L.N. 66 of 2006

MALTA FILM COMMISSION ACT
(CAP. 478)

Tax Credit (Audiovisual Infrastructure) Regulations,2006

IN exercise of the powers conferred by articles 25 and 33 of the Malta Film Commission Act, the Minister for Investment, Industry and Information Technology, after consultation with the Prime Minister and Minister of Finance, has made the following regulations:-

Title.

1. (1) The title of these regulations is the Tax Credit (Audiovisual Infrastructure) Regulations,2006.

(2) These regulations shall apply in respect of qualifying expenditure incurred on or after the 1st January, 2005.

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

Definitions.

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

"the Act" means the Malta Film Commission Act;

"additional employee" means an employee whose employment is certified by the Commissioner as the employment of an additional employee by means of a certificate issued under regulation 13;

"allowable expenditure" has the meaning assigned to it in regulation 11;

"approved project" means a project approved in accordance with regulation 7, as subject to any conditions that may be applicable in terms of regulation 7(2);

"company" has the meaning assigned to it under the Income Tax Act;

"eligible company" means a company established or having a place of business in Malta whose business consists solely or mainly of activities that form part of the film servicing industry;

"maximum qualifying expenditure" means the amount determined in accordance with regulation 8;

"project period" means the period commencing on the date indicated in the letter of approval as the earliest date by which the project must commence and ending on the date indicated in the said letter of approval as the latest date by which it must be completed;

"qualifying company" means an eligible company which is certified as a qualifying company and which is in possession of a valid certificate issued under regulation 4;

"qualifying expenditure" means expenditure which has been incurred on or after the 1st January, 2005 for:

(a) the acquisition, construction, development or improvement of any industrial building or structure, including a warehouse, and including related labour costs which are capitalised as part of the cost of any such acquisition, construction, development or improvement;

(b) the acquisition of plant and machinery, excluding –

(i) motor vehicles, except for such specialised motor vehicles as may be approved by the Commissioner;

(ii) works of art and antiques;

(iii) any assets whose use is wholly or mainly of a decorative nature; and

(iv) any assets whose cost is related to their intrinsic value rather than to their specific usefulness for a qualifying investment;

(c) the acquisition of intellectual property rights from third parties under open market conditions the cost of which is amortisable;

"qualifying project" means a project in which qualifying expenditure is incurred and which, in the opinion of the Commissioner, contributes towards the development, improvement or expansion of the audiovisual infrastructure in Malta;

"self-assessment", "tax", "tax return date" and "year of assessment" have the meaning assigned to them under the Income Tax Act or the Income Tax Management Act;

"small enterprise" and "medium sized enterprise" shall have the meaning assigned to them under the Business Promotion Regulations, 2001.

Tax credit in respect of qualifying expenditure.

3. (1) When a qualifying company incurs allowable expenditure in carrying out an approved project and where the employment condition referred to in regulation 12 and the other relevant conditions laid down in these regulations are satisfied, it shall be entitled to a tax credit in accordance with and subject to the provisions of these regulations.

(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 Income Tax Act.

Certification of qualifying company.

4. (1) An eligible company may apply to the Commissioner to be certified as a qualifying company for the purpose of these regulations.

(2) An application under this regulation shall be made on such form as may be acceptable to the Commissioner and shall contain such particulars, and be accompanied by such documents and certifications as the Commissioner may consider relevant.

(3) When the Commissioner is satisfied that a company that has made an application under this regulation is an eligible company and that its activities are conducive to the development or expansion of the audio visual industry in Malta, he may certify it as a qualifying company for the purposes of these regulations.

(4) The certificate shall indicate the date from which and the period for which such certificate shall be valid:

Provided that the Commissioner may, in line with the criteria set out in sub-regulation (3), by notice in writing cancel a certificate issued under this regulation or extend or restrict the period of its validity.

Application for the approval of a project.

5. (1) When a qualifying company carries out or intends to carry out a qualifying project it may apply to the Commissioner for the approval of that project.

(2) An application under this regulation shall be made in such form as may be acceptable to the Commissioner 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 and its purpose and state the expected date of its commencement and its expected duration;

(c) provide details of the investment that the company plans to make for the realisation of the project, including a description of each item of qualifying expenditure that the applicant intends to incur, distinguishing between expenditure on plant and machinery, expenditure on industrial buildings and structures and expenditure on intellectual property rights;

(d) state the number of additional employees that it plans to employ during the project period;

(e) grant the authorisation referred to in sub-regulation (3);

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

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

(3) The authorisation referred to in sub-regulation (2)(e) shall -

(a) grant to the Commissioner and his officers access to any premises or works as the Commissioner may consider necessary in order to ascertain any matter relevant to the approval of the application;

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

Recommendation by the Commissioner.

6. (1) When the Commissioner is satisfied that an application complying with the requirements of these regulations has been filed by an eligible company, and that a project to which the application refers is a *bona fide* qualifying project, he may recommend to the Commission that the project be approved.

(2) In his recommendation the Commissioner shall state the extent to which, in his opinion, the investment that the applicant plans to make towards the project represents qualifying expenditure and is

necessary and reasonable in the light of the purpose for which it is planned to be incurred.

(3) The Commissioner shall not recommend the approval of a project –

(a) that requires for its realisation a period of more than five years;

(b) if the application for its approval is made after the 31st December, 2008.

Approval of project.

7. (1) When the Commission receives a recommendation from the Commissioner under regulation 6 it may, if it considers it appropriate so to do, approve the project and proceed to make a determination and issue a letter of approval as provided in regulations 8 and 9.

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

Determination of maximum qualifying expenditure.

8. (1) When the Commission approves a project it shall determine the maximum qualifying expenditure for each item of expenditure.

(2) The total amount determined in accordance with sub-regulation (1) shall not exceed the amount recommended by the Commissioner in terms of regulation 6(2).

Letter of approval.

9. (1) In respect of every approved project the Commissioner shall issue a letter of approval showing:

(a) particulars of the applicant;

(b) a description of the project, with such conditions as may have been considered appropriate pursuant to regulation 7(2);

(c) the maximum qualifying expenditure for each item of expenditure;

(d) the maximum aggregate State aid intensity to which the applicant is entitled;

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

(f) the shortest period for which the investment must be retained in terms of regulation 11;

(g) such other particulars as the Commissioner may consider appropriate.

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

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

Certification of completion by the company.

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

(a) the date of completion of the project;

(b) the amount of allowable expenditure actually incurred, distinguishing between expenditure on plant and machinery, expenditure on industrial buildings and structures and expenditure on intellectual property rights.

(2) The company shall, within the time limit set out in sub-regulation (1), deliver a copy of the certificate to the Commissioner of Inland Revenue.

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

Allowable expenditure.

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

(a) it is qualifying expenditure actually incurred by a qualifying company in carrying out an approved project 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 regulation 9 refers, which does not exceed the maximum qualifying expenditure for that item, and in respect of which any conditions that may have been made applicable in terms of regulation 7(2) have been satisfied;

(c) it was incurred during the project period and for the purpose for which the project was approved;

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

(e) if it represents the cost of construction works, the documentary evidence referred to in paragraph (d) includes a statement 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.

(2) The investment represented by allowable expenditure shall be retained within the company for at least three years after the termination of the project period.

(3) If an investment or part thereof is not retained within the company for the period referred to in sub-regulation (2), the amount of expenditure corresponding to that investment or part thereof, as the case may be, that is not so retained shall be deemed to have never constituted allowable expenditure and the provisions of regulation 15 shall apply.

Employment condition.

12. (1) Subject to the other provisions of this regulation, the employment condition referred to in regulation 3(1) shall be satisfied if, during the project period or within three years from the termination thereof, the qualifying company in question employs at least four additional employees.

(2) Subject to sub-regulation (3), an individual shall be deemed to be an additional employee if all the following conditions are met –

(a) he is employed under an indefinite contract or for a period of not less than three years;

(b) his duties are solely and directly related to the activities carried out by the qualifying company in the film servicing industry;

(c) his employment represents a net increase in the number of full time employees of the qualifying company;

(d) he was not, at any time during the period of two years prior to his employment with that company, employed with a person related through direct or indirect ownership or shareholding with that company;

(e) his employment is certified by the Commissioner in accordance with regulation 13 as an employment of an additional employee for the purpose of these regulations;

(f) he remains in the employment of the said qualifying company for at least three years.

(3) When the employment of an individual has been certified in accordance sub-regulation (2)(e) and that individual does not remain in the employment of the qualifying company in question, for any reason whatsoever, for a period of at least three years and is not validly replaced as provided in sub-regulation (4), he shall be deemed to have never been an additional employee.

(4) An employee shall be deemed to have been validly replaced if:

(a) within three months from the date of the termination of his employment with a qualifying company, that company employs another individual in his place; and

(b) the employment of the replacement employee satisfies the conditions of sub-regulation (2), except that the fact that it is a replacement shall not, of itself, be deemed to be a breach of the condition of paragraph (c) thereof; and

(c) the aggregate of the periods of employment of the original employee and of his replacement or replacements is not less than three years.

(5) A replacement employee may be validly replaced in the same manner, and the period of his employment shall also be taken into account for the purpose of sub-regulation (4)(c).

(6) In calculating the number of additional employees, an employee and his replacement or replacements shall count as one additional employee.

(7) If a qualifying company that has availed itself of the benefit of the tax credit under these regulations does not satisfy the employment condition it shall forfeit the right to that benefit and the provisions of regulation 15 shall apply.

Certification of additional employees.

13. (1) A qualifying company whose project is approved under these regulations shall prepare and deliver to the Commissioner such information about its employees as is necessary to enable the

Commissioner to determine the number of additional employees and their replacements, including -

(a) the number of individuals who were in the employment of the company before the commencement of its project and the number and particulars and date of employment of individuals who are employed by it as full time employees during the project period and during the following three years;

(b) such further information and details as the Commissioner may consider relevant.

(2) The statement shall be prepared at such intervals as the Commissioner may require.

(3) When the Commissioner is satisfied that a qualifying company has employed an individual that qualifies as an additional employee in accordance with the provisions of regulation 12, and that it has obtained all the information that it has considered relevant about the employees of that company, it shall issue a certificate to that effect:

Provided that such certificate shall be without prejudice to regulation 12(3).

Calculation of the tax credit.

14. (1) The tax credit due to a qualifying company in respect of allowable expenditure shall be allowable for the year of assessment immediately following that in which the expenditure is incurred or in which the employment condition is first satisfied, whichever is the later, and shall be equal to:

(a) 25% of expenditure to which paragraph (a) of the definition "qualifying expenditure" applies;

(b) 40% of any other allowable expenditure

(2) Notwithstanding the provisions of sub-regulation (1) the tax credit due to a qualifying company in respect of an approved project shall not exceed, in the aggregate, –

(a) in the case of a small or medium sized enterprise, fifty percent of the total cost of the project in question; and

(b) in the case of any other qualifying company, forty percent net grant equivalent of the total cost of the project in question:

Provided that 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 these regulations, the threshold referred to in paragraph (a) or (b), as the case may be, shall be reduced by the value of that aid:

Provided further that the correct calculation of the said reduction, where applicable, shall be the sole responsibility of the company.

(4) The tax credit shall be availed of by way of a deduction from the tax chargeable on gains or profits derived from the activities in respect of which the investment to which the approved project refers is made, and shall not be allowable as a deduction from tax chargeable on gains or profits from any other source; and any amount of tax credit due for a year of assessment that is not so absorbed in that year may be carried forward and deducted from the tax chargeable in subsequent years on income from the said activities:

Provided that any part of the tax credit that is not availed of up to the year of assessment 2013 shall not be carried forward and the right to a credit in respect thereof will lapse.

(5) Where, for a year of assessment, a company 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 under the Business Promotion Act before any set-off is made in respect of the tax credit due under these regulations.

(6) A tax credit due in accordance with these regulations shall not give rise to a right for any refund.

Reversal or recalculation of tax credit.

15. (1) In the circumstances mentioned in regulations 11(3) and 12(7) the tax credit in question shall be reversed or recalculated, as the case may be.

(2) The reversal or recalculation of a tax credit shall give rise to an obligation of the company to pay an amount of tax, in addition to any other tax liability, equivalent to the amount represented by the reversal or recalculation, and such amount shall be deemed to be tax chargeable under the Act for the year of assessment immediately following that in which the cause for the reversal or recalculation takes place, and shall be reported and paid by the company in question accordingly.

Submission of copy of tax return to the Commissioner.

16. A company to whom a letter of approval has been issued in terms of regulation 9 shall submit to the Commissioner, by not later than two months after the relative tax return date, a copy of the tax return for the year of assessment for which the relative benefit may be claimed in terms of under these regulations and for each subsequent year of assessment for which the said benefit remains available to it, irrespective of whether the benefit is utilised or not.

Monitoring by the Commissioner.

17. (1) When the Commissioner issues a letter of approval to a company in terms of regulation 9, he 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 he may consider necessary for the purposes of these regulations and for any matter relevant to an approved application.

(2) The Commissioner shall keep a database of all assistance provided to, or claimed by, a company under these regulations 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 regulations have been complied with;

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

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

Powers of the Commissioner of Inland Revenue.

18. Notwithstanding the other provisions of these regulations, the Commissioner of Inland Revenue may make such enquiries and verification as he deems fit in accordance with the provisions of the Income Tax Act and the Income Tax Management Act, and shall, after consulting the Commissioner, have the right not to allow a benefit under these regulations if any default is committed by the applicant in respect of any provision of those Acts or the Social Security Act or any subsidiary legislation issued thereunder.

Electronic tax return.

19. No tax credit shall be due to a company 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.

Further conditions.

20. 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.

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