SUBSIDIARY LEGISLATION 463.05

ASSISTANCE FOR RESEARCH AND DEVELOPMENT AND INNOVATION REGULATIONS

1st January, 2009*

LEGAL NOTICE 168 of 2009, as amended by Legal Notices 80 of 2014 and 38 of 2015.

1. The title of these regulations is the Assistance for Research and Development and Innovation Regulations. Citation.

2. In these regulations, unless the context otherwise requires: Interpretation. *Amended by: L.N. 38 of 2015.* Cap. 463.

"the Act" means the Malta Enterprise Act;

"aid intensity" means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge;

"the Corporation" means the Malta Enterprise Corporation established under the Act;

"eligible costs" means expenses incurred by an undertaking:

(*a*) to carry out industrial research or experimental development:

Provided that the eligible costs considered by this paragraph shall only be applicable to undertakings which qualify for assistance under these regulations until the 30th June, 2014;

(*b*) to carry out technical feasibility studies preparatory to industrial research or experimental development:

Provided that the eligible costs considered by this paragraph shall only be applicable to undertakings which qualify for assistance under these regulations until the 30th June 2014;

(*c*) to carry out feasibility studies in preparation for an industrial research or an experimental development project having the start of works happening on or after the 1st November, 2014;

(*d*) to obtain and validate patents and other industrial property rights;

(*e*) to carry out industrial research and experimental development projects as well as to carry out feasibility studies in preparation for industrial research or experimental development projects, having the start of works happening on or after the 1st November 2014, in accordance with the terms and conditions set out in the

*see regulation 1(2) of these Regulations, as originally promulgated.

Guidelines;

"effective collaboration" means collaboration between at least two independent parties to exchange knowledge or technology, or to achieve a common objective based on the division of labour where the parties jointly define the scope of the collaborative project, contribute to its implementation and share its risks, as well as its results. One or several parties may bear the full costs of the project and thus relieve other parties of its financial risks. Contract research and provision of research services are not considered forms of collaborations:

Provided that this definition shall be applicable to industrial research and experimental development projects having the start of works happening on or after the 1st November, 2014;

"experimental development" means the acquiring, combining, shaping and using of existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services but shall not include the routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements. The experimental production and testing of products, processes and services are also eligible, provided that these cannot be used or transformed to be used in industrial applications or commercially:

Provided that the following definition for "experimental development" shall be applicable to research and development projects having the start of works happening on or after the 1st November, 2014:

"experimental development" means acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services. This may also include, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes or services:

Provided that experimental development may comprise prototyping, demonstrating, piloting, testing and validation of new or improved products, processes or services in environments representative of real life operating conditions where the primary objective is to make further technical improvements on products, processes or services that are not substantially set. This may include the development of a commercially usable prototype or pilot which is necessarily the final commercial product and which is too expensive to produce for it to be used only for demonstration and validation purposes:

Provided further that experimental development does not include routine or periodic changes made to existing products, production lines, manufacturing processes, services and other operations in progress, even if those changes may represent improvements;

"feasibility study" means the evaluation and analysis of the

potential of a project, which aims at supporting the process of decision-making by objectively and rationally uncovering its strengths and weaknesses, opportunities and threats, as well as identifying the resources required to carry it through and ultimately its prospects for success:

Provided that "feasibility studies" in the above definition refers to feasibility studies in preparation for industrial research and experimental projects as contemplated by these regulations:

Provided also that the above definition for "feasibility study" in preparation for industrial research and experimental development projects shall be applicable to feasibility studies in preparation for industrial research and experimental projects having the start of works happening on or after the 1st November 2014, in accordance with the terms and conditions set out in the Guidelines:

Provided further that the applicable definition for technical feasibility studies preparatory to industrial research and experimental development for research, development and innovation projects approved by the Corporation till the 30th June 2014, is provided in the Guidelines applicable at the time;

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

"industrial research" means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes and services:

Provided that industrial research comprises the creation of components parts of complex systems, and may include the construction of prototypes in a laboratory environment or in an environment with simulated interfaces to existing systems as well as of pilot lines, when necessary for the industrial research and notably for generic technology validation;

"large undertaking", "medium-sized undertaking", "small undertaking" and "micro undertaking" shall have the meaning attributed to them by Annex I of Commission Regulation (EC) No 800/2008 of the 6th August, 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation):

Provided that for industrial research and experimental development projects as well as for feasibility studies in preparation for industrial research or experimental development projects having the start of works happening on or after the 1st November 2014, " "large undertaking", "medium-sized undertaking", "small undertaking" and "micro undertaking" " shall have the meaning attributed to them by Annex I of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty;

"research organisation" means an entity, such as university or

research institute, irrespective of its legal status (organised under public or private law) or way of financing, whose primary goal is to conduct fundamental research, industrial research or experimental development and to disseminate their results by way of teaching, publication or technology transfer; all profits are reinvested in these activities, the dissemination of their results or teaching; undertakings that can exert influence upon such an entity, in the quality of, for example, shareholders or members, shall enjoy no preferential access to the research capacities of such an entity or to the research results generated by it;

"research and knowledge-dissemination organisation" means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities), irrespective of its legal status (organised under public or private law) or way of financing, whose primary goal is to independently conduct industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer:

Provided that where such entity also pursues economic activities the financing, the costs and the revenues of those economic activities must be accounted for separately:

Provided further that undertakings that can exert a decisive influence upon such an entity, in the quality for example, shareholders or members may not enjoy preferential access to the results generated by it:

Provided finally, that the above definition for "research and knowledge-dissemination organisation" shall be applicable to industrial research and experimental development projects having the start of works happening on or after the 1st November 2014 in accordance with the terms and conditions set out in the Guidelines;

"start of works" means the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible:

Provided that buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works:

Provided further that for take-overs, "start of works" means that moment of acquiring the assets directly linked to the acquired establishment;

"undertaking" means an undertaking as defined in the Act except for the purposes of tax credits granted under regulation 3 where undertaking shall mean:

Cap. 386.

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

(*b*) a body of persons constituted, incorporated or registered outside Malta, and of a nature similar to the aforesaid partnerships and registered as an oversea company in accordance with the Companies Act; or Cap. 386.

(*c*) a co-operative society duly registered as such under the Co-operative Societies Act: Cap. 442.

Provided that for industrial research and experimental development projects having the start of works happening on or after the 1st November 2014, "undertaking" shall have the same meaning as assigned to it in paragraphs (*a*) to (*c*) under the definition "undertaking" above:

Provided also that, for feasibility studies in preparation for industrial research and experimental development projects having the start of works happening on or after the 1st November 2014, "undertaking" shall have the same meaning as defined in the Act.

Tax credits or cash grants for research and development and innovation activities. *Amended by: L.N. 38 of 2015.*

3. (1) Where the Corporation is satisfied that an undertaking requires assistance to carry out research and development and innovation activities for developing new products, processes or services or for bringing about a significant improvement in existing products, processes and services, the Corporation may assist such an undertaking by means of a tax credit or a cash grant as a percentage of the eligible costs incurred by such undertaking in the development of the said products, services or processes in accordance with the terms and conditions set out in the Guidelines:

Provided that as from the 1st November 2014 where the Corporation is satisfied that an undertaking requires assistance to carry out industrial research and experimental development projects, the Corporation may assist such an undertaking by means of a tax credit or a cash grant as a percentage of the eligible costs incurred by such an undertaking in accordance with the terms and conditions set out in the Guidelines:

Provided also that as from the 1st November 2014 where the Corporation is satisfied that an undertaking requires assistance to carry out feasibility studies in preparation for an industrial research or an experimental development project, the Corporation may assist such an undertaking by means of a cash grant as a percentage of the eligible costs incurred by such an undertaking in accordance with the terms and conditions set out in the Guidelines.

(2) The tax credit that may be claimed under this regulation shall be due for each year of assessment that immediately follows a year in which the eligible expenditure giving rise to the right to the tax credit is incurred.

(3) The assistance referred to in sub-regulation (1) may be provided only if the research, development and innovation project together with the relative services and costs involved have been approved *a priori* in writing by the Corporation:

Provided that such assistance may be approved by the Corporation only if the undertaking shall increase its level of research, development and innovation activities and shall carry out research, development and innovation projects or activities which

would otherwise not have been carried out or would have been carried out in a more restricted manner.

Assistance for industrial research and experimental development. *Amended by: L.N. 38 of 2015.*

4. (1) Where the Corporation is satisfied that a research project based on industrial research or experimental development may contribute to the economic development of Malta, the Corporation may provide such an undertaking with the forms of assistance referred to in regulation 3 in accordance with the terms and conditions set out in the Guidelines.

(2) Where the Corporation, on or after the 1st November 2014, is satisfied that an undertaking requires assistance to carry out feasibility studies in preparation for an industrial research or an experimental development project, the Corporation may provide such an undertaking with the form of assistance referred to in regulation 3 in accordance with the terms and conditions set out in the Guidelines.

Collaboration. *Amended by: L.N. 38 of 2015.*

5. Where the Corporation is satisfied that a research project referred to in regulation 4 involves collaboration between two undertakings independent from each other or between an undertaking and a research organisation, the Corporation may provide such an undertaking with the forms of assistance referred to in regulation 3 with the aid intensities for collaboration as indicated in the Schedule, in accordance with the terms and conditions set out in the Guidelines:

Provided that, as from the 1st November 2014, where the Corporation is satisfied that an industrial research or an experimental development project referred to in regulation 4(1) involves effective collaboration between two undertakings independent from each other or between an undertaking and a research and knowledge-dissemination organisation, the Corporation may provide such an undertaking with the forms of assistance referred to in regulation 3 with the aid intensities for collaboration as indicated in Schedule A, in accordance with the terms and conditions set out in the Guidelines.

Assistance for technical feasibility studies. *Amended by: L.N. 38 of 2015.*

6. Where the Corporation is satisfied that an undertaking that may contribute to the economic development of Malta requires assistance to carry out technical feasibility studies preparatory to industrial research or experimental development, the Corporation may provide such an undertaking with the forms of assistance referred to in regulation 3 in accordance with the terms and conditions set out in the Guidelines:

Provided that, as from the 1st November 2014, where the Corporation is satisfied that an undertaking as defined in the Act may contribute to the economic development of Malta requires assistance to carry out feasibility studies in preparation for an industrial research or an experimental development project, the Corporation may provide such an undertaking with a cash grant in accordance with the terms and conditions set out in the Guidelines.

Tax credits. *Re-numbered by: L.N. 38 of 2015.*

7. (1) An undertaking benefiting from tax credits in terms of these regulations and the respective Guidelines in respect of a year of assessment shall be entitled to deduct from the amount of income tax which is due on its chargeable income derived from its trade or business for that year of assessment the amount of the tax credit and, where the tax credit, for any year of assessment, exceeds the income tax payable by such an undertaking for that year, the excess shall be added to the tax credit for the following year and deemed to be part of that tax credit, or if there is no such tax credit for that year, be deemed to be the tax credit for that year and so on for subsequent years:

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

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

(2) When an undertaking has benefited from the provisions of these regulations, 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, and where the undertaking or any subsequent undertaking distributes the income which is so deemed to have been relieved from tax, such undertaking or undertakings shall state in the dividend warrant pertaining to any such distribution that such income has been relieved from tax by a tax credit in accordance with these regulations; and the tax which has so been relieved shall not be available for refund for any purpose of the Income Tax Act. Cap. 123.

(3) (*a*) The chargeable income which is deemed to have been relieved from tax in accordance with these regulations 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 the dividend referred to in sub-regulation (2) is distributed to a member which is also a company (hereinafter 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.

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(4) Where for a year of assessment, an undertaking qualifies for a tax credit under regulation 5 of the Business Promotion Regulations, and also under the provisions of these regulations, it shall avail itself of the tax credit due under the Business Promotion Regulations before any set-off is made in respect of the tax credit due under these regulations.

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

Approval of new research projects. *Amended by: L.N. 80 of 2014. Re-numbered and amended by: L.N. 38 of 2015.*

8. The Corporation shall not approve any new research projects after the 30th June, 2014 or after such date as the Corporation may specify by means of a notice in the Gazette:

Provided that the Corporation may approve until the 31st December 2020 new industrial research and experimental development projects as well as feasibility studies in preparation for industrial research or experimental development projects having the start of works happening on or after the 1st November 2014, and the provisions of these regulations shall *mutatis mutandis* apply to such industrial research and experimental development projects and feasibility studies in accordance with the terms and conditions set out in the Guidelines.

Maximum level of assistance. *Re-numbered and amended by: L.N. 38 of 2015.*

9. The levels of assistance that may be granted in terms of these regulations shall be established by the respective Guidelines published by the Corporation pursuant to the Act. The maximum intensity levels of assistance shall be as indicated in the Schedule:

Provided that the maximum aid intensity levels of assistance for industrial research and experimental development projects as well as feasibility studies in preparation for industrial research or experimental development projects having the start of works happening on or after the 1st November 2014, shall be those as indicated in Schedule A.

Non-applicability. *Re-numbered and amended by: L.N. 38 of 2015.*

10. These regulations shall not apply to firms in difficulty in terms of Community Guidelines on State aid for rescuing and restructuring firms in difficulty as described in the Official Journal C244, 01.10.2004:

Provided that the Community Guidelines considered by this regulation shall only be applicable to undertakings which qualify for assistance under these regulations until the 30th June, 2014:

Provided also that for industrial research and experimental development projects as well as feasibility studies in preparation for industrial research or experimental development projects

having the start of works happening on or after the 1st November 2014, these regulations shall not apply to firms in difficulty in terms of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

SCHEDULE

(Regulation 5)

Maximum Aid Intensity in respect of eligible costs

	Small Undertaking	Medium Undertaking	Large Undertaking
Industrial Research	70%	60%	50%
Industrial Research subject to: - collaboration between undertakings; for large undertakings: cross border or with at least one SME or - collaboration of an undertaking with a research organisation	80%	75%	65%
Experimental Development	45%	35%	25%
Experimental Development subject to: - collaboration between undertakings; for large undertakings: cross border or with at least one SME or - collaboration of an undertaking with a research organisation	60%	50%	40%
Technical Feasibility Studies Industrial Research	75%	75%	65%
Technical Feasibility Studies Experimental Development	50%	50%	40%
Innovative Clusters and Collaborations Investment Aid	50%	40%	30%
Innovative Clusters and Collaborations Operation Aid (non-digressive)	50%	50%	50%

Added by:
L.N. 38 of 2015.

Schedule A

(Regulation 5)

Maximum aid intensities for industrial research and experimental development projects as well as feasibility studies in preparation for industrial research or experimental development projects having the start of works happening on or after the 1st November, 2014:

	Small Undertaking	Medium Undertaking	Large Undertaking
Research and Development Tax Credits			
Industrial Research Projects	70%	60%	50%
Experimental Development Projects	45%	35%	25%
Collaborative Industrial Research Projects	80%	75%	65%

Collaborative Experimental Development Projects	60%	50%	40%
Feasibility Studies			
Feasibility studies in preparation for industrial research and experimental development projects	70%	60%	50%