exercised after the application of any other benefits available to the company in terms of the Act and these regulations.

(2) The provisions of subregulations (14) and (15) of regulation 5 shall apply *mutatis mutandis* to the tax credits and references in those subregulations to investment tax credits shall be construed as references to tax credits.

Special incentives for small and medium-sized enterprises.

38. (1) Where a qualifying company:

- a) qualifies as a small or medium-sized enterprise;
- b) satisfies the conditions set out in paragraph (b) and (c) of subregulation (1) of regulation 31 hereof;

such company shall, subject to the approval of the Corporation, be entitled to the benefits provided by

this regulation in lieu of the benefits provided by regulations 4, 5 or 6 of these regulations:

Provided that a company that benefits from the provisions of this regulations shall not be entitled to the benefits provided by regulations 4, 5 or 6 of these regulations.

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(2) A company which satisfies the conditions set out in subregulation (1) hereof by virtue of it having been entitled to the benefit provided by article 4 of the Act shall, up to year of assessment 2012, be exempt from income tax due on its chargeable income, derived from its trade or business, for the consecutive years of assessment, forming part of the original ten consecutive years of assessment referred to in article 4(1) of the Act, subsequent to year of assessment 2003, subject to it satisfying the conditions of the said article 4 other than the condition set out in paragraph (b) of sub-article (1) of the said article 4.

(3) A company which satisfies the conditions set out in subregulation (1) hereof by virtue of it having been entitled to the benefits provided by article 5 of the Act shall, for the remaining years of assessment the company is still entitled to benefit from the incentives provided by the said article 5 subsequent to year of assessment 2003, be entitled, up to year of assessment 2012, to a reduction of the whole or a proportion of the amount of income tax due on its chargeable income derived from its trade or business; and the “whole or a proportion of the amount of income tax due” shall be determined by multiplying the total income tax due on the company’s chargeable income, derived from its trade or business, by a percentage which shall be calculated by dividing the income tax due in any year of assessment, as may be determined by the company, between year of assessment 1995 and year of assessment 2003, in which the company qualified for the incentive provided by article 5 of the Act, by the income tax that would have been payable by the company in the absence of that incentive:

Provided that where a company demonstrates to the satisfaction of the Corporation that the percentage as calculated in accordance with the above provision is materially different from that which the company reasonably expects, the Corporation may approve a different percentage based on the evidence provided by the company.

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(4) A company which satisfies the conditions set out in subregulation (1) hereof by virtue of it having been entitled to the benefits provided by article 5A of the Act shall, for the remaining years of assessment the company is still entitled to benefit from the incentives provided by the said article 5A subsequent to year of assessment 2003, be entitled, up to year of assessment 2012, to a reduction of the whole or a proportion of the amount of income tax due on its chargeable income derived from its trade or business; and the “whole or a proportion of the amount of income tax due” shall be determined by multiplying the total income tax due on the company’s chargeable income, derived from its trade or business, by a percentage which shall be calculated by dividing the income tax due in any year of assessment, as may be determined by the company, between year of assessment 1995 and year of assessment 2003, in which the company qualified for the incentive provided by article 5A of the Act, by the income tax that would have been payable by the company in the absence of that incentive:

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Provided that where a company demonstrates to the satisfaction of the Corporation that the percentage as calculated in accordance with the above provision is materially different from that which the company reasonably expects, the Corporation may approve a different percentage based on the evidence provided by the company:

Provided further that the entitlement to the said reduction shall be conditional on the company satisfying the conditions set out in sub-article (1) of the said article 5A for that year of assessment.

(5) For the purposes of subregulations (3) and (4) hereof:

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(a) a company which would have been entitled to benefit for the incentives provided by the said articles 5 and 5A in any year of assessment between year of assessment 1995 to year of assessment 2003 but did not so benefit solely due to the fact that it did not have any chargeable income, shall be deemed to be a company which of the Act qualified for the incentive provided by article 5 or 5A of the Act as the case may require and its chargeable income for that year of assessment shall be deemed to be Lm100.

(b) for the purposes of determining the percentage referred to therein, the income tax due in any of the years of assessment between year of assessment 1995 to year of assessment 2003 shall be calculated on the basis that the base period profits referred to article 5(2) of the Act are deemed to be zero.

(6) A company which satisfies the conditions set out in subregulation (1) hereof by virtue of it having been entitled to the benefits provided by articles 18 or 20 of the Malta Freeports Act:

Cap. 364.

(i) shall, up to the 31<sup>st</sup> December 2011, be exempt from the payment of duty chargeable in terms of the Duty on Documents and Transfers Act to the same extent as it would have been exempt from the payment of such duty in terms of article 20 of the Malta Freeports Act; and

Cap. 334.

(ii) shall, up to year of assessment 2012, be exempt from the payment of income tax due on its chargeable income, derived from its trade or business exercised in a freeport pursuant to the provisions of article 11 of the Malta Freeports Act, for the years of assessment subsequent to year of assessment 2003:

Cap. 334.

Provided that a company shall be entitled to the benefit provided by this paragraph for as long as it remains a company licensed to operate in a Freeport in accordance with the Malta Freeports Act and provided that it satisfies the conditions, as set out in that Act, it would have been required to satisfy in order for it to qualify for the exemptions provided by the said articles 18 and 20 of the Malta Freeports Act.

(7) The provisions of subregulations (2) to (6) of regulation 31 of these regulations shall apply *mutatis mutandis* to this regulation as they apply to regulation 31.

Cap. 123.

(8) Profits which are relieved from tax in accordance with the provisions of this regulation shall, for the purposes of the Income Tax Act, be allocated to the Maltese Taxed Account and upon distribution shall be exempt from income tax to the same extent as dividends referred to in article 9 of the Act.

(9) The provisions of article 25 of the Act shall, as far as is applicable, apply to the incentive provided by this regulation.

(10) The benefit provided by this regulation shall cease to apply with respect to a company which ceases to qualify as a small or medium sized enterprise by reason of the fact that it was merged with another company or another company merged with it or as a consequence of the acquisition by it of another business.

Limitation of applicability of regulations 31 to 38.

39. (1) The provisions of regulations 31 to 38 of these regulations shall not be applicable with respect to a qualifying company for a year of assessment if, in the accounting period ending in the year preceding that year of assessment, there has been a material change in the trading activities of such qualifying company.

(2) A certificate issued by the Corporation confirming that there has been no material change in the activities of a qualifying company shall be conclusive evidence of that fact.

Limitation of applicability of certain incentives.

L.N. 103 of 2002.

40. The incentives provided by articles 6 and 7 of the Act and by regulations 6, 8, 9, 10, 11 and 28 shall only be available to enterprises whose trade or business consists of farming, fishing and aquaculture, or ship repair or the production of steel, motor vehicles, ships or synthetic fibres, if the assistance is regarded by the State Aid Monitoring Board as being compatible aid in accordance with the provisions of the State Aid Monitoring Regulations.

Common expenditure.

41. Where costs and expenditure are eligible in whole or in part under different schemes, giving entitlement to a tax credit under these regulations, the common expenditure shall be considered only once under the scheme which provided that most favourable benefit.

Notification dates

42. Where in these regulations or the Act, the Corporation is to be notified by a certain date, the Corporation may allow a different date for notification.