

A.L. 68 ta' l-2008

**ATT DWAR L-INTRAPRIŻA TA' MALTA
(KAP. 463)**

Regolamenti ta' l-2008 dwar Ghajjnuna għall-Investment

BIS-SAHHA tas-setghat mogħtija bl-artikolu 5 ta' l-Att dwar l-Intrapriża ta' Malta, il-Prim Ministru u Ministru tal-Finanzi u l-Ministru għall-Investment, Industrija u Teknoloġija ta' l-Infurmazzjoni għamlu dawn ir-regolamenti li ġejjin:-

1. (1) It-titolu ta' dawn ir-regolamenti hu Regolamenti ta' l-2008 dwar Ghajjnuna għall-Investment. Titolu u bidu fis-sehh.

(2) Dawn ir-regolamenti għandhom jitqiesu li bdew isehhu fl-1 ta' Jannar, 2008.

2. F'dawn ir-regolamenti, kemm-il darba r-rabta tal-kliem ma teħtieġx xort'ohra: Tifsir.

“l-Att” tfisser l-Att dwar l-Intrapriża ta' Malta; “intrapriża” tfisser intrapriża kif imfissra fl-Att hliet għall-iskopijiet ta' regolamenti 4 u 6 fejn intrapriża tfisser:

(a) kull soċjetà kostitwita taħt l-Att dwar il-Kumpanniji li tkun jew soċjetà *en nom collectif*, in akkomandita jew kumpannija ta' responsabbiltà limitata; Kap. 386.

(b) kull korp kostitwit, inkorporat jew reġistrat barra minn Malta, u tax-xorta bħall-imsemmija soċjetajiet u reġistrata bħala kumpannija barranija skond l-Att dwar il-Kumpanniji;

(ċ) kull għaqda koperativa hekk reġistrata kif imiss taħt l-Att dwar Soċjetajiet Koperattivi; “intrapriża kbira”, “intrapriża ta' daqs medju”, “intrapriża żgħira” u “intrapriża mikro” għandhom it-tifsira mogħtija lilhom bir-Rakkomandazzjoni tal-Kummissjoni Ewropea 2003/361/KE; Kap. 442.

“il-Korporazzjoni” tfisser l-Korporazzjoni Maltija għall-Intrapriża mwaqqfa taht l-Att dwar l-Intrapriża ta’ Malta;

“linji gwida” tfisser dawk il-linji gwida li jistgħu jiġu pubblikati mill-Korporazzjoni minn żmien għal żmien skond l-Att;

“persuni żvantagġati jew b’dizabilità” għandha t-tifsira mogħtija lilha fil-linji gwida;

“spiza kwalifikanti” tfisser dik in-nefqa li tista’ tikkwalifika għall-assistenza skond dawn ir-regolamenti u li tkun konformi mal-linji gwida.

Attivitajiet
kwalifikanti.

Kap. 123.

3. (1) Attività kwalifikanti skond dawn ir-regolamenti tkun attività ekonomika li tikkonsisti f’sengħa jew negozju li minnhom il-profitti jew il-qligh ikunu taxxabli skond l-artikolu 4(1)(a) ta’ l-Att dwar it-Taxxa fuq l-*Income*, mwettqa jew mahsubha li tiġi mwettqa minn intrapriża f’Malta li tikkonsisti biss f’wahda jew aktar minn dawn l-attivitajiet li ġejjin –

(a) (i) il-produzzjoni, il-manifattura, it-titjib, l-assemblaġġ, il-preservazzjoni, l-ipproessar ta’ kull oġġett, materjal, prodotti, tagħmir, impjant u makkinarju;

(ii) il-provvediment ta’ kull servizz industrijali analogu għall-attivitajiet imsemmija fil-paragrafu (i) ta’ dan is-subregolament;

(iii) it-tiswija, miljorament jew manutenzjoni ta’ bastimenti bil-mutur jew jottijiet li ma jkollhomx iktar minn tletin irmiġġ, inġenji ta’ l-ajru, magni jew tagħmir inkorporat jew użat fuq dawk il-bastimenti jew inġenji ta’ l-ajru;

(b) attivitajiet għal żvilupp tat-Teknoloġija ta’ l-Informatika u tal-Kommunikazzjonijiet (ICT), servizzi tan-negozju abilitati bit-Teknoloġija ta’ l-Infommazzjoni (IT) inklużi ċentri tas-sejha, u soluzzjonijiet għan-negozju bit-Teknoloġija ta’ l-Infommazzjoni (IT) kif jistgħu jiġu ordnati fil-linji gwida, imma esklużi l-fornituri ta’ servizzi għat-telekomunikazzjoni;

(ċ) rierka u żvilupp, u l-bidu ta’ proġetti innovattivi kif jistgħu jiġu ordnati fil-linji gwida;

(d) innovazzjonijiet ekoloġiċi, trattament ta' l-iskart jew soluzzjonijiet ambjentali kif jistgħu jiġu ordnati fil-linji gwida;

(e) bioteknoloġija, li tinkludi l-produzzjoni jew l-iżvilupp ta' proprjetà jew affarijiet intellettuali jew il-provdiment ta' servizzi li jirriżultaw mill-istudju, rierka, skoperta, applikazzjoni, modifika jew żvilupp ta' organiżmi hajjin jew materjali derivati minnhom kif jistgħu jiġu ordnati fil-linji gwida;

(f) il-provdiment ta' faċilitajiet li jkunu direttament meħtieġa fl-iżvilupp jew il-produzzjoni ta' *feature films*, programmi tat-televiżjoni jew reklami kif jistgħu jiġu ordnati fil-linji gwida;

(g) il-provdiment ta' edukazzjoni terzjarja privata fix-xjenza u t-teknoloġija kif jistgħu jiġu ordnati fil-linji gwida;

(h) il-provdiment ta' servizzi privati ta' kura medika permezz ta' l-implimentazzjoni ta' proġetti godda li jwettqu investiment ta' mhux inqas minn 2.5 miljun euro f'tagħmir mediku, esklużi art u bini kif jistgħu jiġu ordnati fil-linji gwida;

(i) il-provdiment ta' servizzi loġistiċi li jinkludu t-trasformazzjoni parzjali li żżid fil-valur minn intrapriża li jimpjegaw mhux inqas minn 250 impjegat *full-time* jew l-ekwivalenti tagħhom kif jistgħu jiġu ordnati fil-linji gwida;

(j) attivitajiet imsemmija fl-artikolu 11 ta' l-Att dwar il-Portijiet Hielsa ta' Malta, u li jsiru f'port hieles kif imfisser f'dak l-Att u li jsiru minn intrapriża li jkollha liċenzja taht dak l-Att: Kap. 334.

Iżda wkoll intrapriża ma tikkwalifikax għal ebda benefiċċju provdut f'dawn ir-regolamenti jekk:—

(a) l-intrapriża tbiegħ bl-imnut u għal dan il-ghan intrapriża ma titqiesx li tkun qiegħda tbiegħ bl-imnut jekk il-bejgħ tagħha ta' prodotti jew servizzi jsir lil:

(i) persuna li tmexxi kummerċ u l-prodotti jew servizzi li jiġu hekk mibjugha lil dik il-persuna jew li jergħu jinbiegħu minn dik il-persuna jew li jkunu użati minn dik il-persuna għal skopijiet tal-kummerċ tagħha; jew

(ii) persuna, li mhux individwu, li tuża dawk il-prodotti jew servizzi għall-iskopijiet ta' kummerċ li tagħmel dik il-persuna;

(iii) persuna permezz ta' attivitajiet ta' *e-commerce* li jirriżultaw fi transazzjonijiet bl-internet li jsiru b'sistema ta' hlas sigura;

(b) il-kummerċ jew negozju ta' l-intrapriża jinkludi xi waħda mill-attivitajiet li ġejjin:

(i) is-separazzjoni, l-għażla, l-ippakkjar, it-tahlit mingħajr ma tinbidel ix-xorta tal-prodott, it-tnixxif, l-ittikkettjar, jew proċessi simili oħra jew kull tahlita ta' dawk il-proċessi fuq prodotti li jiġu akkwistati bl-ingrossa u biss biex jippreparaw dawk il-prodotti għall-bejgħ jew għad-distribuzzjoni, esklużi dawk il-prodotti li dwarhom l-intrapriża tagħmel xi attività oħra li tinsab imsemmija fis-subregolament (1)(a);

(ii) l-immuntar ta' xi prodott meta:

1. il-prodott finali immuntat huwa rikonossibbli b'mod ċar mill-komponenti individwali jew partijiet li minnhom ġie immuntat il-prodott mingħajr ma tiġi ikkunsidrata xi qoxra ta' barra tal-prodott; u

2. il-komponenti u l-partijiet li minnhom ikun ġie immuntat il-prodott huma tali illi l-prodott ikun kważi komplut u x-xogħol ta' immuntar u s-superviżjoni ta' dak ix-xogħol ta' immuntar ikun jirrikjedi biss l-impjeg ta' haddiema li huma kważi kollha mhux tas-sengħa, hekk li l-operazzjoni ta' immuntar tkun ta' natura fittizja meta tkun ikkunsidrata fil-kuntest ta' l-attivitajiet ta' manifattura;

(iii) mingħajr preġudizzju għal xi eċċezzjoni li tista' tiġi provduta fil-linji gwida, l-istallazzjoni, ikkummissjunar jew immuntar ta' prodotti fuq il-post, fejn l-imsemmija prodotti ma kienux manifatturati mill-intrapriża li qiegħda tistalla, tikkummissjona jew timmonta il-prodotti fil-post:

Iżda d-dispożizzjonijiet ta' dan il-paragrafu ma japplikawx ghal intrapriża li twettaq biss xi waħda jew aktar mill-attivitajiet deskritti fis-subregolament (1)(b) sa (j).

(ċ) il-kummerċ jew negozju ta' l-intrapriża jinkludi l-preparazzjoni jew produzzjoni ta' "ikel fil-kors ta' *"catering"* inkluż –

(i) ikliet jew *snacks* inklużi –

(1) platti shan u keshin inklużi antipasto u diżerta;

(2) *sandwiches, toast, chips* tal-patata, *sausage rolls, pizza, pastizzi, qassatat* u *snacks* simili;

(3) gallettini, kejkijiet, helu w oġġetti simili iżda esklużi dawk sigillati f'pakketti mill-manifattur u provduti f'dak il-pakkett oriġinali u dawk l-oġġetti li individwalment jiżnu 500 gramma jew aktar;

(4) ikel ipprovdut f'ristoranti, kafetteriji, *canteens, bars* u stabbilimenti ohra bħalhom;

(5) ikel ippreparat jew prodott ghal festi, funzjonijiet, tiġijiet u okkażjonijiet simili;

(6) ikel ippreparat jew prodott għall-konsum minn nies li jappartjenu għal xi post jew organizzazzjoni partikolari, inklużi pazjenti fi sptarijiet jew djar, residenti ta' lukandi jew *guest houses*, haddiema f'post tax-xogħol partikolari u l-preparazzjoni jew produzzjoni ta' ikel f'ċirkostanzi simili;

(ii) halib, *milkshake*, tè, kafè u ċikkulata mahlula, eskluż halib u *milkshake* ipprovdut mill-manifattur tagħhom fi fliexken u kontenituri għad-distribuzzjoni lil bejjiegha bl-imnut, iżda inkluża kull tip ta' xarba li hija prodotta sempliment billi żżid likwidu mat-trab jew sustanza, u meta dik ix-xarba tkun prodotta sabiex tkun tista' tiġi servuta f'*bar*, ristorante, *canteen*, kafetterija jew stabbiliment jew post ieħor lil individwi għall-konsum.

4. (1) Intrapriża li twettaq jew ghandha l-hsieb li twettaq attività kwalifikanti konformi mar-regolament 3 li tista' tikkontribwixxi għall-iżvilupp ekonomiku ta' Malta tkun, konformi mal-pattijiet u l-kundizzjonijiet tal-linji gwida, intitolata għal kreditu ta' taxxa fuq l-investment, u dak il-kreditu ta' taxxa għandu, fir-rigward ta' proġett ta' investment, jiġi kalukulat jew –

(a) bhala perentwali ta' l-ispiza kwalifikanti li ssir minn dik l-intrapriża fis-sena preċedenti għas-sena ta' stima in kwistjoni; jew

(b) bhala perentwali ta' l-ispejjeż ta' pagi għal impjegji mahluqin direttament mill-proġett ta' investment skond id-dispożizzjonijiet tas-subregolamenti (4) sa (7):

Iżda l-ammont totali ta' krediti ta' taxxa għall-investment li jistgħu jinghataw skond dan ir-regolament għal proġett ta' investment speifiku m'għandux jeċċedi:

(i) fil-każ ta' intrapriża li tikkwalifika bhala intrapriża żghira, hamsin fil-mija ta' l-ispiza kwalifikanti;

(ii) fil-każ ta' intrapriża li tikkwalifika bhala intrapriża ta' daqs medju, erbgħin fil-mija ta' l-ispiza kwalifikanti;

(iii) fil-każ ta' intrapriża li tikkwalifika bhala intrapriża ta' daqs kbir, tletin fil-mija ta' l-ispiza kwalifikanti:

Iżda wkoll fil-każ ta' proġetti ta' investmenti kbar, il-kreditu ta' taxxa li għandu jinghata skond dan is-subregolament m'għandu qatt jeċċedi:

(i) hmistax fil-mija (15%) ta' l-ispiza kwalifikanti għal dak l-ammont li jeċċedi l-50 miljun euro; u

(ii) għaxra punt tnejn fil-mija (10.2%) ta' l-ispiza kwalifikanti għal dak l-ammont li jeċċedi l-100 miljun euro.

(2) Fil-każ ta' proġett ta' investment li jista' jagħmel kontribut sostanzjali għall-iżvilupp ekonomiku ta' Malta, il-Korporazzjoni tista' tikkonverti l-kreditu ta' taxxa fuq l-investment li saret referenza għalih fis-subregolament (1) għal forom ohra ta' assistenza, inklużi għotjiet finanzjarji.

(3) Għall-iskopijiet ta' dan is-subregolament il-frazzjiet “assi tanġibbli” u “assi intanġibbli” għandhom it-tifsira mogħtija lilhom fil-linji gwida.

(4) L-ammont ta' kreditu ta' taxxa fuq l-investment ibbażat fuq il-holqien ta' impjegi li intrapriża tista' titlob f'sena ta' stima skond is-subregolament (1)(b) ikun ibbażat fuq l-ispiza għall-pagi li ssir minn dik l-intrapriża f'perjodu ta' kontijiet li jispiċċa fis-sena preċedenti għal dik is-sena ta' stima.

(5) Intrapriża għandha, bla hsara għall-pattijiet u l-kundizzjonijiet tal-linji gwida, tiġi ikkunsidrata li bhala riżultat ta' proġett ta' investment tkun holqot impjieg għal daww l-individwi li jkunu impjegati mal-intrapriża, jekk l-impjieg ikun direttament konness ma' l-attività li magħha għandu x'jaqsam il-proġett ta' investment u dan isir fi żmien tlett snin minn meta jitlesta l-proġett ta' investment u sakemm l-impjieg ta' dak l-individwu ma jkun qiegħed jissostitwixxi l-impjieg ta' xi individwu ieħor u dak l-impjieg ma jiġix itterminat qabel ma jgħaddu hames snin mid-data ta' l-impjieg fil-każ ta' intrapriži kbar u mhux qabel ma jgħaddu tlett snin mid-data ta' l-impjieg fil-każ ta' intrapriži żgħar jew ta' daqs medju:

Iżda bl-iskop li jiġi stabbilit jekk ġewx maħluqin impjegi, individwi li jiġu impjegati mill-intrapriża fuq bażi *part-time* għandhom jitqiesu bhala numru ta' impjegati *full-time* kif jirriżulta meta l-għadd ta' siegħat maħdumin mill-impjegati *part-time* jiġi diviż b'elf u sebgha mija u sittin:

Iżda wkoll meta perjodu ta' kontijiet li jispiċċa fis-sena li tiġi qabel sena ta' stima jkun aktar jew anqas minn tnaqqas il-xahar, l-għadd ta' siegħat maħduma mill-impjegati *part-time* għandu jkun diviż b'ammont li wieħed għandu jasal għalih billi jiddividi l-ammont ta' elf seba' mija u sittin, bi tliet mija hamsa u sittin, u r-riżultat jiġi multiplikat bin-numru ta' granet kompriži f'dak il-perjodu ta' kontijiet.

(6) Intrapriża li tkun intitolata għal kreditu ta' taxxa fuq l-investment, għal sena ta' stima, tkun intitolata li tnaqqas mill-ammont ta' taxxa fuq l-*income* li hu dovut fuq l-*income* taxxabli tagħha li jiġi mill-kummerċ jew negozju tagħha għal dik is-sena ta' stima l-ammont tal-kreditu ta' taxxa fuq l-investment u fejn il-kreditu ta' taxxa fuq l-investment, għal xi sena ta' stima, jeċċedi t-taxxa fuq l-*income* li jithallas minn dik l-intrapriża għal dik is-sena, l-eċċess għandu jkun miżjud mal-kreditu ta' taxxa fuq l-investment għas-sena ta' wara u jkun meqjus bhala parti minn dak il-kreditu ta'

taxxa fuq l-investment, jew jekk ma hemmx kreditu ta' taxxa bhala dak fuq l-investment ghal dik is-sena, ikun meqjus bhala l-kreditu ta' taxxa fuq l-investment ghal dik is-sena u jibqa' jsir hekk ghas-snin sussegwenti:

Izda dik il-parti mill-kreditu ta' taxxa fuq l-investment li ma tkunx hekk utilizzata fl-ahhar ta' xi sena u li ghalhekk tkun miġjuba 'l quddiem biex tkun miżjuda mal-kreditu ta' taxxa fuq l-investment tas-sena ta' stima ta' wara u meqjusa bhala parti minn dak il-kreditu ta' taxxa fuq l-investment jew meqjusa bhala l-kreditu ta' taxxa fuq l-investment ghal dik is-sena, ghandha tkun miżjuda bir-rata ordnata fil-linji gwida; u fejn xi parti ta' dak il-kreditu ta' taxxa fuq l-investment hekk miżjud ghal darb'ohra ma tkunx utilizzata, dik il-parti li ma hijiex utilizzata terġa' tkun miżjuda bl-imsemmija percentwali u miġjuba 'l quddiem ghas-sena ta' wara, u jibqa' jsir hekk ghas-snin sussegwenti;

Izda wkoll kreditu ta' taxxa fuq l-investment ma jaghtix lok ghal dritt ta' rifiżjoni ta' taxxa.

(7) Meta intrapriża tkun ibbenefikat mid-disposizzjonijiet ta' dan ir-regolament, il-kreditu ta' taxxa fuq l-investment ikun meqjus illi heles mit-taxxa dik il-parti ta' *l-income* taxxabli ta' l-intrapriża li meta jiġi multiplikat bir-rati ta' taxxa li bihom kienet taxxabli f'dik is-sena tkun ugwali ghall-kreditu ta' taxxa fuq l-investment; u meta l-intrapriża jew xi intrapriża sussegwenti tiddistribwixxi *l-income* li hu hekk meqjus li kien mehlus mit-taxxa, dik l-intrapriża, jew intrapriża, ghandhom jiddikjaraw fid-*dividend warrant* li ghandu x'jaqsam ma' dik id-distribuzzjoni li t-taxxa fuq dak *l-income* kienet mehlusa bi kreditu ta' taxxa fuq l-investment skond dan ir-regolament; u t-taxxa li kienet hekk mehlusa ma tkunx disponibbli ghal rifiżjoni ghal kull fini ta' l-Att dwar it-Taxxa fuq *l-Income*.

Kap. 123.

(8) (a) *L-income* taxxabli li hu meqjus li ġie mehlus mit-taxxa skond is-subregolament (7) ghandu jkun, ghall-finijiet ta' l-Att dwar it-Taxxa fuq *l-Income*, allokat fil-kont intaxxat b'mod finali tal-kumpannija in kwistjoni u kull *dividend* (jew parti minnu) li jkun imqassam ikun eżenti mit-taxxa fuq *l-income* meta jasal f'idejn il-membri tal-kumpannija malli dawn jirċievu dan it-tqassim.

(b) Meta *dividend* imsemmi fis-subregolament (1) jitqassam lil membru li jkun ukoll kumpannija (f'dan is-subregolament imsemmi bhala "it-tieni kumpannija"), dak id-*dividend* jista' bl-istess mod jitqassam mit-tieni kumpannija lill-membri taghha stess bhala *dividends* eżenti mit-taxxa fuq *l-income* meta jasal f'idejn min jirievih, u meta membru tat-tieni kumpannija jkun ukoll kumpannija, id-dispożizzjonijiet

preċedenti ta' dan is-subregolament għandhom japplikaw *mutatis mutandis* bhallikieku dak li jingħad hemm għat-tieni kumpannija kien qed jingħad ukoll għal dak il-membri, u l-prinċipju stabbilit f'dan is-subregolament għandu jibqa' jiġi applikat għal kemm-il darba l-qligħ u l-profitti jew parti minnhom li għalihom japplika dan ir-regolament jitqassmu bħala *dividends*.

(9) Meta għal sena ta' stima, intrapriża tikkwalifika għal kreditu ta' taxxa skond l-Att dwar il-Promozzjoni tan-Negożju, u anki taht id-dispożizzjonijiet ta' dawn ir-regolamenti, din għandha tagħmel użu mill-kreditu ta' taxxa dovuta taht l-Att dwar il-Promozzjoni tan-Negożju, qabel ma tagħmel xi tpaċija fir-rigward tal-kreditu ta' taxxa dovut skond dawn ir-regolamenti. Kap. 325.

(10) Ebda kreditu ta' taxxa ma jkun dovut lil xi intrapriża skond dawn ir-regolamenti għal xi sena ta' stima jekk dan ma jintalabx fil-parti adatta tal-prospett tat-taxxa mibgħut b'mezzi elettronici sa mhux aktar tard mid-data tal-prospett tat-taxxa relattiv.

5. Meta intrapriża tkun qegħda twettaq jew tkompli twettaq xi attività kwalifikanti f'Għawdex li tista tikkontribwixxi għall-iżvilupp reġjonali ta' Għawdex tingaġġa fl-impjieg tagħha fuq bażi *full-time* persuna jew persuni żvantaġġati jew b'diżabilità, dik l-intrapriża, sakemm din tkun tikkonforma mal-linji gwida, tista' tiġi provduta b'għotja finanzjarja ekwivalenti għal percentwali ta' l-ispiza għall-pagi minfuqa fl-impjieg ta' dawk il-haddiema żvantaġġati jew b'diżabilità. Impjieg ta' persuni
żvantaġġati jew
b'diżabilità

6. (1) Meta l-Korporazzjoni tkun soddisfatta li intrapriża li tkun qegħda twettaq jew li għandha l-hsieb li twettaq attività kwalifikanti f'Għawdex tista' tikkontribwixxi għall-iżvilupp reġjonali ta' Għawdex u dik l-intrapriża tkun tikkwalifika għal kreditu ta' taxxa fuq l-investiment skond ir-regolament 4, dik l-intrapriża tista', sakemm din tkun tikkonforma mal-linji gwida, tingħata għotja finanzjarja ekwivalenti għal perentwali ta' l-ispiza għall-pagi mhallsin mill-intrapriża, u li f'kull każ din is-somma ma teċċedix l-11,650 euro għal kull impieġ għdid li jiġi mahluq. Għotjiet finanzjarji
bħala għajna
għall-investiment
lil intrapriži
ibbażati
f'Għawdex.

(2) L-għotja finanzjarja li tiġi provduta skond is-subregolament (1) tkun disponibbli biss għal dawk l-intrapriži stabbiliti f'Għawdex li jimpjegaw ta' l-inqas hames impjegati godda jew iktar.

(3) L-għotja finanzjarja li tiġi provduta skond is-subregolament (1) tkun minflok kreditu ta' taxxa ekwivalenti mogħtija skond dawn ir-regolamenti.

L.N. 68 of 2008

**MALTA ENTERPRISE ACT
(CAP. 463)**

Investment Aid Regulations, 2008

IN exercise of the powers conferred upon him by article 5 of the Malta Enterprise Act, the Prime Minister and Minister of Finance and the Minister for Investment, Industry and Information Technology have made the following regulations:

Title and commencement.

1. (1) The title of these regulations is the Investment Aid Regulations, 2008.

(2) These regulations shall be deemed to have come into force with effect from 1st January 2008.

Interpretation.

2. In these regulations, unless the context otherwise requires:

“the Act” means the Malta Enterprise Act;

“the Corporation” means the Malta Enterprise Corporation established under the Malta Enterprise Act;

“disadvantaged or disabled person” has the meaning assigned to it by the Guidelines;

“Guidelines” means such guidelines as may be published by the Corporation from time to time in terms of the Act;

“large undertaking”, “medium-sized undertaking”, “small undertaking” and “micro undertaking” shall have the meaning attributed to them by Commission Recommendation 2003/361/EC;

“qualifying expenditure” means that expenditure that may qualify for assistance in terms of these regulations and in accordance with the Guidelines;

“undertaking” means an undertaking as defined in the Act except for the purposes of regulations 4 and 6 where undertaking shall mean:

(a) a partnership constituted under the Companies Act, being a partnership *en nom collectif*, *en nom commandite* or a limited liability company; or

(b) 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

(c) a co-operative society duly registered as such under the Co-operative Societies Act.

3. (1) A qualifying activity in terms of these regulations shall be an economic activity consisting of a trade or business the profits or gains from which are chargeable to tax pursuant to article 4(1)(a) of the Income Tax Act, carried on or intended to be carried out by an undertaking in Malta which consists solely of any one of the following activities –

(a) (i) the production, manufacture, improvement, assembly, preservation, processing of any goods, materials, commodities, equipment, plant, machinery;

(ii) the rendering of any industrial services analogous to the activities referred to in paragraph (i) of this subregulation;

(iii) the repair, overhaul or maintenance of pleasure crafts, yachts not having more than thirty berths, aircraft, engines or equipment incorporated or used in such vessels or aircraft;

(b) Information and Communications Technology (I.C.T.) developmental activities, software development, Information Technology (IT) enabled services including call centres and Information Technology (IT) solutions as may be prescribed in the Guidelines, but excluding telecommunications service providers;

(c) research and development, and innovative start-ups as may be prescribed in the Guidelines;

(d) eco-innovations, waste treatment and environmental solutions as may be prescribed in the Guidelines;

(e) biotechnology, comprising the production or development of intellectual property or goods or the rendering of services resulting from, or related to, the study, research, discovery application, modification or development of living organisms or materials derived from them as may be prescribed in the Guidelines;

(f) the provision of facilities directly required in the development or production of feature films, television programmes or commercials as may be prescribed in the Guidelines;

(g) the provision of science and technology private tertiary education as may be prescribed in the Guidelines;

(h) the provision of private health-care services through the setting up of new projects carrying out an investment of not less than 2.5 million Euro in medical equipment, excluding land or buildings as may be prescribed in the Guidelines;

(i) the provision of logistics services that include part-transformation that adds value by undertakings employing not less than 250 full-time employees or their equivalent as may be prescribed in the Guidelines;

(j) activities set out in Article 11 of the Malta Freeports Act and carried on mainly in a freeport as defined by that Act by an undertaking licensed under that Act:

Cap. 334.

Provided that an undertaking shall not qualify for any of the benefits provided by these regulations if –

a) the undertaking sells by retail and, for this purpose, an undertaking shall be deemed not to sell by retail if its sales of goods or services are made to –

(i) a person who carries on a trade and the goods or services so sold to such person are either resold by such person or are used by such person for the purpose of his trade; or

(ii) a person, other than an individual, who uses those goods or services for the purpose of an undertaking carried on by such person;

(iii) a person through e-commerce activities resulting in online transactions effected by means of a secure payment system;

b) the undertaking's trade or business includes any one of the following activities:

(i) dividing, sorting, packaging, mixing without changing the character of the good, drying, labelling, or other similar processes or any combination of such processes to goods which are acquired in bulk merely to prepare those goods for sale or distribution, excluding goods in respect of which the said undertaking carries on any other activity referred to in subregulation (1)(a);

(ii) the assembly of any goods where—

1. the final assembled good is clearly recognisable from the individual components or parts from which it is assembled without regard being had to any exterior casing of the good; and

2. the components and parts from which the good is assembled are such that the good is nearly complete and the assembly work and the supervision of such assembly work only require the employment of almost exclusively unskilled workers, such that the assembly operation is of a spurious nature when considered in the light of manufacturing activities;

(iii) without prejudice to any exception as may be provided in the Guidelines, the installation, commissioning or assembly of goods on site, where the said goods have not been manufactured by the undertaking which is installing, commissioning or assembling the goods on site:

Provided that the provisions of this paragraph shall not be applicable to an undertaking which carries on only any one or more of the activities set out in subregulation (1)(b) to (j);

(c) the trade or business of the undertaking includes the preparation or production of “food in the course of catering” including -

(i) meals or snacks including -

(1) hot and cold dishes including antipasto and dessert;

(2) sandwiches, toast, potato chips, sausage rolls, pizza, *pastizzi*, *qassatat* and similar snacks;

(3) biscuits, cakes, confectionery and similar items but excluding those sealed in a package by the manufacturer and supplied in that original sealed package, and those items which individually weigh 500 grams or more;

(4) food supplied in restaurants, cafeterias, canteens, bars and other similar establishments;

(5) food prepared or produced for parties, functions, weddings and similar events;

(6) food prepared or produced for consumption by persons pertaining to a particular location or organisation, including patients in hospitals or homes, residents of hotels or guest houses, workers in a particular workplace and the preparation or production of food in similar circumstances.

(ii) milk, milkshake, tea, coffee and chocolate supplied in liquid form, excluding milk and milkshake supplied by the manufacturer thereof in bottles and containers for distribution to retail outlets but including any form of drink which is merely produced by adding liquid to powder or substance and where such drink is produced in order that it may be served in a bar, restaurant, canteen, cafeteria or other establishment or place to individuals for consumption.

4. (1) An undertaking carrying on or intending to carry out a qualifying activity in terms of Regulation 3 that may contribute to the economic development of Malta shall, subject to the terms and conditions of the Guidelines, be entitled to an investment tax credit, which tax credit shall, with respect to an investment project be calculated either –

(a) as a percentage of the qualifying expenditure incurred by such undertaking in the year preceding the year of assessment in question; or

(b) as a percentage of wage costs for jobs directly created by the investment project in accordance with the provisions of subregulations (4) to (7):

Provided that the total amount of investment tax credits that may be granted in terms of this regulation for a specific investment project shall not exceed:

(i) in the case of an undertaking which qualifies as a small undertaking, fifty per cent of the qualifying expenditure;

(ii) in the case of an undertaking which qualifies as a medium undertaking, forty per cent of the qualifying expenditure;

(iii) in the case of an undertaking which qualifies as a large enterprise, thirty per cent of the qualifying expenditure:

Provided further that in the case of large investment projects, the investment tax credit to be granted in terms of this subregulation shall never exceed:

(i) fifteen per cent (15%) of the qualifying expenditure for that amount in excess of 50 million Euro; and

(ii) ten point two per cent (10.2%) of the qualifying expenditure for that amount in excess of 100 million Euro.

(2) In the case of an investment project that may make a substantial contribution to the economic development of Malta, the Corporation may convert the investment tax credit referred to in

subregulation (1) into other forms of assistance, including cash grants.

(3) For the purposes of this regulation the terms 'tangible assets' and 'intangible assets' shall have the meaning attributed to them in the Guidelines.

(4) The amount of investment tax credit based on job creation which an undertaking may claim in a year of assessment in terms of subregulation (1)(b) shall be based on the wage cost incurred by that undertaking in the accounting period ending in the year preceding that year of assessment.

(5) An undertaking shall, subject to the terms and conditions of the Guidelines, be considered to have created a job as a result of an investment project for those individuals who are employed by the undertaking, if the job is directly connected with the activity to which the investment project relates and is created within three years from the completion of the investment project and as long as the employment of any such individual is not in replacement of another individual and provided that such employment is not terminated before the lapse of five years from the date of employment in the case of large undertakings and not before the lapse of three years from the date of employment in the case of small and medium sized undertakings:

Provided that for the purpose of determining whether jobs have been created, individuals who are employed by the undertaking 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 and seven hundred and sixty:

Provided further 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 and 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.

(6) An undertaking which is entitled to an investment tax credit in respect of a year of assessment 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 that year of assessment the amount of the investment tax credit and, where the investment tax credit, for any year of assessment, exceeds the income tax payable

by such an undertaking for that year, the excess shall be added to the investment tax credit for the following year and deemed to be part of that investment tax credit, or if there is no such investment tax credit for that year, be deemed to be the investment tax credit for that year and so on for subsequent years:

Provided that so much of the investment tax credit which is not so utilised at the end of any year and which is therefore carried forward to be added to the investment tax credit of the following year of assessment and deemed to be the investment tax credit for that year, shall be increased by such rate as may be prescribed in the Guidelines; and where any part of the investment tax credit as so increased is again not utilised, so much of it as is not utilised shall be further increased by the said percentage and carried forward to the following year, and so on for subsequent years:

Provided further a tax credit shall not give rise to a right to a refund of tax.

(7) Where an undertaking has benefited from the provisions of this regulation, the investment tax credit shall be deemed to have relieved from tax so much of that undertaking's chargeable income which, when multiplied by the rates of tax at which it was chargeable in that year, is equal to the investment tax credit; and where the undertaking or any subsequent undertaking distributes the income which is so deemed to have been relieved from tax, such undertaking or undertakings shall state in the dividend warrant pertaining to any such distribution that such income has been relieved from tax by an investment tax credit in accordance with this regulation; and the tax which has so been relieved shall not be available for refund for any purpose of the Income Tax Act. Cap. 123.

(8) (a) The chargeable income which is deemed to have been relieved from tax in accordance with sub-regulation (7) shall, for the purposes of the Income Tax Act, be allocated to the Final Taxed Account of the company in question and any dividends (or part thereof) distributed from such income shall be exempted from income tax in the hands of the members of the company on receipt of such distribution.

(b) Where a dividend referred to in sub-regulation (1) is distributed to a member which is also a company (in this sub-regulation is referred to as "the second company"), the said dividend shall likewise be distributed by the second company to its members in the form of dividends exempt from income tax in the hands of the recipients, and where a member of the

second company is again a company, the preceding provisions shall apply *mutatis mutandis* as though references to the first company were references to the second company, and as though references therein to the second company were references to that member, and the principle set out in this sub-regulation shall continue to be applied for as long as such income or part thereof to which this regulation applies are distributed by way of dividends.

Cap. 325.

(9) Where for a year of assessment, an undertaking qualifies for a tax credit under the Business Promotion Act and also under the provisions of these regulations, it shall avail itself of the tax credit due under the Business Promotion Act before any set-off is made in respect of the tax credit due under these regulations.

(10) No tax credit shall be due to an undertaking under these regulations for a year of assessment unless it is claimed in the appropriate section of a tax return submitted by electronic means by not later than the relative tax return date.

Employment of disadvantaged or disabled persons.

5. Where an undertaking carrying out or carrying on a qualifying activity in Gozo that may contribute to the regional development of Gozo recruits in its employment on a full time basis a disadvantaged or disabled person or persons, such an undertaking may subject to its compliance with the Guidelines be provided with a cash grant equivalent to a percentage of the wage costs incurred in the employment of such disadvantaged or disabled workers.

Investment aid cash grants to Gozo based undertakings.

6. (1) Where the Corporation is satisfied that an undertaking carrying out or carrying on a qualifying activity in Gozo may contribute to the regional development of Gozo and such an undertaking qualifies for investment tax credits in terms of Regulation 4, such an undertaking may, subject to its compliance with the guidelines published by the Corporation, be awarded a cash grant equivalent to a percentage of the wage costs incurred by the undertaking, but in any case not exceeding the sum of Euro11,650 per new job created by the undertaking.

(2) The cash grant to be provided in terms of subregulation (1) shall only be available to such undertakings established in Gozo that recruit at least five or more new employees.

(3) The cash grant to be provided in terms of subregulation (1) shall be in lieu of equivalent tax credits granted in terms of these regulations.