

B 4706

L.N. 456 of 2012

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

**Enterprise Support Incentives
(Amendment) (No. 2) Regulations, 2012**

IN exercise of the powers conferred upon him by article 5 of the Malta Enterprise Act, the Minister of Finance, the Economy and Investment, in consultation with the Malta Enterprise Corporation, has made the following regulations:-

Citation. **1.** The title of these regulations is the Enterprise Support Incentives (Amendment) (No. 2) Regulations, 2012, and these regulations shall be read and construed as one with the Enterprise Support Incentives Regulations, hereinafter referred to as "the principal regulations".

S.L. 463.04

Amends regulation 2 of the principal regulations. **2.** In regulation 2 of the principal regulations, the definition "undertaking" shall be substituted by the following:

" "undertaking" means an undertaking as defined in the Act except for the purposes of regulations 14 and 15 where undertaking shall mean:

Cap. 386. (a) a limited liability company constituted under the Companies Act; or

Cap. 386. (b) a limited liability company incorporated or registered outside Malta, and registered as an oversea company in accordance with the Companies Act;".

Renumbers regulation 14 of the principal regulations. **3.** Regulation 14 of the principal regulations shall be renumbered as regulation 16 thereof.

Adds new regulations to the principal regulations. **4.** Immediately after regulation 13 of the principal regulations, there shall be added the following new regulations:

"Tax credits to undertakings for restoration works on protected buildings used for commercial activities.

Cap. 504.

14. (1) When the Corporation is satisfied that an undertaking carrying on or intending to carry out a commercial activity that may contribute to the economic development of Malta, requires assistance to restore a Grade 1 or Grade 2 scheduled building or a building falling within an Urban Conservation Area as defined in the Environment and Development Planning Act, being used or to be used for a commercial activity as may be specified in the Guidelines, the Corporation may provide such an undertaking with a tax credit to be calculated as a percentage of the eligible costs as may be defined in the Guidelines incurred as from 1st October 2012 of:

(a) 20% for the restoration, conservation or maintenance works on a building used or to be used for a commercial activity, falling within an Urban Conservation Area;

(b) 30% for the restoration, conservation or maintenance works on a building used or to be used for a commercial activity, that is a Grade 1 or Grade 2 scheduled building.

(2) The intensity of the tax credit shall be in accordance with the terms and conditions of the Guidelines:

Provided that this benefit shall be calculated on the eligible costs incurred as from the 1st October 2012:

Provided further that the total amount of the tax credit that may be granted in terms of this regulation shall not exceed:

(a) twenty thousand euro (€20,000) for restoration, conservation or maintenance works on a building used or to be used for a commercial activity, falling within an Urban Conservation Area;

(b) thirty thousand euro (€30,000) for restoration, conservation or maintenance works on a building used or to be used for a commercial activity, that is a Grade 1 or Grade 2 scheduled building.

(3) The tax credit referred to in this regulation shall be due as a deduction from tax payable by an undertaking on its chargeable income derived from its trade or business for that year of assessment commencing on the 1st January of the year immediately following the year in which the eligible costs are incurred, and where the tax credit, for that year of assessment, exceeds the income tax payable by such undertaking for that year, the excess in the tax credit shall be allowed to be carried forward to the subsequent year of assessment and deemed to be a tax credit for that year:

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

(4) Where an undertaking has benefited from the provisions of this regulation, the 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 tax credit on the investment; and where such undertaking or any subsequent company 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 a 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.

(5) (a) The chargeable income which is deemed to have been relieved from tax in accordance with sub-regulation (4) 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 paragraph (a) is distributed to a member which is also a company, in this sub-regulation 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.

Tax credits to
undertakings
for digital
applications
development.

15. (1) When the Corporation is satisfied that an undertaking carrying on or intending to carry out a commercial activity that may contribute to the economic development of Malta, requires assistance for digital applications development as may be specified in the Guidelines, the Corporation may provide such an undertaking with a tax credit to be calculated as a percentage of the eligible costs as may be defined in the Guidelines incurred as from 1st October 2012 of 100% for the subcontracted development of a single digital game project that serves as a promotional tool and informs users about the undertaking's products or services in accordance with the terms and conditions as may be set in the Guidelines.

(2) The intensity of the tax credit shall be in accordance with the terms and conditions of the Guidelines:

Provided that this benefit shall be calculated on the eligible costs incurred as from the 1st October 2012:

Provided further that the total amount of the tax credit that may be granted in terms of this regulation shall not exceed fifteen thousand euro (€15,000).

(3) The tax credit referred to in this regulation shall be due as a deduction from tax payable by an undertaking on its chargeable income derived from its trade or business for that year of assessment commencing on the 1st January of the year immediately following the year in which the eligible costs are incurred, and where the tax credit, for that year of assessment, exceeds the income tax payable by such undertaking for that year, the excess in the tax credit shall be allowed to be carried forward to the subsequent year of assessment and deemed to be a tax credit for that year:

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

(4) Where an undertaking has benefited from the provisions of this regulation, the 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 tax credit on the investment; and where such undertaking or any subsequent company 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 a 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.

(5) (a) The chargeable income which is deemed to have been relieved from tax in accordance with sub-regulation (4) 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.

Cap. 123.

(b) Where a dividend referred to in paragraph (a) is distributed to a member which is also a company, in this sub-regulation 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."

