L.N. 330 of 2005

INCOME TAX ACT
(CAP. 123)

Deductions and Tax Credits (Research and Development) Rules, 2005

IN exercise of the powers conferred by articles 14(2) and 96 of the Income Tax Act, hereinafter referred to as "the Act", the Prime Minister and Minister of Finance has made the following rules:-

Part One

General Provisions

Title.

1. (1) The title of these rules is the Deductions and Tax Credits (Research and Development) Rules, 2005.

(2) These rules shall apply to expenditure incurred on or after the 1st January, 2005.

(3) The equivalent of the benefits under the scheme shall be an amount specifically appropriated in Government's financial estimates for a particular financial year.

General definition.

2. In these rules, unless the context otherwise requires –

"small enterprise" and " medium-sized enterprise" have the meaning assigned to them under the provisions of the Business Promotion Regulations, 2001;

"SME" means a small or medium-sized enterprise;

"the Corporation" means the Malta Enterprise Corporation.

Part Two

Research and Development Projects

Definitions under this Part.

3. In this Part, unless the context otherwise requires -

"allowable R&D expenditure" has the meaning assigned to it in rule 10;

"approved R&D project" means a project approved by the Corporation in accordance with rule 5;

"company" means a company, as defined in the Act, that qualifies as a small or medium-sized enterprise:

Provided that with respect to qualifying expenditure incurred as from such date as the Minister responsible for finance may prescribe, "company" shall also include a company as defined in the Act that does not qualify as a small or medium sized enterprise;

"maximum amount of qualifying R&D expenditure" has the meaning assigned to it in rule 7;

"project period" means the period starting on the earliest date of the commencement and ending on the latest date of the termination of a project as determined under rule 8(1)(d);

"qualifying R&D expenditure" means expenditure that is treated as such in terms of rule 5(2) and (3);

"research and development" means an activity falling within any of the following descriptions:

(i) fundamental research, that is, an activity designed to broaden scientific and technical knowledge not linked to industrial or commercial objectives;

(ii) industrial research, that is, planned research aimed at the acquisition of new knowledge, the objective being 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;

(iii) pre-competitive research, that is, the shaping of the results of industrial research into a plan, arrangement or design for new, altered or improved products, including the creation of a prototype which cannot be used commercially.

Deduction or tax credit in respect of R&D project.

4. (1) When a company incurs allowable R&D expenditure in carrying out an approved R&D project, it shall be entitled to a deduction and, where applicable, to tax credit in accordance with and subject to the provisions of this Part.

(2) No deduction or tax credit shall be allowable under the Act or under any other law in respect of qualifying R&D expenditure incurred on or after the 1st January, 2005 except as and to the extent provided for in this Part and in paragraph (f) and (j) of article 14 of the Act.

(3) The provisions of paragraph (h) of sub-article (1) of article 14 of the Act shall not apply with respect to expenditure incurred on or after the 1st January, 2005.

Application to the Corporation.

5. (1) When a company engaged in a trade, business, profession or vocation incurs or intends to incur qualifying R&D expenditure in carrying out a research and development project it may submit to the Corporation an application for the approval of that project.

(2) Expenditure is to be treated as qualifying R&D expenditure if it falls within any of the following descriptions:

(a) personnel costs of staff employed solely on research and development to the extent that they have been correctly reported in the Payee Statement of Earnings and the Payer's Annual reconciliation Statement prepared in terms of the Final Settlement System (FSS) Rules, 1998;

(b) costs of instruments and equipment used solely and on a continual basis for research and development;

(c) cost of land and premises used solely and on a continual basis for research and development;

(d) cost of external consulting and equivalent services related directly to research and development, other than costs to which sub-rule (3) refers;

(e) additional overheads incurred directly as a result of research and development;

(f) other operating expenses incurred directly as a result of research and development.

(3) When the research and development project in question is a project that is, or that would be if selected, fully or partly financed by the Commission of the European Union under a framework programme, the costs of external consulting and equivalent services related directly to the preparation and submission of an application for the selection and funding of that project under the relative programme

shall also be treated as qualifying R&D expenditure incurred in the carrying out of an R&D project.

(4) An application under this rule shall be made on such form as may be acceptable to the Corporation and shall:

(a) provide such particulars of the applicant as are necessary to determine whether it qualifies or not as a small or medium sized enterprise;

(b) describe the project, its purpose and the expected date of its commencement and its duration;

(c) contain a description of each item of qualifying expenditure that the applicant has incurred or intends to incur in the carrying out of the project, which items shall be grouped according to the descriptions listed in the definition of research and development given in rule 3 and to the categories of qualifying R&D expenditure listed in sub-rules (2) and (3);

(d) grant the authorisation referred to in sub-rule (5);

(e) contain such other information, breakdowns and details, and be accompanied by such documents and certifications as the Corporation may require;

(f) be made not later than three months before the company's tax return date for the year of assessment that immediately follows the year in which the company incurs the expenditure to which the application refers.

(5) The authorisation referred to in sub-rule (4)(d) shall -

(a) grant to the Corporation and its officers access to any premises or works as the Corporation may consider necessary in order to ascertain any matter relevant to the approval of an application and the right to a deduction or tax credit under this Part;

(b) authorise the Corporation to disclose to the Commissioner any information and to pass on to the Commissioner originals or copies of any documents and records that the Corporation may have obtained in connection with the application.

Approval of project.

6. (1) When the Corporation is satisfied that a project to which an application made under rule 5 refers is a *bona fide* research and development project and that the application complies with the requirements of these rules, it may approve the project and proceed to make a determination and issue a letter of approval as provided in rules 7 and 8:

Provided that –

(a) the Corporation shall not approve any project after the 31st December, 2008 or after such earlier date as the Corporation may specify by means of a notice in the Gazette;

(b) the Corporation shall not approve a project whose expected duration is more than thirty-six months.

(2) The Corporation may make the approval of a project subject to such conditions as it may consider appropriate.

Determination of maximum qualifying R&D expenditure.

7. When the Corporation approves a project it shall determine the extent to which, in its opinion, the expenditure referred to in the application constitutes qualifying R&D expenditure and is necessary and reasonable in the light of the purpose for which it is or was intended to be incurred, and the amount so determined shall constitute the maximum qualifying R&D expenditure.

Letter of approval.

8. (1) In respect of every approved R&D project the Corporation shall issue a letter of approval showing:

(a) particulars of the applicant;

(b) a description of the project, with such conditions as the Corporation may have considered appropriate pursuant to rule 6(2);

(c) the amount of the maximum qualifying R&D expenditure for each item of expenditure, indicating the category under rule 5(2) and (3) to which each such item belongs;

(d) the earliest date by which the project must commence and the latest date by which it must be completed;

(e) the shortest period for which the investment must be retained in terms of rule 10(2);

(f) such other particulars as the Corporation may consider appropriate.

(2) The Corporation shall deliver the letter of approval to the applicant and a copy thereof to the Commissioner.

(3) The Corporation shall issue the said letter of approval before the company's relative tax return date.

Certification of completion by company.

9. (1) On the completion of the approved R&D project and not later than sixty days therefrom, the company shall deliver to the Corporation a certificate drawn up by a person who is recognised by the Corporation as competent for this purpose, showing:

(a) the date of the completion of the project;

(b) the amount of allowable R&D expenditure, indicating the applicable description under the definition of research and development given in rule 3 and the category of qualifying R&D expenditure listed in sub-rules 5(2) and 5(3) to which each item belongs;

(c) whether, where applicable, the conditions that may have been made applicable to the project in terms of rule 6(2) have been observed.

(2) Where the approved project includes qualifying R&D expenditure listed under paragraph 5(2)(c), the certificate referred to in sub-rule (1) shall be accompanied by a statement written by the architect under whose direction or supervision the works were carried out, confirming that the expenditure was incurred in the carrying out of the project as approved.

(3) The company shall, within the time limit set out in sub-rule (1), deliver a copy of the certificate and, where applicable, of the accompanying statement, to the Commissioner.

(4) The Commissioner may, after receiving a copy of the certificate, request an independent opinion from the Corporation or any other competent technical person regarding the contents thereof.

Allowable R & D expenditure.

10. (1) Expenditure shall constitute allowable R&D expenditure if and to the extent that it meets all the following conditions:

(a) it is qualifying R&D expenditure actually incurred by a company and is not reimbursed to or otherwise recoverable by it;

(b) it is an item of expenditure to which the letter of approval issued under rule 8 refers and in respect of which any condition

that may have been made applicable to the project in terms of rule 6(2) are satisfied;

(c) it was incurred during the project period;

(d) it is correctly, clearly and separately recorded in the records of the company and supported by documentary evidence.

(2) The investment represented by allowable R&D expenditure that falls within the descriptions of rule 5(2)(b) and (c) shall be retained within the company for at least three years after the termination of the project period or for such shorter period as the Corporation may specify in the letter of approval in terms of rule 8(1)(e), and the assets to which such expenditure refers shall be, for the said period, used solely and on a continual basis for research and development.

(3) If an investment or any part thereof represented by expenditure referred to in sub-rule (2) is not retained within the company for the period referred to in that sub-rule, or is not, during the said period, used solely and on a continual basis for research and development, the amount of expenditure corresponding to that investment or part thereof, as the case may be, that is not so retained shall, for the purpose only of determining the right to the tax credit as provided in rule 11(2), be deemed to have never constituted allowable R&D expenditure and the provisions of rule 12 shall apply.

Calculation of deduction and tax credit.

11. (1) In determining the total income of a company that incurs allowable R&D expenditure there shall be allowed a deduction equivalent to that expenditure:

Provided that no deduction shall be allowed under the provisions of this rule in the case of any such expenditure on plant or machinery or premises, in respect of which any deduction is allowed under paragraphs (f) and (j) of article 14 of the Act.

(2) where the R&D expenditure is incurred in the carrying and of an activity in the applicant's main place of business in addition to the deduction referred to in sub-rule (1) the company shall be entitled –

(a) in respect of allowable R&D expenditure other than expenditure to which paragraph (b) refers, to a tax credit equivalent to a percentage of the said expenditure as shown in Table A of the Schedule, but not exceeding the threshold referred to in sub-rules (3) and (5);

(b) in respect of allowable R&D expenditure incurred in carrying out an approved R&D project that is financed partly by the Commission of the European Union under a framework programme, to a tax credit equivalent to a percentage of that expenditure as shown in Table C of the Schedule, but not exceeding the threshold referred to in sub-rules (4) and (5).

(3) Subject to sub-rule (5), the tax credit allowable under sub-rule (2)(a) in respect of a project shall not exceed –

(a) the threshold set out in Table B of the Schedule, if the project is carried out by a small or medium-sized enterprise; or

(b) the threshold set out in Table D of the Schedule in any other case.

(4) Subject to sub-rule (5), the total value of the tax credit allowable under sub-rule (2)(b) in respect of a project shall not exceed the threshold set out in Table E of the Schedule.

(5) Where the company in question has benefited from any State aid in respect of expenditure incurred in the carrying out of the project, other than as provided for in this Part, the threshold referred to in sub-rule (3) or (4), as the case may be, shall be reduced by the value of that other benefit.

(6) The correct calculation of the reduction mentioned in sub-rule (5), where applicable, shall be the sole responsibility of the applicant company.

(7) When the tax credit referred to in sub-rule (2)(a) or the tax credit referred to in sub-rule (2)(b), computed before taking into account the thresholds referred to in sub-rules (3), (4) and (5), exceeds the respective threshold, the said tax credit allowable in respect of each item of expenditure shall be reduced *pro rata*.

(8) The amount of the total tax credits allowable under this rule shall be subject to the applicable State Aid intensity limitations, in particular those established in article 5a of Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State Aid to small and medium-sized enterprises (OJ L 10/33, 13.1.2001), as subsequently amended.

(9) The deduction and tax credit referred to in this rule shall be due for the year of assessment immediately following the year in which the relative expenditure is incurred:

Provided that:

(a) to the extent that a deduction or tax credit cannot be availed of in a year of assessment, it shall be carried forward to be availed of in subsequent years of assessment;

(b) a tax credit due under this Part shall not give rise to a right to a refund of tax;

(c) where, for a year of assessment, a company qualifies for a tax credit under the Business Promotion Act and also under the provisions of this Part, it shall avail itself of the tax credit under the Business Promotion Act before any set-off is made in respect of the tax credit due under this Part.

Reversal of tax credit.

12. If a company avails itself of a tax credit under rule 11(2) in respect of expenditure that is subsequently deemed to have never constituted allowable R&D expenditure for the purpose of that rule in the circumstances mentioned in rule 10(3), an amount equal to that credit shall be deemed to be tax due by the company, in addition to any other tax liability, for the year of assessment that immediately follows the year in which those circumstances subsist, and the provisions of the Act shall apply accordingly.

Council Regulation (EC) No 70/2001.

13. Insofar as it provides for and regulates benefits for small and medium-sized enterprises this Part is prescribed and shall be applied in accordance with Commissioner Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State Aid to small and medium-sized enterprises (OJ L 10/33, 13.1.2001), as subsequently amended.

Part Three

R & D Relevant Qualifications

Definitions under this Part.

14. In this Part, unless the context otherwise requires –

"allowable wages and tuition expenditure" has the meaning assigned to it in rule 19;

"company" has the meaning assigned to it in the Act;

"general qualification" means a masters degree or a doctoral degree that is largely transferable to other firms or fields of work in information technology, sciences or engineering awarded on

the successful completion of a full-time course in a university or equivalent educational institution recognised by the Corporation;

"maximum qualifying wages and tuition expenditure" means the amount determined in accordance with rule 17(1);

"qualifying wages and tuition expenditure" means expenditure that is treated as such in terms of rule 16(2):

Provided that expenditure that forms part of allowable R&D expenditure under Part One shall not be treated as qualifying wages and tuition expenditure under this Part;

"R&D relevant qualification" means a general or a specific qualification which, in the opinion of the Corporation, is relevant to research and development;

"specific qualification" means an internationally recognised certificate in information technology, sciences or engineering awarded by a university or other institution recognised by the Corporation to an employee of a company on the successful completion of a full-time course which, in the opinion of the Corporation, directly contributes to high level specialisation in areas directly and principally applicable to that employee's present and future position in the company as the Corporation may approve.

Deduction for qualifying wages and tuition expenditure.

15. (1) When a company incurs allowable wages and tuition expenditure it shall be entitled, for the purpose of ascertaining its total income, to a deduction and, where applicable, to a tax credit in respect of that expenditure in accordance with and subject to the provisions of this Part.

(2) No deduction or tax credit shall be allowable under the Act or under any other law in respect of qualifying wages and tuition expenditure incurred on or after the 1st January, 2005 except as and to the extent provided for in this Part.

Application to the Corporation.

16. (1) When a company engaged in a trade, business, profession or vocation incurs or intends to incur qualifying wages and tuition expenditure it may apply to the Corporation for a determination under rule 17.

(2) Expenditure is to be treated as qualifying wages and tuition expenditure if it is expenditure that falls within any of the following descriptions and that is incurred by a company in connection

with a course of studies leading to an R&D relevant qualifying qualification undertaken by one or more full-time employees:

(a) wages and the employer's share of social security contributions paid in respect of the respective employee while he was a full-time employee pursuing the course in question;

(b) fees paid to the university or institution in question for the admission of the respective employee to the course and the attendance of that employee for that course;

(c) the cost of course materials directly related to the training programme, as may be approved by the Corporation.

(3) An application under this rule shall be made on such form as may be acceptable to the Corporation and shall:

(a) provide such particulars on the applicant as are necessary to determine whether it qualifies or not as a small or medium-sized enterprise;

(b) describe in detail each course of studies to which it refers, including the date of the commencement and of the completion of the course, the relative academic qualification and the particulars of the respective employee;

(c) contain a description of each item of qualifying wages and tuition expenditure that the applicant has incurred or intends to incur, which items shall be grouped according to the categories of expenditure listed in sub-rule (2);

(d) grant the authorisation referred to in sub-rule (4);

(e) contain such other information, breakdowns and details, and be accompanied by such documents and certifications as the Corporation may require;

(f) be made not later than three months before the company's tax return date for the year of assessment that immediately follows the year in which the company incurs the expenditure to which the application refers.

(4) The authorisation referred to in sub-rule (3)(d) shall -

(a) grant to the Corporation and its officers access to any premises or works as the Corporation may consider necessary in

order to ascertain any matter relevant to the approval of an application and the right to a deduction or tax credit under this Part;

(b) authorise the Corporation to disclose to the Commissioner any information and to pass on to the Commissioner originals or copies of any documents and records that the Corporation may have obtained in connection with the application.

Letter of approval by the Corporation.

17. (1) When the Corporation is satisfied that the application is a *bona fide* application that complies with the provisions of rule 16, and when, after it has obtained all such information and made such ascertainment as it has considered necessary, it considers it appropriate so to do, it may determine that the course in question is a course leading to an R&D relevant qualification and determine the extent to which, in its opinion, the expenditure referred to in the application constitutes qualifying wages and tuition expenditure and is necessary and reasonable in the light of the purpose for which it is or was intended to be incurred, and the amount so determined shall constitute the maximum qualifying wages and tuition expenditure:

Provided that the Corporation shall not make such a determination in respect of a course of studies that –

(a) commences after the 31st December, 2008 or after such earlier date as the Corporation may specify by means of a notice in the Gazette;

(b) is longer than thirty-six months.

(2) The Corporation may make the determination under this rule subject to such conditions as it may consider appropriate.

(3) When the Corporation makes a determination under this rule, it shall issue a letter of approval in respect of each course of studies to which that determination refers showing -

(a) the particulars of the applicant and of the employee in question, including the date of the commencement of the employee's employment with the applicant;

(b) a description of the course and the relative qualification, specifying whether it is to be treated as a general or a specific qualification;

(c) any conditions as the Corporation may have considered appropriate pursuant to sub-rule (2);

(d) the maximum qualifying wages and tuition expenditure for each item of expenditure, indicating the category under rule 16(2) to which each such item belongs;

(e) the earliest date by which the course is to commence or the date on which it has commenced and the latest date by which it is to be successfully concluded;

(f) such other particulars as the Corporation may consider appropriate.

(4) The Corporation shall deliver the letter of approval to the applicant and a copy thereof to the Commissioner.

Certification of completion of the course.

18. (1) On the successful completion of a course in respect of which a letter of approval has been issued and not later than sixty days from the date of such completion, the company shall deliver to the Corporation a certificate showing:

(a) the date of the successful completion of the course;

(b) the amount of allowable wages and tuition expenditure;

(c) whether, where applicable, the conditions that may have been made applicable to the project in terms of rule 17(2) have been observed.

(2) The said certificate shall be accompanied by a statement issued by the relevant university or other institution showing the date on which the employee successfully completed the course in question.

(3) The company shall, within the time limit set out in sub-rule (1), deliver to the Commissioner a copy of the certificate referred to in the said sub-rule (1) and a copy of the statement referred to in sub-rule (2).

Allowable wages and tuition expenditure.

19. (1) Expenditure shall constitute allowable wages and tuition expenditure if and to the extent that it meets all the following conditions:

(a) it is qualifying wages and tuition expenditure actually incurred by a company and is not reimbursed to or otherwise recoverable by it;

(b) it is an item of expenditure to which a letter of approval issued under rule 17 refers, which does not exceed the maximum qualifying wages and tuition expenditure for that item, and in respect of which any conditions that may have been made applicable in terms of rule 17(2) have been satisfied;

(c) it was incurred in the manner and for the purpose stated in the application made by the company under rule 16 or otherwise declared to the Corporation;

(d) it is correctly, clearly and separately recorded in the records of the company and supported by documentary evidence.

Calculation of deduction and tax credit.

20. (1) In determining the total income of a company, there shall be allowed a deduction equivalent to the relative allowable wages and tuition expenditure.

(2) When the employee in respect of whom the allowable wages and tuition expenditure was incurred obtains the qualification in question, the company shall, in addition to the deduction referred to in sub-rule (1), be entitled to a tax credit equivalent to a percentage of the said allowable wages and tuition expenditure as shown in Table F of the Schedule, but not exceeding the thresholds laid down in sub-rules (3) and (4):

Provided that the tax credit under this sub-rule shall not be due unless –

(a) the company has obtained and delivered to the Corporation the statement referred to in rule 18(2) and –

(b) the employee was still a full-time employee of the company on the date of the successful completion of the course in question; and

(c) that date is not later than the date specified in the letter of approval issued by the Corporation in terms of rule 17(3)(e) as the latest date by which the course is to be successfully completed.

(3) Subject to sub-rule (4), the tax credit allowable under sub-rule (2) shall not exceed –

(a) the threshold set out in Table G of the Schedule, if the expenditure is incurred by a small or medium-sized enterprise;

(b) the threshold set out in Table H of the Schedule in any other case.

(4) Where the company in question has benefited from any State aid in respect of expenditure to which the tax credit refers, other than as provided for in this Part, the said threshold shall be reduced by the value of that aid.

(5) The correct calculation of the reduction mentioned in sub-rule (4), where applicable, shall be the sole responsibility of the company.

(6) The deduction referred to sub-rule (1) shall be due for the year of assessment immediately following the year in which the relative expenditure is incurred, and the tax credit referred to in sub-rule (2) shall be due for the year of assessment immediately following the year in which the course of studies in question is successfully completed:

Provided that –

(a) to the extent that a tax credit cannot be availed of in a year of assessment, it shall be carried forward to be availed of in subsequent years of assessment;

(b) a tax credit due under this Part shall not give rise to a right to a refund of tax;

(c) where a company qualifies for a tax credit under the Business Promotion Act and also under the provisions of this Part, it shall avail itself of the tax credit under the Business Promotion Act before any set-off is made in respect of the tax credit due under this Part.

(7) The amount of the total tax credit allowable under this Part shall be subject to the applicable State aid intensity limitations, in particular those established in Article 4 of Commission Regulation (EC) No 68/2001 on the application of Articles 87 and 88 of the EC Treaty to training aid (OJ L 10/20, 13.1.2001), as subsequently amended.

21. This Part is prescribed and shall be applied in accordance with Commission Regulation (EC) No 68/2001 on the application of Articles 87 and 88 of the EC Treaty to training aid (OJ L 10/20, 13.1.2001), as subsequently amended. Council Regulation (EC) No 68/2001.

Part Four

Tax Credit for Social Security Contributions

Definitions under this Part.

22. In this Part, unless the context otherwise requires –

"company" means a company, as defined in the Act, that qualifies as a small or medium-sized enterprise:

Provided that as from such date as the minister responsible for finance may prescribe, "company" shall also include a company, as defined in the Act, that does not qualify as a small or medium sized enterprise;

the terms "general qualification", "R&D relevant qualification" and "specific qualification" have the meaning assigned to them in rule 14.

Tax credit for social security contributions paid in respect of qualified personnel.

23. (1) Subject to the other provisions of these rules, when a company engaged in a trade, business profession or vocation incurs expenditure consisting of the employer's share of social security contributions that meets all the conditions of sub-rule (3), it shall be entitled to a tax credit equivalent to that expenditure.

(2) The said tax credit shall be in addition to and without prejudice to the right of that company to a deduction, if any, that may be allowable in respect of the said expenditure in accordance with the provisions of article 14 of the Act:

Provided that –

(a) no tax credit shall be allowed under this rule in respect of expenditure in respect of which a deduction or tax credit is availed of under Part One;

(b) the tax credit due to a company under this Part shall not exceed, in the aggregate, the ceiling laid down in Article 4 of Commission Regulation (EC) No 2204/2202 on the application of Articles 87 and 88 of the EC Treaty to State Aid for employment (OJ L 337/3, 13.12.2002) as may be subsequently amended;

(c) where the company in question has benefited from any State aid in respect of expenditure to which the tax credit refers, other than as provided in this Part, the said ceiling shall be reduced by the value of that other benefit;

(d) the correct calculation of the said ceiling and, where applicable, reduction, shall be the sole responsibility of the company.

(3) The tax credit referred to in this rule shall be allowable if –

(a) the relative expenditure represents the employer's share of social security contributions actually paid by the employer company in accordance with the relevant provisions of the Social Security Act in respect of each individual who, at the time that he was employed as a full-time employee by that company and for the period that the expenditure was incurred, was in possession of an R&D relevant qualification;

(b) the employer company is in possession of a letter of approval issued by the Corporation in terms of sub-rule (4) confirming that the qualification of each of the employees in question is an R&D relevant qualification; and

(c) each employee in respect of whom the tax credit is claimed is an individual –

(i) whose employment with the said company represented a net increase in the number of full-time employees both in the company concerned and in the establishment of which that company forms part; and

(ii) who either had no previous full-time employment in Malta or had not resigned voluntarily from his last full-time employment that he had prior to his employment with the said company; and

(iii) who is first employed by the company claiming the tax credit on or after 1st January, 2005 and who remains in the full-time employment of that company for at least three consecutive years.

(4) The letter of approval referred to in sub-rule 3(b) may be issued by the Corporation upon a *bona fide* application that is made by not later than three months prior to the company's tax return date for the year of assessment for which the relative tax credit is first claimed, and after the Corporation has obtained all such information and made such ascertainment as it has considered necessary. The Corporation shall deliver the certificate to the applicant and a copy thereof to the Commissioner.

(5) The tax credit allowable under this rule shall be due for each year of assessment that immediately follows a year in which expenditure giving rise to the right to the tax credit is incurred:

Provided that –

(a) to the extent that the tax credit cannot be availed of in a year of assessment, it may be carried forward to be availed of in subsequent years of assessment;

(b) a tax credit shall not give rise to a right to a refund of tax;

(c) the tax credit is allowable for not more than three consecutive years of assessment in respect of any one employee, and the first of any such year of assessment shall not be later than the year of assessment 2009;

(d) if an employee in respect of whom a tax credit has been claimed does not remain in employment for the period specified in sub-rule (3)(c)(iii), that tax credit shall be deemed to have never been due;

(e) if a company avails itself of a tax credit which subsequently, in the circumstance mentioned in paragraph (d), is deemed to have never been due, an amount equivalent to credit shall be deemed to be tax due by that company, in addition to any other tax liability, for the year of assessment immediately following that in which that circumstance subsists, and the provisions of the Act shall apply accordingly.

Council Regulation No 2204/2202.

24. This Part is prescribed and shall be applied in accordance with Commission Regulation (EC) No 2204/2202 on the application of Articles 87 and 88 of the EC Treaty to State Aid for employment (OJ L 337/3, 13.12.2002), as may be subsequently amended.

Part Five

Further Provisions

Electronic tax return.

25. Notwithstanding the other provisions of these rules, except where the Commissioner otherwise approves, no tax credit shall be due to a company under these rules 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.

Submission of copy of tax return to the Corporation.

26. A company to whom a letter of approval has been issued in terms of rule 8, 17 or 23 shall submit to the Corporation, by not later than two months after the relative tax return date, a copy of the tax return for the earliest year of assessment for which the relative tax credit may first be claimed in terms of the said approval and for each subsequent year of assessment for which the said tax credit remains available to it under these rules, irrespective of whether the benefit is utilised or not.

Monitoring by the Corporation.

27. (1) When the Corporation issues a letter of approval to a company in terms of rule 8, 17 or 23, it may, from time to time, make such reviews of books and documents, hold on-site inspections on premises of that company and make such other monitoring as it may consider necessary for the purposes of these rules and for any matter relevant to an approved application.

(2) In addition to the database kept under the provisions of the Business Promotion Rules, 2001, the Corporation shall also keep a database of all assistance provided to, or claimed by, a company under these rules for ten years from the date on which the last individual assistance was granted, in order to enable it to –

(a) verify whether the provisions of these rules have been complied with;

(b) provide the State Aid Monitoring Board with such information as it may require; and

(c) inform the Commissioner whether the credits claimed in terms of these rules have been properly calculated.

Powers of the Commissioner.

28. Notwithstanding the other provisions of these rules, the Commissioner may make such enquiries and verification as he deems fit in accordance with the provisions of the Income Tax Act, and shall, after consulting the Corporation, have the right not to allow any tax credit if any default is committed by the applicant in respect of any provision of the Income Tax Act or the Social Security Act or any subsidiary legislation issued thereunder.

Further conditions.

29. The following further conditions must also be fulfilled for eligibility to the benefit under these regulations:

(a) no other benefits are being claimed or may subsequently be claimed by a person on the same activity or project under any other legislation granting fiscal incentive schemes;

(b) all tax liabilities including amounts due in respect of FSS tax as well as social security contributions due up to the time of the application, except for any tax still in dispute, must have been settled or is being settled in accordance with a formal agreement drawn up with the Commissioner.

Reversal of Tax Credit.

30. If a company avails itself of a tax credit under Part Three or Four in respect of expenditure that is subsequently deemed to have never constituted allowable expenditure for the purpose of the said Parts in the circumstances mentioned therein, an amount equal to that credit shall be deemed to be tax due by the company, in addition to any other tax liability, for the year of assessment that immediately follows the year in which those circumstances subsist, and the provisions of the Act shall apply accordingly.

SCHEDULE

TABLE A

Rule 11(2)(a)
Tax credit in respect of allowable R&D expenditure
A project that is not funded, fully or partly, under an EU funding programme

Item of expenditure	**Tax credit**
Personnel (rule 5(2)(a))	35%
Instruments and equipment (rule 5(2)(b))	35%
Land and premises (rule 5(2)(c))	14%
External consultants and equivalent services (rule 5(2)(d))	35%
External consultants and equivalent services engaged in an application for EU funds (rule 5(3))	17.5%
Additional overheads (rule 5(2)(e))	10.5%
Other operating expenses (rule 5(2)(f))	10.5%

TABLE B

Rule 11(3)(a)
Threshold of tax credit in respect of allowable R&D expenditure
A project that is not funded, fully or partly, under an EU funding programme and that is carried out by an SME

	The tax credit not to exceed the following percentage of the total expenditure incurred in the project
Type of R&D project (in terms of the definition of "research and development" under rule 3)	
Fundamental research	100%
Industrial research	70%
Pre-competitive research	45%

TABLE C

Rule 11(2)(b)
Tax credit in respect of allowable R&D expenditure
A project that is partly funded under an EU funding programme

Item of expenditure	**Tax credit**
Personnel (rule 5(2)(a))	35%
Instruments and equipment (rule 5(2)(b))	35%
Land and premises (rule 5(2)(c))	14%
External consultants and equivalent services (rule 5(2)(d))	35%
External consultants and equivalent services engaged in an application for EU funds (rule 5(3))	12.25%
Additional overheads (rule 5(2)(e))	10.5%
Other operating expenses (rule 5(2)(f))	10.5%

TABLE D

Rule 11(3)(b)
Threshold of tax credit in respect of allowable R&D expenditure
A project that is not funded, fully or partly, under an EU funding programme and that is carried out by a company that is not an SME

	The tax credit not to exceed the following percentage of the total expenditure incurred in the project
Type of R&D project (in terms of the definition of "research and development" under rule 3)	
Fundamental research	100%
Industrial research	60%
Pre-competitive research	35%

TABLE E

Rule 11(4)
Threshold of tax credit in respect of allowable R&D expenditure
A project that is partly funded under an EU funding programme

Type of R&D project (in terms of the definition of "research and development" under rule 3)	**Tax credit not to exceed the following percentage of the total expenditure**
Fundamental research	100%
Industrial research	75%
Pre-competitive research	50%

TABLE F

Rule 20(2)
Tax credit in respect of allowable wages and tuition expenditure

Type of expenditure	**Tax Credit**
Allowable tuition and wages expenditure	17.5%

TABLE G

Rule 20(3)(a)
Threshold of tax credit in respect of allowable wages and tuition expenditure incurred by an SME

Type of R&D relevant academic qualification	**Value not to exceed the following percentage of the total expenditure**
General academic qualification	80%
Specific academic qualification	45%

TABLE H

Rule 20(3)(b)
Threshold of tax credit in respect of allowable wages and tuition expenditure incurred by a company that is not an SME

Type of R&D relevant academic qualification	Value not to exceed the following percentage of the total expenditure
General academic qualification	60%
Specific academic qualification	35%

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