L.N. 335 of 2005

INCOME TAX ACT
(CAP. 123)

Deductions and Tax Credits (General and Specific Qualifications) 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

Title.

1. (1) The title of these rules is the Deductions and Tax Credits (General and Specific Qualifications) Rules 2005

(2) These rules shall apply to qualifying 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.

Definitions.

2. In these rules unless the context otherwise requires –

"allowable wages and tuition expenditure" has the meaning assigned to it in rule 6;

"the Corporation" means the Malta Enterprise Corporation;

"general qualification" means a masters degree or a doctoral degree in an area 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 5(1);

"qualifying wages and tuition expenditure" means expenditure that is treated as such in terms of rule 4(2);

"relevant qualification" means a general or a specific qualification, other than a qualification which falls within the meaning of "R&D relevant qualification" as defined in the Deductions and Tax Credits (Research and Development) Rules, 2005:

Provided that any question that may arise in general or in any particular case as to whether a qualification falls or not within the meaning of "R&D relevant qualification" shall be decided by the Corporation in its absolute discretion;

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

"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.

Part Two

Deduction and Tax Credit for Wages and Tuition Expenditure

Deduction and tax credit for qualifying wages and tuition expenditure.

3. (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.

(3) Sub-rule (2) is without prejudice to the deduction allowable in respect of wages and tuition expenditure incurred in connection with academic qualifications to which the Deductions and Tax Credits (Research and Development) Rules, 2005 apply.

Application to the Corporation.

4. (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 letter of approval under rule 5.

(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 if it is incurred by a company in connection with a course of studies leading to a relevant 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 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.

5. (1) When the Corporation is satisfied that the application is a *bona fide* application that complies with the provisions of rule 4, 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 a 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 that 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 4(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.

(5) The Corporation shall issue the said letter of approval by not later than the company's relative tax return date.

Certification of completion of the course.

6. (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 5(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 sub-rule (1) and a copy of the statement referred to in sub-rule (2).

Allowable wages and tuition expenditure.

7. 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 5 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 5(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 4 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.

8. (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 A 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 6(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 5(3)(e) as the latest date by which the course was 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 B of the Schedule, if the expenditure is incurred by a small or medium-sized enterprise;

(b) the threshold set out in Table C 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 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 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, as subsequently amended.

Council Regulation (EC) No 68/2001.

9. 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, as subsequently amended.

Part Three

Tax Credit for Social Security Contributions

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

10. (1) Subject to the other provisions of this Part, 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, 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 a 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 a 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 letter of approval 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.

11. 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, as may be subsequently amended.

Part Four

Further provisions applicable to Parts Two and Three

Electronic tax return.

12. Notwithstanding the provisions of Parts Two and Three except no tax credit shall be due to a company under the said Parts 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.

13. A company to whom a letter of approval has been issued in terms of rule 5 or 10(4) 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 Part Two or Three, irrespective of whether the benefit is utilised or not.

Monitoring by the Corporation.

14. (1) When the Corporation issues a letter of approval to a company in terms of rule 5 or 10(4), 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 the provisions of Parts Two and Three 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 Parts Two and Three 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.

15. 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.

16. 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.

17. If a company avails itself of a tax credit under Part Two or Three 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.

Part Five

Tax credit for individuals

Tax credit for an individual in respect of study costs.

18. (1) Subject to the other provisions of this rule, when an individual is a student following a course of studies that leads to a specific qualification and successfully completes that course, he becomes entitled to the tax credit referred to in this rule.

(2) The tax credit referred to in this rule is an amount equivalent to the study costs as defined in rule 20 paid by the individual for the period commencing on the date of the commencement of the course or the 1st January, 2005, whichever is the later, and ending on the date of the conclusion of the course or thirty six months from the commencement of the course, whichever is the earlier.

(3) The tax credit shall be spread over three years and, accordingly, one third of the amount determined in accordance with sub-rule (2) shall be due as a deduction from the tax payable by the individual on his chargeable income for the year of assessment commencing on the 1st January of the year immediately following that in which the relevant qualification is obtained and for each of the subsequent two years of assessment, and any amount not absorbed by the tax payable for a year of assessment may be carried forward to be allowed as a tax credit for subsequent years.

(4) The tax credit referred to in this rule shall not be due unless the individual is in possession of receipts of the study costs to which the credit refers and submits to the Commissioner, together with

the tax return for the first year of assessment for which the tax credit is claimed -

(a) an itemised statement of the study costs incurred and a declaration that he is not and has not been entitled from any source whatsoever to any reimbursement of or compensation for the costs claimed as a tax credit or any part of those costs; and

(b) a certified copy of the certificate or equivalent document issued by the university or educational establishment in question confirming the successful completion of the course by that individual; and

(c) a letter of approval issued by the Corporation confirming that the qualification obtained is a specific qualification.

Letter of approval by the Corporation.

19. (1) The letter of approval referred to in rule 18(4)(c) shall be issued by the Corporation, on the application of an individual, if, after it has obtained all such information and made such ascertainment as it has considered necessary, it considers it appropriate to determine that the course in question is a course leading to a specific qualification:

Provided that the Corporation shall not issue a letter of approval 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.

Study costs.

20. The study costs to which this Part applies are:

(a) fees paid to the university or educational establishment in question for the admission of the individual to the course and his attendance for that course;

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

SCHEDULE

TABLE A

Rule 8(2)
Tax credit in respect of allowable wages and tuition expenditure

Type of expenditure	Tax credit
Allowable tuition and wages expenditure	17.5%

TABLE B

Rule 8(3)(a)
Threshold of tax credit in respect of allowable wages and tuition expenditure incurred by an SME

Type of relevant academic qualification	Tax credit not to exceed the following percentage of the total expenditure
General qualification	80%
Specific qualification	45%

TABLE C

Rule 8(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 relevant academic qualification	Tax credit not to exceed the following percentage of the total expenditure
General qualification	60%
Specific qualification	35%

Ippubblikat mid-Dipartiment ta' l-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugh fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*
Prezz 56c – *Price 56c*