

**CHAPTER 325****BUSINESS PROMOTION ACT**

*To encourage the establishment of new businesses and the expansion of existing ones, and to make ancillary arrangements in relation thereto.*

5th July, 1988

*ACT XXI of 1988, as amended by Acts IX of 1993, XVII of 1994, XI and XV of 1997, IV and VI of 2001, and IV and VIII of 2003.*

**ARRANGEMENT OF ACT**

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## PART I

## PRELIMINARY

Short title.  
Amended by:  
IV. 2001.3.

1. The short title of this Act is the Business Promotion Act.

Interpretation.  
Amended by:  
IX.1993.2;  
XI. 1997.2;  
IV. 2001.4.

2. (1) In this Act, unless the context or subject otherwise requires -

"body of persons" means any partnership, fellowship or society of persons, whether vested with legal personality or not;

"certified public accountant and auditor" means an individual who holds a warrant to act in this capacity issued under the Accountancy Profession Act, or a partnership of such individuals duly registered under the said Act;

Cap. 281.

"company" means:

Cap. 168  
Cap. 386.

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

(b) any body of persons constituted, incorporated or registered outside Malta, and of a nature similar to the aforesaid partnerships;

(c) any co-operative society duly registered as such under the appropriate law for the time being in force in Malta;

Cap. 202.

"Corporation" means the Malta Development Corporation established under the Malta Development Corporation Act, and where any other authority or person is designated by regulations prescribed by the Minister to be the competent authority to exercise any of the functions of the Corporation under this Act, includes any such other authority or person to the exclusion of the Corporation;

"enterprise" means any individual or body of persons who or which carries on or exercises a trade, business, profession or vocation;

"export sales" means:

(a) the value of goods exported by a qualifying company calculated free on board; or

(b) the invoiced value of goods or services sold or rendered, as the case may be, by a qualifying company to another qualifying company under a written contract which clearly stipulates that the said goods or services are to be exported by the latter company whether as so sold, or as subjected to further processing or incorporation in other goods or services, and provided such export has actually taken place:

Provided that the said contract shall also stipulate that an officer duly authorised to sign on behalf of the

\*Repealed by Act XXV of 1995 (Cap. 386).

buying company shall furnish the supplying company with a written declaration confirming that the said goods or services had been exported together with an undertaking that the Corporation may examine the relative export documents and the grant of any benefit on the basis of the provisions of this paragraph shall be conditional upon the production by the beneficiary of such declaration and undertaking together with a statement by the auditors of the buying company that confirms that the declaration of the said official is substantially correct; or

- (c) the value of services rendered or performed by a qualifying company which are exported by the same company and in the case of a company qualifying in terms of article 3(1)(e) the value of services rendered or performed for another qualifying company which satisfies the provisions of article 4(1)(b);

"hotel" means a hotel licensed as such under the Malta Travel and Tourism Services Act, or a building in the course of construction which is intended to be so licensed upon completion; Cap. 409.

"income tax" means tax charged or chargeable under the provisions of the Income Tax Act; Cap. 123.

"Maltese company" means a company in which Maltese citizens, directly or indirectly, either -

- (a) hold more than half in nominal value of its issued share capital, excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution; or
- (b) are entitled to more than half its voting power;

"Minister" means the Minister responsible for industry and includes, to the extent of the authority given, any Parliamentary Secretary authorised in that behalf;

"person" includes a body of persons;

"prescribed" means prescribed by regulations under this Act;

"public officer" has the same meaning as is assigned to it by article 124 of the Constitution of Malta;

"qualifying company" means a company which carries on, or intends to carry on in Malta, a trade or business consisting solely of any of the activities referred to in article 3(1)(a) to (k);

"research and development programme" means a programme for systematic investigation or research carried out in any field of science or technology through experiment or analysis, and includes:

- (a) basic research comprising activities undertaken for the advancement of scientific or technological knowledge;
- (b) applied research where a final specific application is in view;

- (c) development involving the use of the results of basic or applied research as aforesaid for the purpose of creating new or of improving existing material, devices, products or processes, but excludes routine or periodic design, testing and analysis of equipment or products for the purposes of quality or quantity control, and routine or periodic alterations to existing products or processes;

"sales revenue derived from export" means "export sales";

"State Aid Monitoring Board" means the State Aid Monitoring Board constituted under article 57.

(2) Enactments referred to in this Act shall include any other enactments replacing the said laws, and where reference in this Act is made to specific provisions of any existing enactment, such reference shall be deemed to comprise also a reference to the corresponding provisions of any enactment replacing the said law.

(3) Words and expressions used in this Act and in other enactments referred to in this Act shall, unless defined in this Act, be construed and have the same meaning in this Act as in the said other enactments.

(4) Wherever in this Act reference is made to incentives and benefits contemplated by this Act, such reference shall be read and construed to include incentives and benefits prescribed under this Act.

Beneficiaries under this Act.  
Amended by:  
*IX.1993.3;*  
*XI.1997.3;*  
*IV.2001.5;*  
*IV.2003.8.*

**3.** (1) Unless otherwise provided by or under this Act, the incentives and benefits contemplated by or under this Act shall be due to and obtained by any enterprise which carries on or intends to carry on, in Malta, a trade or business which consists solely of -

- (a) the production, manufacture, improvement, assembly, processing, repair, preservation or maintenance of any goods, materials, commodities (including computer software), equipment, plant or machinery; or
- (b) the rendering of services of an industrial nature analogous to the activities referred to in paragraph (a), including the repair, maintenance, commissioning, installation, inspection or testing of plant, machinery or equipment and the recycling or treatment of waste material; or
- (c) fisheries or large scale aquaculture; or
- (d) agriculture, stock farming large scale horticulture; or
- (e) the rendering of a service by a company to non-resident persons or to a company which satisfies the provisions of article 4(1)(b), whether the service is performed or rendered in Malta or from Malta, provided such service is prescribed by the Minister to be a qualifying export service; or
- (f) the rendering of a qualifying support service as may be prescribed by the Minister; or

- (g) the export of goods or services produced or provided, as the case may be, by other qualifying companies; or
- (h) research and development programmes; or
- (i) the activities set out in article 11 of the Malta Freeports Act and carried on mainly in a freeport as defined by that Act, by a company licensed under that Act; Cap. 334.
- (j) (i) the operation of catering establishments, guesthouses, hostels, hotels and holiday premises as defined in the Malta Travel and Tourism Services Act, and falling within such categories as may be prescribed; or Cap. 409.  
(ii) the undertaking of any project beneficial to the tourism industry as may be prescribed;
- (k) the production of feature films, television films, advertising programmes or commercials, and documentaries:

Provided that where any provision is made by or under this Act for an incentive or benefit to be obtained by a qualifying company, any such incentive or benefit shall be due and obtained only by a company which carries on or intends to carry on in Malta such trade or business.

(2) Notwithstanding any other provision of this Act, in the case of activities or classes of activities referred to in subarticle (1)(c) to (k), the incentives and benefits contemplated by this Act shall only be due to and obtained by a company subject to the approval of the project by the Corporation, and in granting its approval as aforesaid, the Corporation may impose such conditions as it may deem fit:

Provided that with effect from such date as may be determined by the Minister by order in the Gazette\*, the Corporation shall not approve any projects falling under subarticle (1)(e).

(3) Notwithstanding any other provision of this Act, the incentives and benefits granted by article 4 and 5 shall not be due to or obtained by a trade or business qualifying under subarticle (1)(g).

(4) A company qualifying under subarticle (1)(h) shall qualify only for those incentives and benefits contemplated by this Act as the Minister may prescribe. In addition to such incentives the Minister may also prescribe other special incentives and benefits, including cash grants, that may be given to such companies.

(5) A trade or business contemplated in subarticle (1) shall be a trade or business actually and physically carried on or carried out in Malta, so however that where the services referred to in paragraph (b), (f) and (g) thereof are rendered outside Malta, the said services shall, for the purposes of this article, be deemed to have been rendered in Malta if the actual services are wholly or mainly

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\*1st November, 2000 - see Legal Notice 135 of 2001.

rendered by citizens of Malta.

(6) Subject to the provisions of article 25, the Minister may from time to time upon a resolution of the House of Representatives by notice in the Gazette exclude from any or all of the incentives and benefits contemplated by this Act companies that would otherwise be qualifying companies but whose trade or business comprises activities specified in the said notice.

(7) Any notice published in accordance with the provisions of subarticle (6) may be subsequently revoked or modified by the Minister upon a resolution of the House of Representatives.

(8) The incentives and benefits contemplated by this Act shall only be due in respect of activities happening on or after 1st June, 1987, and in respect of gains or profits earned after that date:

Provided that, notwithstanding any other provision of this Act in respect of:

- (a) projects approved by the Corporation under subarticle (1)(c), (d), (e), (f), (g) and (h); or
- (b) the operation of paragraphs (b) and (d) of the definition of "export sales" in article 2,

the incentives and benefits contemplated by this Act shall not be due in respect of activities happening before 1st January, 1992, and in respect of gains or profits earned before that date:

Provided further that notwithstanding any other provision of this Act in respect of qualifying companies incorporated outside Malta, the incentives and benefits contemplated by this Act may only be obtained by qualifying companies registered as an overseas company in accordance with the Companies Act in respect of their activities happening on or after 1st January, 1997:

Provided further that the incentives and benefits contemplated by article 6(1), article 8(7), article 9, article 15 and article 24B may only be obtained by a company constituted under Maltese Law:

Provided further that the incentives and benefits contemplated by or under this Act shall only be available to companies which qualify under any of the provisions of article 3(1)(i) to (k) as from such date as may be determined by the Minister by order in the Gazette\*.

(9) The Minister shall in January of every year publish in the Gazette a list of companies that have benefited under subarticle (1)(h) together with a general description of the activities of the company and of any cash grants from which the company benefits under this Act.

(10) Notwithstanding the provisions of articles 4(6), 5(7), 5A(6) and 15, with effect from the year of assessment 2004 no company shall be entitled to the incentives provided by articles 4, 5 and 5A:

Provided that a company may qualify for such benefits and

Cap. 386.

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\*1st November, 2000 - see Legal Notice 135 of 2001.

incentives as may be prescribed by the Minister.

**3A.** (1) Where by means of an extraordinary resolution it is decided to transfer the trade or business of a company constituted under Maltese Law, hereinafter referred to as the first company, to a company which is registered as an overseas company in terms of the Companies Act, hereinafter referred to as the second company, and the Corporation is satisfied that the ultimate beneficial shareholders of the said companies are the same and are not resident in Malta,

Transfer of  
business to an  
overseas company.  
Added by:  
XI. 1997.4.  
Cap. 386.

- (i) all rights and obligations of the first company arising from the provisions of this Act shall be deemed to be the rights and obligations of the second company as if such rights and obligations had always appertained to the second company;
- (ii) the second company shall be entitled to the incentives and benefits contemplated by this Act to the same extent as the first company would have been entitled had the transfer of business not taken place and this irrespective of whether the first company was dissolved.

(2) The provisions of subarticle (1) shall apply, *mutatis mutandis*, where a company registered as an overseas company in terms of the Companies Act transfers its business to a company constituted under Maltese Law and in subarticle (1) "the first company" shall mean a company registered as an overseas company in terms of the Companies Act and "the second company" shall mean a company constituted under Maltese Law.

Cap. 386.

(3) For the purposes of this article a trade or business shall be deemed to have been transferred when:

- (i) all the tangible assets of the first company are transferred to the second company, which company uses the said assets in carrying on the same kind of trade or business as that carried on by the first company; and
- (ii) the customers of the second company are substantially the same as that of the first company.

(4) On being satisfied that the provisions of this article have been complied with, the Corporation may issue a certificate to that effect, which certificate shall constitute sufficient evidence for the purpose of the application of this article.

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## PART II

## MAIN INCOME TAX INCENTIVES

Tax holidays  
Amended by:  
IX.1993.4;  
XI.1997.5;  
IV.2001.6.

Cap. 386.

4. (1) Where a qualifying company -
- (a) is a company which:
    - (i) is constituted under Maltese Law on or after 1st June, 1987; or
    - (ii) is a company incorporated outside Malta and has been registered as an oversea company in terms of the Companies Act registered on or after 1st June, 1987 but only in respect of its activities happening on or after 1st January, 1997; and
  - (b) subject to the provisions of subarticle (5), derives from export sales not less than ninety-five per cent of its total sales revenue; and
  - (c) carries on or carries out a trade or business which does not consist solely or mainly in the mere expansion, duplication or replacement of a trade or business formerly carried on or carried out in Malta by any person in any way directly or indirectly connected or associated with the said company through shareholding, voting or other ownership or controlling rights, irrespective of the person in whom such rights are or may have been vested,

such company shall be exempt from income tax on the gains or profits from its trade or business made during ten consecutive years of assessment which years shall be comprised within the company's first twelve years of assessment as may be determined by the company by way of an irrevocable notice in writing to the Corporation to be given not later than the end of the third year of assessment:

Provided that in the case of a company entitled to obtain the exemption contemplated in this subarticle, in terms of subarticle (3)(b), the twelve years of assessment referred to in this subarticle shall be the company's twelve years of assessment immediately following the year in which its shares were acquired, and the ten consecutive years of assessment in respect of which the exemption from income tax may apply shall be comprised in these twelve years of assessment as may be determined by the company by way of an irrevocable notice in writing to the Corporation, which notice shall be given by not later than the end of the third year of assessment falling within the said twelve years of assessment.

(2) If a company in any year immediately preceding a year of assessment comprised in the ten consecutive years of assessment referred to in subarticle (1) derives from export sales less than ninety-five per cent of its sales revenue, the company shall for that year of assessment forfeit the exemption granted under the provisions of this article:

Provided that such forfeiture for any year as aforesaid shall not -



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- (a) affect the company's right for exemption in any other year of assessment; or
  - (b) obtain for the company exemption under this article for any year not comprised in the original ten consecutive years of assessment.
- (3) For the purposes of subarticle (1) -
- (a) the acquisition by a company of any trade or business formerly carried on or carried out by any person not connected with the company as set out in paragraph (c) of the said subarticle shall not qualify the said company to obtain the exemption from income tax contemplated by this article;
  - (b) where on the 1st June, 1987, a company was controlled at least as to fifty per cent directly or indirectly by Government and not less than fifty per cent of the shares of the company were owned directly or indirectly by Government, if all such shares are acquired by any person not under Government control, such company shall be qualified to obtain the exemption contemplated in subarticle (1) if the company is a qualifying company and it satisfies the condition at paragraph (b) of the said subarticle.
- (4) The income of any company for any year of assessment in respect of which exemption from income tax operates under the provisions of this article shall be computed in the manner set out in the Income Tax Act, and in accordance with its provisions:

Cap. 123.

Provided that:

- (a) the provisions of the said Act shall be superseded or replaced as may be necessary by the provisions of this Act;
- (b) any entitlement to a deduction under the provisions of article 12 for any year of assessment in respect of which exemption under the provisions of this article is due, shall be deferred to the first year of assessment next following the ten consecutive years of assessment referred to in subarticle (1);
- (c) any unabsorbed losses or unabsorbed capital allowances (including the allowances contemplated by this Act) at the end of any year of assessment exempt from income tax under the provisions of this article shall be carried forward strictly in the manner set out in the Income Tax Act, notwithstanding that such carry forward is from an exempt year into a year when no such exemption is operative:

Provided further that, if, during any one year falling within the ten consecutive years of assessment referred to in subarticle (1), a qualifying company fails to qualify for the incentive under that subarticle, any entitlement under paragraph (b) may, at the option of the company, be utilised as a deduction against its chargeable income of the first or any subsequent years of assessment in respect of which

the company does not so qualify.

(5) The words "not less than ninety-five per cent" in subarticle (1) shall be substituted by the words "substantially the whole" and subarticle (2) shall be construed accordingly in any particular line of production, manufacture or service as may be determined by the Minister by notice published in the Gazette and in that case the words "substantially the whole" shall mean that percentage higher than ninety-five per cent as the Minister may mention in the same notice:

Provided that such substitution shall, in respect of any qualifying company, be applicable only as from its first accounting period commencing on a day subsequent to that on which notice is published as aforesaid.

(6) With effect from such date as may be determined by the Minister by order in the Gazette\*, the provisions of this article shall only be applicable to:

- (a) qualifying companies which existed on the day immediately preceding that date and, in the case of companies incorporated outside Malta and which had been registered as overseas companies in terms of the Companies Act, were so registered on the day immediately preceding such date;
- (b) qualifying companies incorporated in Malta or registered as overseas companies after that date which carry on or intend to carry on a trade or business which relates to a project in respect of which the Corporation has, prior to such date, approved the granting of any assistance in terms of this Act:

Provided that, as from the aforementioned date, no company shall qualify for the benefit provided by this article in terms of subarticle (3)(b).

Cap. 386.

Export incentive scheme.  
Amended by:  
IX. 1993.5;  
XI. 1997.6;  
IV. 2001.7.

5. (1) Where a qualifying company in any year of assessment increases its export sales over such sales during a base period by the percentages specified in subarticle (5), the additional export profits earned by the company in that year from the export sales resulting in such increase shall be exempt from income tax.

(2) The additional profits exempt from income tax in accordance with the provisions of subarticle (1) shall be calculated in accordance with the following formula:

$$("Y" \times "X") - ("B" \times "A")$$

$$("Z" - \quad) - ("C" - \quad)$$

where:

"A" = profits in base period

"B" = export sales during base period

"C" = total sales during base period

"X" = profits earned in year of assessment

\*1st November, 2000 - see Legal Notice 135 of 2001.

"Y" = export sales in year of assessment

"Z" = total sales in year of assessment

For the purposes of computing the additional profits exempt from income tax in terms of this subarticle or the profits which are exempt from income tax or taxed at a reduced rate of income tax for the purposes of article 5A for any year of assessment (hereinafter in this subarticle referred to as the relevant year of assessment), where a qualifying company has changed the date on which its accounting period ends for the purposes of article 11 of the Income Tax Act and the profits of such accounting period fall to be charged to tax -

Cap. 123.

- (i) in any year of assessment comprised in a base period;  
or
- (ii) in any year relevant of assessment,

the value of the total sales, export sales and profits of the accounting periods, or where applicable the accounting period, the profits of which fall to be charged to tax in the years of assessment comprised in a base period, shall be decreased or increased, as the case may be, by multiplying the actual value of the said total sales, export sales and profits by the number of days comprised in the accounting period the profits of which fall to be charged to tax in the relevant year of assessment and dividing the product thereof by the number of days comprised in the said accounting periods or period as the case may be.

- (3) For the purpose of the computation set out at subarticle (2) -

- (a) there shall be excluded any income which does not accrue to the company from a trade or business and any sale or other component of its turnover which is not connected with its trade or business;
- (b) "profits" and "income" shall in all cases be taken as comprised in the company's chargeable income for income tax purposes after account has been taken, where appropriate, of any incentive or benefit obtained by the company under the provisions of this Act;
- (c) a loss made in any year of assessment comprised in a base period shall be deemed to be zero profits;
- (d) where a company was not in existence, or in the case of a qualifying company incorporated outside Malta, such company was not registered as an overseas company in accordance with the Companies Act, during a year of assessment comprised in a base period, the company shall be deemed to have had zero profits for that year of assessment.

Cap. 386.

- (4) For the purposes of this article, profits and export sales during a base period shall be the average profits and export sales during a period of two consecutive years of assessment as follows:

<u>Year of Assessment</u>	<u>Base Period</u>
1989 to 1993	year of assessment: 1987 and 1988
1994	1988 and 1989

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1995	1989 and 1990
1996	1990 and 1991
1997	1991 and 1992
1998	1992 and 1993
1999	1993 and 1994
2000	1994 and 1995
2001	1995 and 1996:

Provided that the base period for year of assessment 2002 and subsequent years of assessment shall be determined by increasing the years comprised in the base period for the preceding year of assessment by one year.

(5) Exemption from income tax under this article shall be due where the increase in export sales is of -

- (a) ten per cent or more over the corresponding base period in the first year of exemption;
- (b) fifteen per cent or more over the corresponding base period in the second year of exemption; and
- (c) twenty-five per cent or more over the corresponding base period in the third and subsequent years of exemption:

Provided that a qualifying company may benefit from the provisions of this article for not more than ten years of assessment, which years need not be consecutive.

(6) The provisions of this article shall only be applicable to:

- (a) a qualifying company constituted before 1st June 1987, and to
- (b) a qualifying company constituted on or after that date, if that company, for any year of assessment, would have been entitled to benefit from an exemption contemplated in article 4 but for the provisions of subarticle (1)(b) thereof.

(7) With effect from such date as may be determined by the Minister by order in the Gazette\*, the provisions of this article shall only be applicable to:

- (a) qualifying companies which existed on the day immediately preceding such date and, in the case of companies incorporated outside Malta and which had been registered as overseas companies in terms of the Companies Act, were so registered on the day immediately preceding such date;
- (b) qualifying companies incorporated in Malta or registered as overseas companies after that date and which would have been entitled to benefit from the provisions of article 4 but for the provisions of subarticle (1)(b) thereof,

and such companies shall continue to be so entitled to the incentive contemplated under this article up to and including the year of

Cap. 386.

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\*1st November, 2000 - see Legal Notice 135 of 2001.

assessment 2021 or such other date as may be prescribed by the Minister.

**5A.** (1) Where a qualifying company incurs expenditure in acquiring qualifying assets and the aggregate expenditure of the company on such assets during any relevant year and in the preceding six accounting periods:

Investment  
incentive scheme.  
*Added by:*  
*XI. 1997.7.*  
*Amended by:*  
*IV. 2001.8.*

- (a) is equivalent to or exceeds a percentage (in this subarticle referred to as "the qualifying percentage") of the company's total sales during the same period, the income derived by such company, from its trade or business, during the relevant year as is proportionately attributable to its increased export sales as determined in terms of subarticle (2) shall be taxed at a reduced rate of income tax as is determined by reference to the qualifying percentage as follows:

Qualifying percentage	Applicable rate of reduced income tax
%	%
8	17.50
9	8.75
10	0.00

Provided that the six accounting periods preceding the relevant year shall be accounting periods the profits of which fall to be charged to income tax in year of assessment 1998 or subsequent years of assessment and, where the number of such accounting periods preceding the relevant year are less than six, the qualifying percentage referred to in this paragraph shall be determined for the period of time commencing from the first day of the accounting period the profits of which fall to be charged to income tax in year of assessment 1998 and ending on the last day of the relevant year:

Provided further that where a company was not in existence during all of the six years preceding the relevant year, the qualifying percentage referred to in this subarticle shall be determined for the period of time during which such company was in existence;

or

- (b) is equal to or exceeds LM7,000,000, the income derived by such company from its trade or business during the relevant year as is proportionately attributable to its increased export sales as determined in terms of subarticle (2) shall be exempt from income tax:

Provided that:

- (i) if the number of days comprised in the period of time commencing from the first day of the accounting period the profits of which fall to be

charged to income tax in year of assessment 1998 and ending on the last day of the relevant year, is less than two thousand five hundred and fifty-five; or

- (ii) the number of days comprised in the relevant year and in the preceding six accounting periods is less or more than two thousand five hundred and fifty-five,

the amount of LM7,000,000 shall be increased or reduced to an amount arrived at by multiplying LM7,000,000 by the proportion which the number of the days comprised in the aforementioned periods bears to two thousand five hundred and fifty-five days.

(2) The income derived by a qualifying company from its trade or business during the relevant year and which shall be exempt from income tax or taxed at the reduced rates of tax in accordance with the provisions of subarticle (1), shall be calculated in accordance with the formula set out in article 5(2):

Provided that a qualifying company may not claim a benefit under this article for any year of assessment in which it has also claimed a benefit under article 5.

(3) A qualifying company may benefit from the incentive provided for by this article for not more than ten years of assessment which years need not be consecutive.

(4) For the purposes of this article:

- (a) there shall be excluded any income which is not derived by the company from its trade or business;
- (b) the amount of total sales and export sales shall be calculated free on board and where the sale is made pursuant to a contract of works, it shall include the uninvoiced value of any materials and components provided by the customer.

(5) In this article:

"expenditure in acquiring qualifying assets" means expenditure incurred in acquiring assets in respect of which an investment allowance can be claimed in terms of article 7, excluding any expenditure incurred on non-commercial motor vehicles;

"non-commercial motor vehicles" means those vehicles to which article 14(3) of the Income Tax Act applies;

"relevant year" means any accounting period of a qualifying company which ends in the year preceding year of assessment 1998 or any subsequent year of assessment as the case may be;

"accounting period" means the accounting period as determined by reference to article 11 of the Income Tax Act;

"profits" and "income" shall in all cases be taken as comprised in the company's chargeable income for income tax purposes after account has been taken of any incentive or benefit obtained by the company under the provisions of this Act.

(6) With effect from such date as may be determined by the Minister by order in the Gazette\*, the provisions of this article shall only be applicable to:

- (a) qualifying companies which existed on the day immediately preceding such date and, in the case of companies incorporated outside Malta and which had been registered as overseas companies in terms of the Companies Act, were so registered on the day immediately preceding such date;
- (b) qualifying companies incorporated in Malta or registered as overseas companies after that date which carry on or intend to carry on a trade or business which relates to a project in respect of which the Corporation has prior to such date approved the granting of any assistance in terms of this Act,

and such companies shall continue to be so entitled to the incentive contemplated under this article up to and including the year of assessment 2021 or such other date as may be prescribed by the Minister.

6. (1) Subject to the provisions of subarticle (2), where it appears to the Corporation that the gains or profits or part thereof derived by a qualifying company from its trade or business or part thereof in the year of assessment commencing on 1st January, 1988, or in subsequent years of assessment, have been set aside for the exclusive purpose of financing any project as shall have been approved by the Corporation, and that the gains or profits or part thereof have in fact been used for the purpose for which they were set aside, the Corporation shall issue to the qualifying company a certificate showing compliance and thereupon the rate of income tax chargeable on the gains or profits or part thereof so used shall be reduced by seventeen and a half percentage points, and in any such case the tax chargeable shall be assessed, or reassessed and where necessary refunded, as the case may require:

Reduced rate of tax.

*Amended by:*  
*XI. 1997.8;*  
*IV. 2001.9.*

Provided that where the qualifying company is a Maltese company, the rate of income tax chargeable shall be reduced by nineteen and a quarter percentage points:

Provided further that as from the year of assessment 2001 the reduction in the rate of income tax shall in all cases be of nineteen and a quarter percentage points or such other higher percentage as the Minister may from time to time by regulations prescribe.

(2) The Corporation shall not grant any approval for the purposes of subarticle (1) -

- (a) in respect of any application for the purpose of this article filed with the Corporation later than twenty-four months after the end of the year immediately preceding the year of assessment in which the income in respect of which approval may be given falls to be charged to tax; or

\*1st November, 2000 - see Legal Notice 135 of 2001.

- (b) in respect of any project requiring for its realisation a period of more than five years from the date of approval.

(3) The Minister may by regulations prescribe rules for the application of the benefit provided by this article. Such rules may be in addition to or in substitution of the rules and conditions prescribed in this article.

Investment allowance.  
Amended by:  
IX.1993.6;  
XI.1997.9;  
IV.2001.10.

7. (1) Where a qualifying company after 1st June 1987 incurs or has incurred expenditure in acquiring plant or machinery, or an industrial building or structure (including a warehouse), for the purposes of its trade or business, and in consequence of its incurring such expenditure the plant, machinery, industrial building or structure is owned by the company, such company shall be entitled in computing its chargeable income for income tax purposes in respect of the year of assessment in which the relative asset is first used by the company in its trade or business, to an investment allowance which shall be expressed as a percentage of the cost of the asset as follows:

	When owned by <u>Maltese companies</u>	When owned by <u>other companies</u>
Plant and machinery	33%	30%
Industrial building and structure	16.5%	15%:

Provided that with effect from the year of assessment 2001, the rates applicable to Maltese qualifying companies shown above shall be applicable to all qualifying companies and the rates shown under the heading "When owned by other companies" shall cease to apply:

Provided further that with effect from year of assessment 2002, investment allowances shall be calculated at the following percentages or such other higher percentages as the Minister may by regulations prescribe:

Plant and machinery 50%  
Industrial buildings and structures 20%.

(2) No allowance under this article shall be due except in respect of assets:

- (a) which are first used in Malta;
- (b) in respect of which no allowance has been claimed under this article by any person who is, directly or indirectly, connected with the company claiming the allowance contemplated by this article, through shareholding, voting or other ownership or controlling rights:

Provided that the condition set out in paragraph (a) shall not apply with respect to industrial buildings or structures.



(3) Where an allowance has been granted to a company under this article -

- (a) the company shall not be entitled to any deduction in respect of the same asset under the provisions of article 14(1)(j) of the Income Tax Act; Cap. 123.
- (b) the provisions of article 24 of the said Act shall not apply in respect of the relative asset;
- (c) nothing contained in the said Act shall operate so as to prevent the investment allowance and any other allowance granted under this Act in respect thereof, when taken together, from exceeding the original cost of the asset.

(4) The provisions of article 8(5) shall apply in respect of any investment allowance granted under this article.

(5) In this article and in article 8:

- (a) immovable property held by title of emphyteusis; and
- (b) any other asset to which this article and article 8 of this Act applies acquired under a finance lease contract or a contract of hire which stipulates that ownership of the asset shall or may pass to the lessee when a specified sum of money has been paid, which contract is in each case approved by the Corporation,

shall be deemed to be held in full ownership.

(6) A company may qualify for the allowance granted under this article for a consecutive period of twenty-five years commencing from the year of assessment 1988 in case of companies registered before 1st June, 1987 and from the first year of assessment for companies registered on or after 1st June 1987:

Provided that the Minister may from time to time by notice in the Gazette increase the said period by a further period or periods not exceeding twenty-five years.

(7) Saving the provisions of this article, investment allowances shall, for the purposes of the Income Tax Act be deemed to be deductions granted under article 14(1)(j) of the said Act and all the relevant provisions of that Act shall apply accordingly. Cap. 123.

(8) The Minister may by regulations prescribe rules for the application of the benefit provided by this article. Such rules may be in addition to or in substitution of the rules and conditions prescribed in this article.

(9) Any person who under contract with the Corporation or the Government of Malta constructs buildings or structures which are immovable in nature and rents such buildings or structures to qualifying companies shall also be entitled to the allowance contemplated by this article.

8. (1) Where a qualifying company is entitled to an investment allowance in respect of any asset under the provisions of article 7, the company shall, in addition, be entitled to a Accelerated depreciation. Amended by: IV. 2001.11.

deduction in respect of wear and tear at the following rates on account of the same asset for the purpose of computing its chargeable income for income tax purposes:

	When owned by <u>Maltese companies</u>	When owned by <u>other companies</u>
Plant and machinery	33 $\frac{1}{3}$ % <i>per annum</i>	25% <i>per annum</i>
Industrial building and structure	5% <i>per annum</i>	4% <i>per annum:</i>

Provided that with effect from the year of assessment 2001 the rates applicable to Maltese qualifying companies shown above shall be applicable to all qualifying companies and the rates shown under the heading "When owned by other companies" shall cease to apply.

(2) The allowances for which provision is made in subarticle (1) shall be granted as from the year of assessment in respect of which the relative allowance is first due to be granted and shall be computed on the straight line method.

Cap. 123. (3) The allowances granted in terms of this article shall replace any allowances otherwise due to the qualifying company for any year of assessment under the provisions of article 14(1)(f) of the Income Tax Act.

(4) The cost of the land on which any industrial building or structure is constructed or erected shall, in all cases, be excluded from any expenditure in respect of which a deduction is due to be granted under the provisions of this article.

Cap. 123. (5) Saving the provisions of this article and of article 7, investment allowances and accelerated depreciation shall for the purposes of the Income Tax Act be deemed to be deductions granted under article 14(1)(f) and (j) of the said Act and all the relevant provisions of that Act shall accordingly apply.

(6) No allowance under this article shall be due except in respect of assets which are first used by the company, having been acquired unused and not second hand:

Provided that this subarticle shall not apply in respect of industrial buildings or structures acquired from the Government.

Cap. 123. (7) For the purposes of articles 59 and 60 of the Income Tax Act, the tax paid or payable in respect of income distributed by a company by way of dividend to its members may, at the request of the company, be calculated as if the company was not entitled to a deduction under this article, but to the deductions contemplated by article 14(1)(f) and (j) of the Income Tax Act.

(8) With effect from such year of assessment as may be determined by the Minister by order in the Gazette, the provisions of this article shall only be applicable to assets purchased by a qualifying company during the year preceding the year of assessment determined by the Minister as aforesaid.

9. (1) Any dividends (or part thereof) distributed by a qualifying company out of its gains or profits, or part thereof, which, under the provisions of this Act, have been relieved from the payment of income tax, and to which the provisions of this article apply, shall be exempt from income tax in the hands of the members of the company in receipt of such distribution.

Tax free dividends.  
*Amended by:*  
*XI. 1997.10.*

(2) Where a dividend referred to in subarticle (1) is distributed to a member which is also a company (in this subarticle referred to as "the second company"), the said dividend shall likewise be distributable by the second company to its own 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 of this subarticle 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 subarticle shall continue to be applied for as long as the gains or profits or part thereof to which this article applies are distributed by way of dividends.

(3) The provisions of this article shall apply to the gains or profits, or part thereof, of a company which are relieved from income tax:

- (a) under the provisions of article 4, being gains or profits derived in any year by a company in respect of which it is entitled to a tax holiday;
- (b) under the provisions of article 5, being part of the gains or profits of a company relieved from income tax for any year under the export incentives scheme;
- (c) under the provisions of article 7, being gains or profits of a company for any year relieved from income tax through the grant of an investment allowance;
- (d) under the provisions of article 5A, being gains or profits of a company relieved from income tax for any year under the investment incentive scheme.

(4) Every company shall, upon the distribution of a dividend exempt in whole or in part from income tax under the provisions of this article, furnish to each member in receipt of such dividend a certificate setting out the amount of the dividend paid, the year in which the gains or profits so distributed were earned by the company, and declaring which part of that dividend is exempt from income tax as provided in this article.

10. (1) Subject to the provisions of subarticle (2), where the Corporation is satisfied that a training programme approved by it after the coming into force of this Act can increase the skill and expertise of the employees of a qualifying company, the Corporation shall issue a certificate accordingly and the company shall be entitled to deduct one hundred and twenty per cent of the actual expenditure incurred by it in organising the training programme in the computation of its total income for the purposes of the Income Tax Act:

Training costs  
allowance.  
*Amended by:*  
*IV. 2001.12.*

Provided that where the Corporation is satisfied that any training programme caters wholly or mainly for handicapped persons, the deduction shall be one hundred and fifty per cent of the expenditure.

(2) The total deductions due to a company for any year of assessment under the provisions of this article shall not exceed one-twentieth of the total sum paid by the company for that year by way of wages, salaries and other emoluments.

(3) With effect from such date as may be determined by the Minister by order in the Gazette\*, the Corporation shall no longer grant approvals under the provisions of this article, provided that such provisions shall continue to apply to training programmes approved by the Corporation prior to that date even if the expenditure to which this article applies is incurred after such date.

Export promotion allowance.  
Amended by:  
IX.1993.7;  
IV.2001.13.

**11.** (1) Subject to the provisions of this article, where a qualifying company incurs or has incurred export promotion expenditure after 1st June, 1987 principally for the purpose of seeking opportunities or creating or increasing demand for the export of its goods or services, that company shall be entitled, in computing its total income for income tax purposes, to deduct an amount equivalent to one hundred and forty per cent of the expenditure so incurred.

(2) The deduction contemplated in subarticle (1) shall still be due notwithstanding that the relative expenditure -

- (a) was incurred in opening or seeking to open new export lines or ventures; or
- (b) does not achieve any export sales or increased export sales.

(3) The total deduction due for any year of assessment to a company under the provisions of this article shall not exceed Lm24,000 or a sum equivalent to five per cent of the total export sales of the company for that year, whichever sum is the higher.

(4) For the purposes of this article -

- (a) export sales shall be taken to be the monetary value of export production calculated "free on board", or of the services exported;
- (b) "export promotion expenditure" shall include, but not to the exclusion of other appropriate items, expenses incurred in:
  - (i) advertising or other means of securing publicity or soliciting business;
  - (ii) carrying out market research or obtaining market information;
  - (iii) providing free of charge samples or technical information to a person outside Malta;
  - (iv) investigating, preparing designs, making

\*1st January, 2002 - see Legal Notice 135 of 2001.

- estimates and similar activities connected with tendering for the supply of goods or services;
- (v) research into methods of packaging or presenting goods for export;
- (vi) participation in trade fairs outside Malta;
- (vii) cost of bringing potential buyers to Malta;
- (c) "export promotion expenditure" shall not include salaries, wages and other similar emoluments except where these are paid to officers or employees of a company registered in Malta for the period or periods in any year during which they are required to tender their services outside Malta.

(5) With effect from such year of assessment as may be determined by the Minister by order in the Gazette\*, the provisions of this article shall only be applicable to expenditure incurred in the year preceding that year of assessment and in the basis years in relation to the following three years of assessment.

**12.** (1) In the case of a qualifying company, other than a company contemplated in article 3(1)(h) of this Act, the provisions of article 14(1)(h) and (i) of the Income Tax Act, shall in any year in which the company is entitled to a deduction thereunder as from the year of assessment 1988 -

Research and development allowance.  
*Amended by:*  
*IX.1993.8;*  
*IV.2001.14.*  
Cap. 123.

- (a) be deemed to allow a deduction in respect of expenses incurred as follows in addition to any other expenses contemplated in the said paragraphs:
  - (i) experimental or theoretical work aimed at the discovery of new knowledge related to its trade or business;
  - (ii) searching for applications of such work and knowledge;
  - (iii) formulation and design of possible applications for such work;
  - (iv) testing in search for, or evaluation of, product or process alternatives;
  - (v) design, construction and testing of pre-production prototypes and models;
  - (vi) design of product, processes, systems or services involving new technology or substantially improving those already produced or installed;
- (b) be deemed not to allow as a deduction any expenses incurred as follows:
  - (i) routine design, testing and analysis of equipment or product for the purpose of quality or quantity control;
  - (ii) routine or periodic alterations to existing products or processes;

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\*year of assessment 2002 - see Legal Notice 135 of 2001.

- (iii) operational research;
- (iv) legal and administrative work in connection with patent applications, records and litigation and the sale or licensing of patents and patent rights;
- (v) any activity, including design and construction, relating to the construction, relocation, rearrangement or start-up facilities or equipment other than facilities or equipment whose sole use is for a specified and particular research or development project;

(c) be read and construed as if all the provisos thereto were omitted.

Cap. 123.

(2) Deductions due under the provisions of article 14(1)(h) or (i) of the Income Tax Act, as modified by the provisions of this article, shall be allowed for the purposes of the said Act at one hundred and twenty per cent of the actual amount of the expenditure incurred, but the total deduction granted as aforesaid shall not, for any year of assessment, exceed five per cent of the turnover of the company for that year:

Provided that if the amount of the deduction is such that the full amount thereof cannot be allowed in the year in which it is incurred, that part which cannot be so allowed shall be added to any deduction due in this respect for the following year and be deemed to be part of that deduction or, if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for subsequent years.

(3) Nothing in this article shall be considered to grant an allowance in respect of research and development which is not substantially carried out in Malta.

(4) With effect from such year of assessment as may be determined by the Minister by order in the Gazette\*, the provisions of this article shall cease to have effect.

Income tax payable  
by expatriate  
employees.  
Amended by:  
IV. 2001.15.

Cap. 123.

**13.** Where an individual who is not domiciled in Malta or who, if so domiciled, is not ordinarily resident therein, is employed with a qualifying company, the tax on the chargeable income of such individual shall, as from the year of assessment commencing on 1st January, 1989, be charged at the rates contemplated by the Income Tax Act, so however that any rate of tax in excess of 30 cents on every lira shall be reduced to 30 cents:

Provided that the tax payable by any individual as aforesaid shall not be less than one thousand liri (Lm1,000) *per annum*, reduced however on a *pro rata* basis when that individual is not so employed during the whole year:

Provided further that the amount of tax payable by any such individual shall not be increased to more than would have been payable by him but for the provisions of this article:

Provided further that with effect from such year of assessment

\*year of assessment 2002 - see Legal Notice 135 of 2001.

as may be determined by the Minister by order in the Gazette<sup>\*</sup>, the provisions of this article shall only apply to any remuneration paid in the year preceding that year of assessment and in the basis years in relation to the following four years of assessment provided that such remuneration is paid to individuals in respect of whom this article applied in the year preceding the year of assessment determined by the Minister as aforesaid.

**14.** Any expenses and outgoings on feasibility studies incurred on or after 1st June, 1987 by a company constituted on or after that date shall, when such expenses or outgoings are wholly and exclusively incurred for the purposes of a trade or business which entitles or may entitle the company to be a qualifying company for the purposes of this Act, and to the extent to which such expenses and outgoings are wholly and exclusively so incurred, be deemed for the purposes of article 14(1) and of article 26 of the Income Tax Act, to have been incurred by that company not earlier than the first day on which the said trade or business is carried on, and, in any case, as being properly deductible in computing the amount of the gains or profits arising from the trade or business for the purposes of the said Act:

Feasibility studies.  
*Amended by:*  
*IV. 2001.16.*

Cap. 123.

Provided that with effect from such year of assessment as may be determined by the Minister by order in the Gazette<sup>†</sup>, the provisions of this article shall only be applicable to expenditure incurred in the year preceding that year of assessment and in the basis year in relation to the following year of assessment.

**15.** Where a member of a qualifying company is a resident of a State or territory with which Malta has made an arrangement under the provisions of the Income Tax Act for the grant of relief from double taxation, and under that arrangement a dividend, or part thereof, distributed by the qualifying company is subject to income tax in Malta at a rate lower than that chargeable on the income out of which the dividend is distributed, the company shall be entitled to require that the gains or profits, or part thereof, derived by it for the year of assessment 1988 and for subsequent years of assessment and which are distributable by way of dividend subject to tax at a reduced amount as aforesaid shall, notwithstanding that the dividend, or part thereof has not been distributed, be taxed at the said reduced rate and not at the rate properly chargeable under the Income Tax Act on the gains or profits of the company:

Consequential provisions in respect of double taxation treaties.  
*Amended by:*  
*XVII.1994.36;*  
*XI. 1997.11;*  
*IV. 2001.17.*  
Cap. 123.

Provided that if there is a change in the shareholding of the company such that the new shareholders would not have been entitled to a reduced rate of tax under any arrangement as aforesaid or if so entitled the rate applicable in such arrangement is more than the rate applicable to the outgoing shareholder, then any profits which have not been distributed at the end of the last financial year of the company preceding the date of change in shareholding less any profit distributions made to the outgoing shareholder in the current financial year shall be taxed at a rate

<sup>\*</sup>year of assessment 2002 - see Legal Notice 135 of 2001.

<sup>†</sup>year of assessment 2002 - see Legal Notice 135 of 2001.

being the difference between the rate of tax which would be applicable had the new shareholder held the shares when such profits were earned, and the rate actually applied, and such tax shall be a tax payable by the company in the year of assessment in which such profits are distributed:

Provided further that where a member of a qualifying company is also a company incorporated under Maltese Law, the provisions of this article shall apply to the same extent as if the members of the latter company had owned the shares directly in the qualifying company:

Provided further that with effect from such date as may be determined by the Minister by Order in the Gazette\* the provisions of this article shall only be applicable to qualifying companies which existed on the day immediately preceding that date.

### PART III

#### OTHER INCENTIVES

Soft loans.  
Amended by:  
IX.1993.9;  
XI.1997.12;  
IV.2001.18.

**16. (1)** Where the Corporation is satisfied that in the case of a qualifying company it would be consistent with the aims and objectives of the industrial policy of the Government, the Corporation may grant loans to the said company for the acquisition of plant, machinery and other fixed assets, but excluding land and buildings, in accordance with the terms and conditions herein specified.

(2) The Corporation may grant loans as provided under subarticle (1) of this article when -

- (a) the plant, machinery or fixed assets are acquired as part of an investment programme of not more than three years duration as may be approved by the Corporation, and
- (b) such investment programme is of not less than twenty-one thousand liri.

(3) Loans under the provisions of this article shall in no case exceed thirty-three per cent of the projected capital investment approved by the Corporation, but no loan shall exceed -

- (a) Lm1,000,000 in the case of companies satisfying the condition laid down in article 4(1)(b) of the Act, and
- (b) Lm200,000 in all other cases.

(4) The rate of interest charged by the Corporation on loans granted under this article shall be either:

- (a) the minimum discount rate in terms of directives issued from time to time by the Central Bank of Malta under the Central Bank of Malta Act, less:

Cap. 204.

\*1st November, 2000 - see Legal Notice 135 of 2001.



- (i) two and a half percentage points in respect of loans made under subarticle (3)(a), and
- (ii) half a percentage point in respect of other loans:

Provided that the provisions of paragraph (a)(i) shall be applied by the Corporation when the said minimum discount rate is at an equivalent or higher level than two and half percentage points, and the provisions of paragraph (a)(ii) shall only be applied by the Corporation when the said minimum discount rate is at an equivalent or higher level than half a percentage point;

or

- (b) such other rate as may be prescribed by the Minister by notice in the Gazette.

(5) The repayment of the principal as well as the payment of interest on any loan granted under this article shall be secured by a general hypothec over the property of the company receiving the loan in addition to any other security which the Corporation may require:

Provided that for the purposes of Title XXIII of Part II of Book Second of the Civil Code, the Corporation may allow a hypothecary debt in respect of a loan or other banking facility granted by a financial institution situated in Malta to rank immediately prior to the general hypothec or other security of the Corporation relative to such loan: Cap. 16.

Provided further that the Corporation may accept a prime bank guarantee or other similar security in respect of its loan instead of or in addition to a general hypothec as aforesaid.

(6) The repayment of any loan made under this article, and of the interest thereon, shall be made within a period and at instalments as may be agreed with the Corporation, but such period shall in no case exceed ten years from the date of the first loan payment received by the company:

Provided that, unless otherwise stipulated by the Corporation, for the first two years following the first loan payment the company shall only pay interest on the loan.

(7) Any loan made under this article shall be applied by the company for only such purpose as may be authorised by the Corporation.

(8) Where the Corporation has granted a loan to a qualifying company under the provisions of this article it shall -

- (a) from time to time make or cause to be made such examination of books, documents, premises and all other things and matters of that company whatsoever as may be necessary to ensure that the loan is being applied for the purpose for which it had been made; and
- (b) request such financial statements from the company as

it may require, to be submitted quarterly or at shorter intervals at the discretion of the Corporation.

(9) Where the Corporation has approved that a loan be granted by instalments, and any part of such loan has not yet been advanced, the Corporation, without prejudice to any other remedy, may withhold any portion of the loan still outstanding if -

- (a) any sum of money, whether principal or interest due in respect of any loan under this article, remains unpaid; or
- (b) any prior loan made under this article has not been applied for the purpose for which it was made or has not been expended in a careful, timely and economical manner; or
- (c) the company has gone into liquidation or has become insolvent or has assigned property for the benefit of creditors; or
- (d) there has been a breach or non-observance of any condition attached to the loan.

Cap. 233. (10) The granting of loans made under this article shall not be subject to the provisions of the Exchange Control Act.

(11) With effect from such date as may be determined by the Minister by order in the Gazette\* the provisions of this article and those of article 24(1)(c) shall only be applicable with respect to loans granted before the said date.

Relief from  
customs duty.  
Amended by:  
IX. 1993.10;  
IV. 2001.19.

**17.** (1) Where the Corporation is satisfied that any article is being imported by a qualifying company -

- (a) for the construction, alteration, reconstruction or extension of any industrial building or structure or for any extension thereof, or for the purpose of effecting repairs to an industrial building or structure or the extension thereof, or constitutes equipment, tools, machinery or plant, contained in or related to any industrial building or structure or extension thereof, or is intended to replace any such equipment, tools, machinery or plant, and in all cases for the purposes of the trade or business carried on or intended to be carried on by the said company; or
- (b) to serve as materials, components or accessories which are necessary for and used by or on behalf of the company for any of the purposes referred to in article 3(1) and to be incorporated in products,

the Corporation shall issue a certificate accordingly, and the company shall be entitled to import the article free from customs duty or at a reduced rate of customs duty:

Provided that wherever it deems fit in regard to a certain type of activity the Corporation may issue a certificate of

\*1st November, 2000 - see Legal Notice 135 of 2001.

exemption or reduction in terms of paragraph (b) notwithstanding that the sale is not for export.

(2) Every company which imports into Malta any article free of customs duty or at a reduced rate of customs duty under subarticle (1) shall -

- (a) keep a record of the articles which it so imports in such form and containing such particulars as may be specified by the Comptroller of Customs (hereinafter referred to as "the Comptroller");
- (b) cause the articles so imported to be marked in the manner specified by the Comptroller;
- (c) permit any officer of the Comptroller at all reasonable times to inspect the record of the articles so imported and to have access to any premises of the company for the purpose of examining any such articles which he may believe to be therein and of satisfying himself of the accuracy of the particulars in relation to such articles in the said record.

(3) No article imported into Malta by a company free or at a reduced rate of customs duty under the provisions of subarticle (1) shall be sold, given away or otherwise disposed of by the company except -

- (a) in the case of an industrial building or structure for the construction, alteration, reconstruction, extension or equipment of which such article was imported into Malta:
  - (i) to the person for whom such industrial building or structure was constructed; or
  - (ii) after payment of the amount of customs duty which would have been payable upon the importation of such article but for subarticle (1); or
  - (iii) with the written authority of the Comptroller after the expiration of five years from the importation into Malta of the article if such article has been actually used for the purpose for which it was imported into Malta;
- (b) in the case of materials, components or accessories imported into Malta for any purpose referred to in article 3(1):
  - (i) if incorporated in the articles or commodities in respect of which they were imported into Malta; or
  - (ii) after payment of the amount of customs duty which would have been payable upon the importation of such materials or components but for subarticle (1).

Cap. 337. (4) Where any article is sold or disposed of to a qualifying company entitled to relief from customs duty in pursuance of a certificate issued under the provisions of this article, and the sale or disposal of such article to the company takes place under circumstances which, but for the operation of this article, would cause such article to be deemed to be taken out of bond and duty to become payable thereon by the company in accordance with any of the provisions of the Import Duties Act, such article shall (to the extent only that the company would have been entitled to relief from customs duty in respect thereof as aforesaid if it had imported that article at the time of its sale or disposal to it in Malta) be deemed to be imported by the company at the time at which such article is sold or disposed of to it.

(5) The provisions of this article and those of article 24(1)(a) shall cease to apply on the lapse of ninety days, or such longer period as the Minister may determine, from the publication of an order in the Gazette to that effect by the Minister.

Provision of  
factories, etc.  
Amended by:  
IX.1993.11;  
XI.1997.13;  
IV.2001.20.

**18.** (1) Subject to the provisions of subarticle (4), the Corporation may, consistently with the aims and objectives of the industrial policy of the Government, procure for a qualifying company industrial buildings and structures at the following rent:

- (a) Lm1.75 *per annum* per square metre for the first three years of the lease;
- (b) at a rate which shall not exceed Lm4 per square metre *per annum* for the next thirteen years of the lease;
- (c) thereafter at the rate determined under the preceding paragraph which rate, however, shall be adjusted immediately, and subsequently every five years, to take account of movements in the index of inflation contemplated in the Schedule to the Housing (Decontrol) Ordinance between the first year of the lease and the date on which every such adjustment is effected.

Cap. 158.

(2) Subject to the provisions of subarticle (4), the Corporation may, consistently with the aims and objectives of the industrial policy of the Government, procure for a qualifying company, land on the following terms:

- (a) in the case of land adjoining an industrial building or structure, by title of lease and the rent payable shall be -
  - (i) 23 cents per square metre *per annum* for the first sixteen years of the lease;
  - (ii) thereafter at a rate which shall be adjusted immediately, and subsequently every five years, to take account of movements in the aforesaid index of inflation between the first year of the lease and the date on which every such adjustment is effected;
- (b) in the case of land which is made available by the

Corporation in an undeveloped state, the land shall be granted by title of temporary emphyteusis for a minimum consideration of 23 cents per square metre *per annum* which shall be revised every twenty-five years (whether the concession is subsequently extended or not) to take account of movements in the said index of inflation as from the date of the grant.

(3) The Corporation may in any particular case provide industrial buildings and structures constructed according to the requirements of a qualifying company, or make alterations to existing buildings and structures, on such terms as the Corporation may agree with the company.

(4) The Minister may from time to time, by notice in the Gazette, vary the rates and the method of revision of such rates established in subarticles (1) and (2).

(5) With effect from 1st January, 1993, no duty shall be payable under the Duty on Documents Act\* in respect of any deed or other instrument whereby any land is transferred pursuant to the provisions of this article. Cap. 294.

(6) The Corporation may also procure for a qualifying company industrial buildings and structures by title of temporary emphyteusis or undeveloped land by title of lease at such terms and conditions as may be prescribed by the Minister from time to time.

(7) Without prejudice to the terms of any agreement then subsistent, with effect from such date as may be determined by the Minister by order in the Gazette†, the consideration contemplated in this article shall no longer apply and the rentals to be charged by the Corporation for the lease of immovable property as contemplated by this article, shall be determined by the Corporation.

**18A.** (1) The Corporation may, consistently with the aims and objectives of the industrial policy of the Government, grant on lease to a qualifying company, on its own or jointly with other qualifying companies, a structure or building to be used as a child day care centre for the benefit of parent-employees of such a qualifying company, other qualifying companies or service providers in government industrial estates as may be approved by the Corporation in accordance with the terms and conditions herein specified:

Child day care centres.  
Added by:  
XI. 1997.14.  
Amended by:  
IV. 2001.21.

- (a) no rent shall be charged for the first three years of the lease;
- (b) thereafter an annual rent shall be charged at a rate per square metre which shall not exceed 25 *per centum* of the rent per square metre per annum charged for the factory allocated in accordance with article 18;
- (c) the Corporation may also provide free of charge a design package which shall include detailed lay-out

\*Repealed by Act XVII of 1993. See the Duty on Documents and Transfers Act (Cap. 364).

†22nd March, 2001 - see Legal Notice 135 of 2001.

plans, lists of furniture and equipment required for the centre and specifications for air conditioning, ventilation and sanitary facilities;

- (d) the Corporation may also finance the cost of the setting up of such a centre up to a maximum of 50 *per centum* of the total cost, excluding the costs for the air conditioning and ventilation, which may be financed by the Corporation up to a maximum rate of 25 *per centum* of the total cost.

(2) The Corporation may, consistently with the aims and objectives of the industrial policy of the Government, allow a qualifying company to use a portion of an industrial structure or building procured for such company in accordance with article 18 of this Act, as a child day care centre for the benefit of parent-employees of such a qualifying company or other qualifying companies, or parent-employees of service providers in government industrial estates subject to the same terms and conditions contemplated under subarticle (1)(a), (b), (c) and (d).

(3) A qualifying company which sets up a child day care centre in a structure or building which is held by such company in full ownership, on emphyteusis or lease from third parties, may be granted by the Corporation the same benefits and assistance as provided in subarticle (1)(c) and (d).

(4) The Corporation may also provide the following assistance to qualifying companies setting up child day care centres in accordance with the provisions of subarticle (1), subarticle (2) or subarticle (3):

- (a) the financing of up to a maximum of 50 *per centum* of the approved recurrent costs for child care at such a centre, provided that the parent-employees may not be charged more than a maximum sum per year as may be determined by the Corporation;
- (b) the financing of approved initial and refresher training costs of suitably qualified staff.

(5) A qualifying company which sets up a child day care centre in accordance with subarticle (1), subarticle (2) or subarticle (3), may be allowed by the Corporation to enter into agreements with other qualifying companies or with service providers in government industrial estates regarding vacancies in such a centre.

(6) The Corporation may, in its discretion grant to a qualifying company operating a child day care centre in accordance with the provisions of subarticles (1), (2) or (3) relief from customs duty as provided in article 17 regarding furniture or equipment to be used in such a centre.

(7) The Corporation may in granting any assistance in accordance with the provisions of this article, impose any conditions it may deem fit regarding the fees which may be charged for such child day care service on the parent-employees.

(8) The Minister may from time to time, by regulations, vary the

conditions and rates set out in this article.

19. (1) Where the Corporation is satisfied that any employee engaged by a qualifying company on or after 1st June, 1987 is a full-time employee engaged for an indefinite period, and that such employee is undergoing training related to the activities of the company in accordance with a training programme approved by the Corporation, a training grant may be given by the Corporation to the company equivalent to one-half of the statutory weekly minimum wage for every week of actual training undergone by each such employee up to a maximum of forty-eight weeks.

Training grants.  
Amended by:  
IX. 1993.12;  
IV. 2001.22.

(2) Where the Corporation is satisfied that, on or after 1st January, 1993, a full-time employee who has been employed in a supervisory or higher capacity by the company for at least three years undergoes a training programme leading to a certificate in instruction or training skills approved by the Corporation in advance and related to the activities of the company, a training grant may be given by the Corporation to the company equivalent to one-half of the actual tuition fees incurred by the company.

(3) Where the Corporation is satisfied that, on or after 1st January, 1993, a full-time employee engaged for an indefinite period by a qualifying company undergoes a training programme in order to acquire new skills required by the company due to the introduction of new technology or methods of production and such training programme has been approved by the Corporation in advance, a training grant may be given by the Corporation to the company equivalent to one-half the statutory weekly minimum wage for every week of actual training undergone by such employee up to a maximum of forty-eight weeks:

Provided that the company shall qualify for such grant only in respect of employees who have not benefited from this scheme during the two years preceding the year in respect of which such grant shall be paid.

(4) Where the Corporation is satisfied that, on or after 1st January, 1993, a full-time management employee who has been so engaged by a qualifying company for at least three years and is either qualified in a specific management or technical area or has not less than three years managerial or technical experience, undergoes a course in management development training or a technical upgrading course which has been approved by the Corporation in advance, a training grant may be given by the Corporation to the company equivalent to one-half of the actual tuition fees incurred by the company.

(5) Where the Corporation is satisfied that, on or after 1st January, 1993, a full-time employee employed by a qualifying company for an indefinite period undergoes a training programme which is necessary in view of a complete change in his employment within the company, which programme has been approved by the Corporation in advance, a training grant may be given by the Corporation to the company equivalent to one-half of the statutory weekly minimum wage for every week of actual training undergone by such employee up to a maximum of forty-eight weeks.

(6) Where the Corporation is satisfied that any trainee in respect of whom a grant is paid under the provisions of this article is a handicapped person, the Corporation may, in its discretion, increase the grant in respect of the said trainee to three quarters of the statutory weekly minimum wage or of the actual tuition fees, as the case may be.

Cap. 123.

(7) A training grant received by a company under this article shall not constitute a taxable receipt under the Income Tax Act.

(8) As from such date as may be determined by the Minister by order in the Gazette<sup>\*</sup>, the provisions of this article shall only be applicable to training programmes which were approved by the Corporation prior to that date.

Management  
services grants.  
*Amended by:*  
*IX.1993.13;*  
*IV.2001.23.*

**20.** (1) Where a qualifying company which is a Maltese company with an actual or foreseen total sales revenue not exceeding Lm600,000 in its latest or actual financial year satisfies the Corporation that it may enhance its potential for development by employing qualified personnel to perform administrative, technical, marketing or financial functions, or by engaging consultants to carry out such functions, in accordance with a three-year plan submitted for the Corporation's approval, the Corporation may reimburse twenty-five per cent of the emoluments or fees disbursed by the company in any year for such personnel or consultants for a period of three years, so however that the reimbursement shall not exceed Lm5,000 in any year.

(2) No reimbursement under the provisions of this article shall be made in respect of emoluments or fees paid or payable to any person who is in any way, whether directly or indirectly, closely connected or related to any member of the qualifying company.

Cap. 123.

(3) The reimbursement received by the company under this article shall not constitute a taxable receipt under the Income Tax Act.

(4) As from such date as may be determined by the Minister by order in the Gazette<sup>†</sup>, the provisions of this article shall only be applicable with respect to grants approved by the Corporation prior to that date.

Exemption from  
death and donation  
duty.  
Cap. 239.

**21.** (1) Notwithstanding anything contained in the Death and Donation Duty Act<sup>‡</sup>, no duty shall be payable thereunder in respect of any interest in a qualifying company possessed by any person when -

- (a) such interest is comprised in a chargeable transmission happening on or after 1st June, 1987, and
- (b) the former owner thereof before the happening of the chargeable transmission and new owner after its happening are both persons not domiciled in Malta, and

<sup>\*</sup>1st January, 2002 - see Legal Notice 135 of 2001.

<sup>†</sup>1st January, 2002 - see Legal Notice 135 of 2001.

<sup>‡</sup>Repealed by Act XVI of 1993.



- (c) the interest is an interest to which the provisions of this article apply.

(2) The provisions of this article apply to an interest in a qualifying company being -

- (a) shares thereof;
- (b) any dividend distributed or due to be distributed by the said company;
- (c) any money loaned or advanced to the company, and any other credit whatsoever, irrespective of the way in which the loan or advance has been made, or has resulted, and the security granted therefor;
- (d) any interest on money or other income paid or due to be paid by the company before the happening of the chargeable transmission.

**22.** (1) The Corporation may certify that an individual who is not an exempt person under the Immigration Act would, if granted a licence under the said Act to be employed by a qualifying company, contribute towards the industrial development of Malta through his technical or managerial knowledge and experience.

Expatriate  
employees.  
Cap. 217.

(2) Where an individual in respect of whom a certificate has been issued under subarticle (1) occupies a senior managerial or technical position or office, if the relative company employs such individual for an extended period, it shall satisfy the Corporation that adequate arrangements are concurrently being made by it to enable another individual of Maltese citizenship to acquire such knowledge and experience as will enable him in due course to occupy the said position or office.

(3) Subject to endorsement by the Corporation, where a person who is not domiciled or ordinarily resident in Malta holds forty per cent or more of the shares of a qualifying company, such person shall be entitled to require that one individual named by him shall, subject to the provisions of the Immigration Act, be granted a licence under that Act to be employed by the company in Malta.

Cap. 217.

**23.** (1) The provisions of this article shall apply in the case of any qualifying company where the Corporation is satisfied that all or part of the activities of the company (hereinafter referred to as "Gozo company") are being carried on or carried out in Gozo.

Industry in Gozo.  
Amended by:  
IX. 1993.14;  
IV. 2001.24.

(2) The Corporation shall give a grant to a Gozo company to cover the actual, additional and necessary transport costs incurred by the company in transporting:

- (a) between Malta and Gozo machinery, plant, materials, goods or products connected with its activities in Gozo related to export;
- (b) from Malta to Gozo material connected with its activities in Gozo whether such activities are related to export or not.

(3) Where a Gozo company satisfies the condition laid down in

article 4(1)(b), the Corporation shall give a grant to the company to cover the actual, additional and necessary costs incurred by the company to accommodate in Gozo persons who are not ordinarily resident in Gozo and who occupy senior managerial or technical positions, which grant shall be limited to a period of three consecutive years:

Provided that the grant shall not exceed Lm1,500 *per annum* in respect of any single employee nor Lm5,000 to the company in any one year.

(4) The maximum period in respect of which a training grant may be given under the provisions of article 19 shall be extended to three years in the case of an employee of a Gozo company undergoing training if such employee was ordinarily resident in Gozo for a period of not less than one year immediately before the commencement of his training.

Cap. 123.

(5) Grants received by a Gozo company under this article shall not constitute taxable receipts under the Income Tax Act.

(6) With effect from such date as may be determined by the Minister by order in the Gazette\* :

- (a) subarticle (2)(a) shall be applicable to all activities whether or not these are related to export;
- (b) subarticle (3) shall apply without the requirement of the qualifying company to satisfy the conditions of article 4(1)(b); and
- (c) subarticle (4) shall only apply to training programmes approved by the Corporation prior to that date.

Small enterprises.  
Substituted by:  
IX. 1993.15;  
XI. 1997.15.  
Amended by:  
IV. 2001.25.

**24.** (1) Subject to the provisions of article 16(11) and those of article 17(5), the Corporation may, at its discretion, grant to a small enterprise:

- (a) relief from customs duty as provided in article 17;
- (b) industrial buildings, structures and land on such conditions as the Corporation may from time to time determine;
- (c) soft loans as provided in article 16; or
- (d) any other incentive or benefit as would be consistent with the aims and objectives of the industrial policy of the Government, as may be prescribed by the Minister by notice in the Gazette.

(2) In subarticle (1) of this article "small enterprise" means a person or a company constituted under Maltese Law which:

- (a) carries on or carries out a trade or business contemplated under article 3(1)(a) to (h) or such other trade or business as the Minister may prescribe by notice in the Gazette; and

\*1st November, 2000, as regards paragraphs (a) and (b), and 1st January, 2002, as regards paragraph (c) - see Legal Notice 135 of 2001.

- (b) qualifies as a small enterprise in accordance with regulations prescribed by the Minister in terms of this Act.

**24A.** (1) Where the Corporation is satisfied that in the case of a qualifying company or of a company which carries on or carries out, in Malta, a trade or business consisting mainly of the operation or management of a hotel or group of hotels, it would be consistent with the aims and objectives of the policy of the Government regarding energy and water conservation, the Corporation may grant loans to the said company for the acquisition of related plant, equipment, machinery and other fixed assets, but excluding land, and for the financing of the necessary civil engineering and infrastructural works, in accordance with the terms and conditions herein specified.

Soft loans in connection with energy and water conservation.

Added by:

XI. 1997.16.

Amended by:

IV. 2001.26.

(2) The Corporation may grant loans as provided under subarticle (1) when the plant, equipment, machinery or fixed assets are acquired as part of an investment programme for the conservation of energy or water as may be approved by the Corporation.

(3) Loans under the provisions of this article shall in no case exceed thirty-three per cent of the projected investment programme for the conservation of energy or water as approved by the Corporation, but no loan shall exceed Lm200,000 or such other amount as may be prescribed.

(4) The rate of interest charged by the Corporation on loans granted under this article shall be the minimum discount rate in terms of directives issued from time to time by the Central Bank of Malta under the Central Bank of Malta Act, less two and a half percentage points:

Cap. 204.

Provided that the provisions of this subarticle may only be applied by the Corporation when the said minimum discount rate is at an equivalent or higher level than two and half percentage points.

(5) The provisions of article 16(4), (5), (6), (7), (8), (9) and (10) shall apply *mutatis mutandis* to loans granted by the Corporation under the provisions of this article.

(6) With effect from such date as may be determined by the Minister by order in the Gazette\*, this article shall apply to all enterprises.

**24B.** (1) Where it appears to the Corporation in the case of a company which carries on or carries out, in Malta, a trade or business consisting mainly of the operation or management of a hotel or group of hotels, that the gains or profits or part thereof derived by that company from its trade or business or part thereof in the year of assessment commencing on 1st January, 1997, or in subsequent years of assessment, have been set aside for the exclusive purpose of financing a project for the upgrading, refurbishing or renovation of a hotel or hotels owned, operated or

Reduced rates of tax for upgrading, refurbishing or renovation of a hotel.

Added by:

XI. 1997.16.

Amended by:

IV. 2001.27.

\*1st November, 2000 - see Legal Notice 135 of 2001.

managed by such a company and as shall have been approved by the Corporation, and that the gains or profits or part thereof have in fact been used for the purposes for which they were set aside, the Corporation shall issue to such company a certificate showing compliance and thereupon the rate of income tax chargeable on the gains or profits or part thereof so used shall be reduced by seventeen and a half percentage points, or such higher percentage as the Minister may prescribe, and in any such case the tax chargeable shall be assessed, or reassessed and where necessary refunded, as the case may require.

(2) The provisions of article 6(2) shall apply *mutatis mutandis* to companies qualifying for assistance under the provisions of subarticle (1).

(3) The Minister may by regulations prescribe rules and conditions for the application of the benefit provided by this article.

Financial  
assistance.  
Added by:  
IV. 2001.28.

**24C.** Where the Minister, on the recommendation of the Corporation, is satisfied that a project to be undertaken by an enterprise may make a substantial contribution to the development of the economy as is consistent with the aims and objectives of the Government, the Minister may, after consultation with the Corporation as may be necessary, approve that a grant be given by the Corporation to such an enterprise subject to such conditions as the Corporation or the Minister may impose.

## PART IV

### GUARANTEE OF INCENTIVES

Guarantee of  
incentives.  
Amended by:  
XI. 1997.17.

**25.** (1) Where after the coming into force of this Act a qualifying company or its members or employees are entitled to an incentive or benefit under any of the following provisions, there shall be deemed to have come into existence a contract between the company or its members or employees and the Government, or the Corporation, as the case may be, guaranteeing the grant and enjoyment of the relative incentive or benefit in accordance with the provisions of this Act as hereunder indicated:

- (a) the incentives and benefits contemplated under articles 4, 5, 7, 8, 11, 12 and 14 when and as soon as the company becomes entitled to a benefit thereunder for any year of assessment;
- (b) exemption from tax on dividends under article 9;
- (c) the rate of tax chargeable in respect of an expatriate employee under article 13 when and as soon as the employee becomes so chargeable;
- (d) gains or profits contemplated in article 15 for as long as the relative arrangement is still in force;
- (e) exemption from duty under article 21; and
- (f) grants due to a Gozo company in accordance with the provisions of article 23(2) and (3).

(2) Where any incentive or benefit contemplated under the provisions of this Act is not due as of right to a qualifying company or other beneficiary but depends on the use of discretion vested in the Corporation, the use of such discretion in favour of a beneficiary shall constitute a contract between the beneficiary and the Government, or the Corporation, as the case may be, guaranteeing the grant and enjoyment of the incentive or benefit in accordance with the provisions of this Act.

(3) Without prejudice to any other proof available to a qualifying company, a certificate released by the Corporation to the effect that a trade or business carried on or carried out, or intended to be carried on or carried out, by the company does not consist solely or mainly in the mere expansion, duplication or replacement of a trade or business formerly carried on or carried out in Malta by any person directly or indirectly connected with the said company, shall be conclusive evidence to this effect for the purposes of article 4(1)(c). A certificate to like effect may also be issued by the Corporation for the purpose of determining any question arising under the provisions of subarticle (3)(a) of the said article.

(4) Notwithstanding any other provision of this Act, in releasing a certificate in accordance with the provisions of subarticle (3), the Corporation may impose any conditions it may deem fit including a reduction in the term of the tax holiday contemplated by article 4.

(5) The Corporation may at its discretion issue a certificate exempting a qualifying company from the requirements of article 4(1)(c) under such terms and conditions it may deem fit to impose where:

- (a) the company is a joint venture between an existing qualifying Maltese company or companies (in this subarticle referred to as "the first partner company") and a company which carries on its trade or business outside Malta (in this subarticle referred to as "the second partner company") and which, if it were not for the said joint venture, would satisfy the conditions established in article 4(1)(c); and
- (b) the second partner company holds at least 20% of the ordinary and voting share capital of the joint venture company; and
- (c) the Corporation is satisfied that the second partner company would bring into the joint venture company innovative technology, new production processes or access to new foreign markets.

(6) The guarantees given by this article shall not be nullified by any retrospective action, whether by legislation or otherwise.

(7) The provisions of this article shall be without prejudice to the controlling and regulatory provisions laid down in this Act and to the powers of the President of Malta under article 26.

**26.** No incentive or benefit contemplated by this Act shall be

Powers of the  
President of Malta.

Revocation of  
incentives or  
benefits.

enjoyed by any qualifying company or other beneficiary for any year or year of assessment if the President of Malta by order in writing declares that the grant or acquisition or continued grant and acquisition of such incentive or benefit is or would be against public policy (*ordre public*), and where such an order is made it shall have effect as from the date therein specified but in no case shall an order have retrospective effect.

**27.** (1) Where a qualifying company or other beneficiary fails to comply or cause compliance with any of the conditions attached to the grant of any incentive or benefit by the Corporation under this Act, the Corporation may either revoke the incentive or benefit or by notice in writing require such company or other beneficiary within thirty days of the receipt of such notice -

- (a) to comply or cause compliance with such conditions; or
- (b) to establish to the satisfaction of the Corporation that failure to comply or cause compliance with such conditions was due to some cause beyond its control and that there are actual prospects of complying or causing compliance with such condition within such time as the Corporation may consider reasonable.

(2) Where a qualifying company or other beneficiary establishes to the satisfaction of the Corporation that failure to comply or cause compliance with any conditions attached to the grant of any incentive or benefit under this Act was due to some cause beyond its control, and that there are actual prospects of complying or causing compliance with such conditions within a reasonable time, the Corporation may authorise reasonable postponement for the purpose of compliance with such conditions, as it thinks fit.

(3) Where a qualifying company or other beneficiary:

- (a) having been required so to do by notice under subarticle (1) of this article, fails to establish to the satisfaction of the Corporation that its failure to comply or cause compliance with any conditions attached to the grant of any incentive or benefit was due to some cause beyond its control and that there are actual prospects of complying or causing compliance with such conditions within a reasonable time; or
- (b) having been allowed a postponement under subarticle (2) of this article, fails within the period of such postponement to comply or cause compliance with such conditions,

the Corporation may revoke any incentive or benefit granted to the company or other beneficiary under this Act, and that revocation shall be operative from such date as may be determined by the Corporation.

(4) Where the grant of any incentive or benefit under this Act is revoked in accordance with the provisions of this article, the relative company or other beneficiary shall pay or repay to the

Government or to the Corporation, as the case may be, any sums which it would have paid to the Government or the Corporation but for the provisions of this Act or which it had received thereunder, and any sums which the company or other beneficiary is so liable to pay or repay may be set off against any sums which may be due from the Government or the Corporation to the company or other beneficiary for any reason whatsoever, without prejudice to any right of the Government or the Corporation for the recovery of any balance remaining due.

(5) The provisions of this article shall only apply where the grant of an incentive or benefit under this Act depends on the use of discretion vested in the Corporation.

(6) In all cases of revocation under the provisions of this article, an appeal shall lie by the aggrieved party to the Appeals Board constituted under article 28.

**28.** (1) There shall be an Appeals Board, hereinafter referred to as "the Board", which shall have exclusive jurisdiction to hear and determine appeals in accordance with the provisions of article 30. The Board shall consist of a Chairman and two other members, appointed by the Prime Minister from among persons who, in his opinion, are conversant with the matters contemplated by this Act.

Establishment of  
Appeals Board.

(2) A person shall be disqualified from being appointed to or from continuing to be a member of the Board so long as he is a member of the House of Representatives, or a public officer.

(3) Every person appointed to be a member of the Board shall, before entering upon his office, make and subscribe a declaration on oath in the form prescribed to that effect before a Commissioner for Oaths which shall be deposited with the Attorney General.

(4) Subject to the provisions of this article, the office of a member of the Board shall become vacant -

- (a) at the expiration of five years from the date of appointment to that office; or
- (b) upon the resignation or death of a member before the expiration of his term of office; or
- (c) upon the removal from office of the member by the Prime Minister for inability to discharge the functions of his office, whether arising from infirmity of mind or body or for any other cause, or for misbehaviour.

(5) Any member of the Board may be challenged or shall abstain in the same circumstances as a judge of the superior courts, and in any such case the Prime Minister shall appoint in his stead another person who is qualified to be a member for the particular case in respect of which the member has been challenged or has abstained.

(6) When the office of a member of the Board is vacant or when a member is for any reason unable to perform the functions of his office, the Prime Minister shall appoint a person who is qualified to be appointed to be a member, to be a temporary

member of the Board; and any person so appointed shall, subject to the provisions of subarticles (4) and (5), cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.

(7) The members of the Board shall not be personally liable for any acts or defaults of the Board done or omitted to be done in good faith in the course of the proceedings of the Board.

(8) There shall be a secretary to the Board who shall be a public officer designated by the Prime Minister to perform the functions of secretary. The Board shall also have such other staff as the Prime Minister may deem necessary and designated as aforesaid.

(9) The members of the Board shall receive such remuneration as the Prime Minister may determine.

(10) The Minister may make regulations governing appeals to the Board and, without prejudice to the generality of the foregoing, may make regulations -

- (a) prescribing the manner in which an appeal shall be made to the Board;
- (b) prescribing the procedure to be adopted by the Board in hearing an appeal and the records to be kept by the Board;
- (c) prescribing the manner in which the Board shall be convened and the places where and the times at which the Board shall hold sittings;
- (d) prescribing fees to be paid in respect of appeals to the Board; and
- (e) generally for the carrying out of the provisions of this Act relating to the Board.

Summoning of witnesses and administration of oath.

**29.** (1) The Board shall have power, exercisable through its Chairman -

- (a) to summon witnesses;
- (b) to administer an oath to any witness and to require him to give evidence or to produce books or other documents before it.

(2) A summons may be served either by hand or by post. Where it is served by hand it shall be sufficient to prove service by evidence that the summons was left with a person over the age of 16 years at the place of residence or of business of the person summoned; and if served by post it shall be sufficient to prove service by evidence that the summons was properly addressed and posted.

(3) Any person summoned as aforesaid who refuses, or without sufficient cause fails, to attend at the time and place mentioned in the summons, or refuses, without sufficient cause, to answer or to answer fully and satisfactorily, to the best of his knowledge and belief, all questions put to him by or with the concurrence of the



Board, or refuses or fails, without sufficient cause, to produce any document he was required to produce by or with the concurrence of the Board, shall be guilty of an offence against this Act:

Provided that, without prejudice to the generality of the provisions of subarticle (1)(b), no person giving evidence before the Board may be compelled to answer any question which tends to expose him to any criminal prosecution, and every such person shall, in respect of any evidence given by him before the Board, be entitled to the same privileges to which a witness giving evidence before a court of law is entitled.

**30.** (1) Subject to the provisions of subarticle (2), a qualifying company or other beneficiary aggrieved by any decision taken in respect of any matter falling under or contemplated by the provisions of this Act shall have the right to appeal against that decision before the Board. Appeals to the Board.

(2) Saving the provisions of article 27(6), subarticle (1) shall not apply to any decision taken by the President of Malta, the Minister, or the Corporation, as the case may be, in the exercise of discretionary power.

(3) The provisions of this article shall be without prejudice to the proceedings contemplated in -

(a) article 65 to article 69 of the Income Tax Act; and Cap. 123.

(b) article 25 to article 28 of the Death and Donation Duty Act\* : Cap. 239.

Provided that any issue decided under this article in respect of any matter contemplated under this Act shall, saving the provisions of article 31, be final and conclusive.

(4) Appeals to the Board shall be heard *in camera* unless the Board, on the application of both contending parties, otherwise directs.

(5) The Board may order the correction of any arithmetical error incurred in any of its decisions on an application filed by either party within thirty days from the date of service upon it of that decision, and such application shall be served on the other party.

**31.** (1) An appeal from a decision of the Board may be made by either party, on a question of law only, to the Court of Appeal (Inferior Jurisdiction) by an application filed within thirty days from the date of service upon it of the decision of the Board, and such application shall be served on the other party. Appeals to Court of Appeal. Amended by: VI. 2001.18.

(2) Unless rules made hereunder provide a longer period, seven clear days' notice shall be given to the parties of the date fixed for the hearing of an appeal made to the Court of Appeal.

(3) All appeals to the Court of Appeal shall be heard *in camera* unless the Court, on the application of both contending parties,

\*Repealed by Act XVI of 1993.

otherwise directs.

Cap. 12.

(4) The Board established under article 29 of the Code of Organization and Civil Procedure may make rules concerning appeals to the Court of Appeal under this article.

(5) The Minister responsible for justice may by regulations under this article establish the fees payable in the registry of the courts relative to the filing of judicial acts in connection with appeals to the Court of Appeal (Inferior Jurisdiction) under this Act:

Cap. 12.

Provided that until such fees are so established by the Minister, the fees contained in Schedule A to the Code of Organization and Civil Procedure shall apply.

(6) The Chairman of the Corporation shall as soon as may be publish the decisions delivered by the Board and by the Court of Appeal without, however, disclosing the identity of any person.

## PART V

### GENERAL PROVISIONS

Effect on other laws.

**32.** Nothing contained in this Act shall affect the provisions of any other law whatsoever except to the extent solely that the provisions of this Act replace or supersede the provisions of that law, and no incentive, exemption, reduction of taxation or other benefit or privilege provided for under the provisions of this Act shall modify any obligation to furnish returns, statements, particulars or documents as may be required by any other law.

Official secrecy.

**33.** (1) Save as may be otherwise required for the purposes of this Act, or in the course of a prosecution for any offence committed in relation to this Act, or where the Prime Minister otherwise directs -

- (a) every person having an official duty or being employed in the administration of this Act shall regard and deal with all documents and information relating to matters contemplated by or pursuant to the provisions of this Act as secret and confidential and shall make and subscribe before a Commissioner for Oaths a declaration on oath to this effect in the form prescribed which shall be deposited with the Attorney General;
- (b) no such person shall be required to produce to or before any court, tribunal, Board, committee of enquiry or any other authority, or to divulge to any court, tribunal, Board, committee or other authority, any matter or thing coming to his notice or being in his possession in the performance of his duties under this Act.

(2) Notwithstanding the provisions of subarticle (1), the

auditor of the Corporation shall have access to any records and documents as may be necessary for the performance of his duties.

**34.** (1) A qualifying company or other beneficiary may be granted and obtain more than one form of incentive or benefit under this Act.

Cumulative  
incentives and  
choice.  
*Amended by:*  
*XI. 1997.18;*  
*IV. 2001.29.*

(2) A qualifying company or other beneficiary may, at any time, by notice in writing, elect not to be granted or to take any incentive or benefit otherwise due to it under the provisions of this Act. Such notice shall specify the date from which its election shall be operative, which date shall invariably be the first day of a year, or of a year of assessment or of any other financial period, and shall be irrevocable and indefinite in respect of the matters on account of which it has been made:

Provided that, notwithstanding anything contained in article 61(1), a qualifying company which so elects not to be granted or to take any incentive or benefit otherwise due to it under the provisions of this Act, shall not be precluded from being granted any incentive or benefit of a similar nature granted under the provisions of the Aids to Industries Ordinance.

Cap. 159.

**35.** (1) No incentive or benefit which may be granted or obtained under this Act shall be so granted or obtained, and no entitlement thereto shall exist notwithstanding anything contained in this Act unless -

Records and  
certification.  
*Amended by:*  
*XI. 1997.19.*

- (a) proper and sufficient records and accounts, including appropriate supporting documentation, have been maintained for the relative year, year of assessment or accounting period, as the case may be, by the qualifying company otherwise entitled to the incentive or benefit or in relation to which such entitlement arises;
- (b) separate accounts have been kept as may be necessary to identify and quantify the incentive or benefit;
- (c) such computations, returns, statements, particulars or documents as may be necessary to establish clearly the entitlement to the incentive or benefit are submitted to the appropriate authority.

(2) A qualifying company shall not be entitled to any incentive or benefit contemplated under the provisions of this Act unless its annual financial statements, and in the case of a company not incorporated under Maltese Law the annual financial statements of its operations in Malta, are audited by a certified public accountant and auditor in accordance with the provisions of the Commercial Partnerships Ordinance\* or the Companies Act, as applicable, whether or not such audit is required under the said Ordinance or Act and unless all other statements, accounts or documents submitted for the purpose of acquiring any such incentive or benefit are also certified by a certified public accountant and auditor to the

Cap. 168.  
Cap. 386.

\*Repealed by Act XXV of 1995 (Chapter 386).

same effect that the company's financial statements are to be certified under the provisions of the said Ordinance or Act as aforesaid.

Certain reserve  
funds.  
*Amended by:*  
*IX.1993.16;*  
*IX.1997.20;*  
*IV.2001.30.*

**36.** (1) A qualifying company in receipt of any of the incentives and benefits indicated in subarticle (4) shall, at the end of the accounting period during which the incentive or benefit stands to be accounted for, transfer to and show in its balance sheet as on the said date a reserve to be called the "Incentives and Benefits Reserve" in a sum equal to the amounts therein specified. This reserve shall show separately any amounts transferred under subarticle (4)(a) and any amounts transferred under subarticle (4)(b).

(2) The amounts to be transferred to the Incentives and Benefits Reserve, as provided for by subarticle (1), shall be so transferred from profits which, but for the provisions of this article, would otherwise be available for distribution under the laws for the time being in force in Malta, and where at the end of any accounting period there are insufficient distributable profits to enable the transfer to the said reserve of the full amount which should be transferred in accordance with subarticle (1), the obligation to transfer any amount which could not be so transferred shall be carried forward to the subsequent accounting period and deemed to be an obligation for that period, and so on for subsequent periods.

(3) A reserve created under the provisions of subarticle (1) shall, except as otherwise provided for in this article, be retained separately in the balance sheet of the company and shall not be distributable or convertible into share capital of the company. The said reserve shall also not be reduced to take account of any losses incurred by the company, whether such losses are of an ordinary or extraordinary nature, or capital or revenue in character:

Provided that, notwithstanding anything in this subarticle, any amount transferred to the Incentives and Benefits Reserve under subarticle (4)(a) may, after the lapse of eight years from the end of the approved investment period, be applied by the company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares. Such distribution shall not be chargeable to tax.

(4) The incentives and benefits referred to in subarticle (1) are the following:

- (a) the net amount of the profits subject to income tax at a reduced rate under the provisions of article 6 and article 24B;
- (b) the amount of any grants given under the following provisions of this Act:
  - (i) article 19 by way of a training grant;
  - (ii) article 20 by way of a management services grant;
  - (iii) article 23(3) and (4) by way of accommodation and training grants to industry in Gozo,

respectively.

(5) Distributions made to the members of a company in the course of winding up the company out of any reserve created in accordance with the provisions of this article shall not be liable to tax under the Income Tax Act:

Cap.123.

Provided that any tax paid by the company on the profits referred to in subarticle (4)(a) shall not be available as a credit or set-off under the provisions of the said Act to the recipient of the distribution.

(6) Where a qualifying company is a company incorporated outside Malta, such company shall show the Incentive and Benefits Reserve on its balance sheet in respect of its business activities in Malta until the company's place of business in Malta, in respect of which the reserve is required, ceases to exist.

(7) The provisions of subarticles (2), (3) and (5) shall only apply to companies constituted under Maltese Law.

**37.** (1) Any qualifying company or other person purporting or seeking to obtain or enjoy any incentive or benefit under the provisions of this Act shall -

Powers of the Corporation and other authorities.

- (a) furnish to the Corporation and to any other authority such information, accounts, statements and other documents which the Corporation or that other authority may deem to be necessary for the purposes of this Act;
- (b) attend or send a representative to attend before the Corporation or other authority and answer any question lawfully made in connection therewith;
- (c) provide the Corporation or other authority with reasonable access to all premises, places, books and other documents, and allow copies to be made thereof for the purposes of this Act.

(2) The Corporation or other authority may delegate to any of its officers, employees and any other person whomsoever any of the rights and powers contemplated by this article.

## PART VI

### OFFENCES AND PENALTIES

**38.** Any person who, except as provided for or allowed under this Act or for the purposes thereof, communicates or attempts to communicate to any other person any matter or thing coming to his notice or being in his possession in the performance of his duties under this Act shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than two hundred liri and not more than two thousand liri or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment:

Penalty for offences against official secrecy.  
Amended by:  
IV. 2001.31.

Provided that a person shall not be precluded from providing such information and access to the Corporation's records as may be required by the State Aid Monitoring Board in the discharge of its functions and duties under this Act:

Provided further that a person referred to in article 33(1)(a) shall have the duty to provide such information and access to the Corporation's records as may be required by the Minister for the execution of the Minister's responsibilities in terms of the provisions of this Act and of the Malta Development Corporation Act.

Cap. 202.

Penalty for making incorrect statements, etc.

**39.** Any person who without reasonable excuse prepares any incorrect statement or gives any incorrect information in relation to any matter or thing falling under this Act, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than three hundred liri and not exceeding two thousand liri.

Provisions relating to fraud, etc.

**40.** Any person who wilfully with intent to obtain any incentive or benefit under this Act or to assist any other person to do so -

- (a) omits from a return or any other document or statement made, prepared or submitted for the purposes of or under this Act, any matter which should be included therein; or
- (b) makes any false statement or entry in any return or other document or statement prepared or submitted for the purposes of or under this Act; or
- (c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of this Act; or
- (d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or
- (e) makes use of any fraud, art or contrivance whatever or authorises the use of any such fraud, art or contrivance,

shall be guilty of an offence, and shall for each such offence be liable on conviction to a fine (*multa*) of not less than five hundred liri and not exceeding five thousand liri or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment.

General penalty.

**41.** If any person contravenes or fails to comply with any of the requirements of this Act or of any regulations made thereunder, in respect of which no special punishment is provided, he shall be guilty of an offence and shall for each offence be liable, on conviction, to a fine (*multa*) of not less than one hundred liri and not more than five hundred liri.

Provision with respect to offences.

**42.** The provisions of this Act establishing offences and punishments in respect thereof shall not affect the operation of any other law establishing offences and punishments in respect of the

same acts or omissions and shall not, in particular, affect the application of any higher punishment under any other law.

43. Proceedings for an offence under this Act may be commenced at any time within five years from the date of commission of the offence.

Prescription of proceedings for offences.

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## PART VII

Added by:  
IV. 2001.33.

### PROVISIONS REGARDING LATE PAYMENT IN COMMERCIAL TRANSACTIONS

44. (1) In this Part, unless the context otherwise requires -

Interpretation.

"advance payment" means a payment which falls due before the obligation of the supplier to which the whole contract price relates is performed, other than a payment of a part of the contract price that is due in respect of any part performance of that obligation and payable on or after the day on which that part performance is completed;

"commercial transaction" means a contract for the supply of goods or services entered into between a micro-enterprise and any body or person specified in article 45(1)(a) and (b);

"contract for the supply of goods or services" means any, or a combination, of the following contracts:

- (a) a contract of sale or lease of movable effects;
- (b) an agreement to carry out a service, including a contract of works, *locatio operis*, for a consideration that consists of, or includes, a money consideration;
- (c) a contract of sale, emphyteusis or letting of immovable property, or a promise thereof;
- (d) a contract of loan (*mutuum*) except for a loan or banking facility contracted between any undertaking and a bank or financial institution,

and the term "supplier" shall be construed accordingly;

"contractual remedy" means a contractual right to interest or any contractual remedy other than interest;

"exempt contract" means a contract that is exempt from the provisions of this Part in terms of article 47(1);

"late payment" means a payment that is made after the relevant date;

"legal interest" means interest due on commercial transactions in terms of article 45;

"purchaser" means the buyer in a contract of sale or the person who contracts with the supplier in any other contract for the supply of goods or services, or any third party to whom the obligation to pay the debt has been legally assigned;

"qualifying debt" means any sum or balance thereof due on a commercial transaction referred to in article 45(1);

"relevant date" or "relevant day", in relation to the payment of a qualifying debt under this Act, means the date on which payment falls due in accordance with article 48;

"semester" means either the period in any year starting from the first day of January and ending on the thirtieth day of June or the period in any year starting on the first day of July and ending on the thirty-first day of December as the context may require;

"substantial remedy" shall be construed in accordance with article 52;

Cap. 13.

"undertaking" means a trader as defined in article 4 of the Commercial Code, a person exercising a profession or providing a consultancy service, alone or in partnership with others, or a non-profit organisation.

(2) The provisions of this Part shall not apply to debts of any description created before the coming into force of this Act.

Legal interest.

**45.** (1) Subject to the provisions of this Act, late payment in a commercial transaction shall carry legal interest with effect from the relevant date, if such payment is due to an undertaking which is a micro-enterprise as defined in this Act, and is due by -

- (a) an undertaking which is a medium-sized or large enterprise as defined in this Act; or
- (b) a public authority, including any Government department, Government-owned or controlled entity set up by or under any law or a local council:

Provided that the Minister may by regulations extend the provisions of this subarticle to late payments due to or by any other undertaking.

Cap. 16.

(2) Notwithstanding the provisions of article 1139 of the Civil Code, legal interest shall be calculated in accordance with the provisions of article 50.

(3) Legal interest shall have effect even if no express provision to this effect is made in the relevant contract, subject to the right of the contracting parties to exclude or modify the right to such interest in accordance with article 51.

Application of legal interest.

**46.** Where a contract to which this Part of this Act applies is combined with an exempt contract, a reference to late payment of debt shall be interpreted as a reference to late payment of the sum due under the contract, excluding any part of that sum which refers to the exempt contract.

Debts not covered by this Act.

**47.** (1) Legal interest shall not be due on:

- (a) a debt to which the right to interest or to charge interest applies by virtue of any special law, in which case the provisions of such special law shall prevail;
- (b) any other debt which the Minister may by order exempt:

Provided that this article shall not prevent a sum from carrying legal interest by reason of the fact that a court, arbitrator or arbiter



would, but for the provisions of this Part, have power to award interest on such sum.

(2) The provisions of Title IV of Part II of Book Second of the Civil Code shall not be considered as a special law for the purposes of subarticle (1)(a). Cap. 16.

**48.** (1) Legal interest shall commence to run from the day on which the payment of a qualifying debt falls due under the relevant contract; a date so agreed may be a fixed one or may depend on the happening of an event or the failure of an event to happen: Period for which legal interest runs.

Provided that, notwithstanding the foregoing, where the debt relates to an obligation to make an advance payment, the provisions of article 53 shall apply.

(2) Where the date or period for payment is not fixed in the relevant contract, the date from which legal interest shall commence to run shall be:

- (a) the date on which the obligation of the supplier to which the debt relates is performed; or
- (b) if the payment is subject to the receipt by the debtor of a notice of the amount or a request for payment of debt, thirty days following the day on which the purchaser receives such notice or request:

Provided that:

- (i) if the date of the receipt of such notice or request is uncertain; or
- (ii) if the debtor receives such notice or request for payment on a date preceding the date of performance by the supplier of the obligation to which the debt relates,

legal interest shall commence to run thirty days following the date stipulated in paragraph (a).

(3) Where the debt is created by virtue of an obligation to pay a sum due in respect of a period of hire of goods, the provisions of subarticle (2)(a) shall have effect as if they referred to the last day of that period.

(4) Legal interest on a qualifying debt shall cease to run on the settlement of such debt.

**49.** (1) The creditor shall not be entitled to legal interest if he has not fulfilled his contractual or legal obligations: Remission of legal interest.

Provided that if the interests of justice require that the supplier should receive legal interest at a reduced rate for a period, legal interest shall run at such rate as fixed by the court as meets the justice of the case for that period.

(2) The Court may order that legal interest shall not be due -

- (a) by reason of any act or omission at any time, whether before or after the time at which the debt is created; and

- (b) for the whole period for which legal interest would otherwise run or for one or more parts of that period.

Rate of legal interest.

Cap. 204.

**50.** (1) The rate of legal interest applicable under this Part of this Act shall be the minimum discount rate in terms of any directives issued from time to time by the Central Bank of Malta under the Central Bank of Malta Act, and prevailing on the relevant reference date increased by six percentage points.

(2) The first reference date shall be the first calendar day of the semester during which legal interest first becomes due:

Provided that the rate of legal interest in respect of every subsequent semester during which the qualifying debt remains due shall be that prevailing on the first calendar date of the relevant semester.

(3) The interest rate referred to in subarticle (1) or any other rate by which it may be replaced shall not be less than eight *per centum*; should the rate of legal interest calculated according to the provisions of subarticles (1) and (2), or according to any other formula that may be prescribed in its place, fall below eight *per centum*, the applicable rate shall be eight *per centum*.

Circumstances where legal interest may be excluded or varied.

**51.** (1) The provisions of this article shall apply to contract terms agreed before, or at the same time as, the debt is created.

(2) Any contract terms which purport to exclude the right to legal interest in relation to the debt, shall be void to that extent, unless there is a substantial contractual remedy for late payment of the debt.

(3) Where the parties agree a contractual remedy for late payment of the debt which constitutes a substantial remedy, the debt shall not carry legal interest.

(4) The parties may not agree to vary the right to legal interest in relation to the debt unless either the right to legal interest as varied or the overall remedy for late payment of the debt is a substantial remedy.

(5) Any contract terms which -

- (a) confer a contractual right to interest that is not a substantial remedy for late payment of the debt; or
- (b) vary the right to legal interest so as to provide for a right to interest that is not a substantial remedy for late payment of the debt,

shall be void to that extent unless the overall remedy for late payment of the debt is a substantial remedy.

(6) If any remedy for late payment is declared void under this article, legal interest in terms of this Act shall apply.

(7) In this article "overall remedy", in relation to the late payment of a debt, means any combination of a contractual right to interest, a varied right to legal interest or a contractual remedy other than interest.

(8) Nothing contained in this article shall entitle the parties to

fix a rate of interest which is higher than the rate of legal interest as a contractual remedy for late payment of the debt and, if such higher rate is so fixed, that part of the contract shall be void and legal interest in terms of this Act shall apply.

**52.** (1) A remedy for the late payment of the debt shall be regarded as a substantial remedy unless -

Meaning of "substantial remedy".

- (a) the remedy is insufficient either for the purpose of compensating the supplier for late payment or for deterring late payment; and
- (b) it would grossly be unfair or unreasonable to allow the remedy to be relied on by the creditor in the absence of the right to legal interest as envisaged in this Part of this Act.

(2) In determining whether a remedy is a substantial remedy or otherwise, regard shall be had to all the relevant circumstances at the time the terms of the contract were agreed.

(3) Without prejudice to the generality of subarticle (2), in determining whether the provisions of the contract are grossly unfair or unreasonable in terms of subarticle (1)(b), regard shall be had *inter alia*, to the following matters:

- (a) good commercial practice;
- (b) the nature of the product;
- (c) the vulnerability of the supplier, considering the size of the contract in relation to the size of his undertaking;
- (d) whether the debtor has any objective reason to deviate from the provisions of articles 45, 48, 49, and 50;
- (e) whether terms which are grossly unfair or unreasonable have been imposed by one party to the detriment of the other through the use of standard clauses or through other means; and
- (f) whether the supplier received an inducement to agree to any contract term.

**53.** (1) A qualifying debt created by virtue of an obligation to make an advance payment shall be treated, for the purposes of this Part as if it was created on the day mentioned in subarticles (2), (3), (4) or (5), as the case may be.

Advance payments.

(2) Where the advance payment is the whole contract price, the debt shall be treated as created on the day on which the supplier's obligation is performed.

(3) Where the advance payment is a part of the contract price, but the sum is not due in respect of any part performance of the supplier's obligation, the debt shall be treated as created on the day on which the supplier's obligation is performed.

(4) Where the advance payment is a part of the contract price due in respect of any part performance of the supplier's obligation, but is payable before that part performance is completed, the debt shall be treated as created on the day on which the relevant part performance is

completed.

(5) Where the debt is created by virtue of an obligation to pay a sum due in respect of a period of hire of goods, this article shall have effect as if -

- (a) references to the day on which the supplier's obligation is performed were references to the last day of that period; and
- (b) references to part performance of that obligation were references to part of that period.

(6) For the purposes of this article an obligation to pay the whole outstanding balance of the contract price shall be regarded as an obligation to pay the whole contract price and not as an obligation to pay a part of the contract price.

(7) The provisions of this article shall be without prejudice to any other right of the supplier arising out of the purchaser's default on the advance payment in issue.

Recovery of costs.

**54.** The right to recover any legal interest arising under this Part of this Act shall not exclude the right to compensation for the recovery of costs incurred by the creditor in consequence of late payment.

Actions by  
associations  
representing  
micro-enterprises.

**55.** (1) Where an association is recognised by the Minister as representing, or having a legitimate interest in representing, micro-enterprises, or any other category of enterprises as the Minister may prescribe by regulations, such association may bring an action before the competent court or other body having jurisdiction for a declaration that standard contractual terms or practices used by a person in commercial transactions are grossly unfair within the meaning of article 52, and such association shall not be required to show any juridical interest in support of its action.

(2) For the purposes of this article, where the court declares any such terms or practices to be grossly unfair, every person shall desist from using any such terms or practices and any such use shall be null and of no effect.

Power to make  
regulations.

**56.** The Minister may prescribe regulations to give effect to the provisions of this Part, and without prejudice to the generality of the foregoing may, by such regulations, in particular, do any of the following:

- (a) extend the definition of a "contract for the supply of goods or services", contained in article 44, to other contractual relations;
- (b) with the concurrence of the Minister responsible for Finance, substitute or amend the rate of legal interest contained in article 48(1) by prescribing:
  - (i) a different formula for calculating the rate of legal interest; or
  - (ii) the rate of legal interest;
- (c) exempt any category of persons, contracts or debts from the provisions of this Part;

- (d) extend the application of article 45(1) to other categories of debtors or of creditors;
- (e) with respect to specified categories of contracts, postpone the date from which legal interest shall commence to run in terms of this Act by a period not exceeding thirty days, provided that the relevant debt shall be subject to a substantially higher rate of legal interest as may be prescribed, and which shall apply for any delay in payment following the expiry of such period;
- (f) prescribe anything that is to be or which may be prescribed; and
- (g) provide for any other matter incidental to or connected with any of the above.

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## PART VIII

### STATE AID MONITORING BOARD

**57.** (1) There is hereby established a board to be known as the State Aid Monitoring Board, hereinafter referred to as "the Board".

State Aid  
Monitoring Board.  
Amended by:  
VIII. 2003.31.

(2) The Board shall consist of five members to be appointed by the Minister responsible for Economic Services, who shall designate one of the members to be the Chairman, and another member to be the Deputy Chairman of the Board.

(3) Members of the Board shall, subject to subarticles (4) and (5), be appointed for a term of three years, and may be re-appointed for a further period or further periods of three years.

(4) A member of the Board may resign his office at any time by giving notice in writing to the Minister.

(5) The Minister may at any time remove a member of the Board on grounds of disability to perform his functions, bankruptcy or neglect of duty.

(6) The quorum necessary for meetings of the Board shall be the chairman or, in his absence, the deputy chairman and two other members.

(7) The Minister shall designate a public officer to act as the secretary to the Board.

(8) The members of the Board and the Secretary shall be paid such honorarium as the Minister may determine.

(9) Subject to the other provisions of this Act, the Board may regulate its own procedures and meetings in such manner as it deems proper.

**58.** (1) The functions of the Board shall be to -

- (a) establish and update a comprehensive state aid inventory;

Functions and  
powers of the  
Board.

- (b) review and assess existing and new state aid, and provide advice about their compatibility with the principles contained in the relative European Union directives;
- (c) establish and implement appropriate rules of procedure and methodological systems which lead to an effective state aid monitoring and reporting system;
- (d) provide expert opinions, positions and proposals for the formulation and implementation of state aid policy;
- (e) prepare an annual report on state aid in Malta, on the basis of the established methodology used in the European Union;
- (f) assist in the identification and implementation of appropriate capacity building concerning state aids;
- (g) act as the pertinent body concerning state aid in Malta; and
- (h) exercise such other functions and duties as may be prescribed.

(2) In its deliberations on specific cases or issues, the Board may require the input of persons engaged in the public sector and, or, entities; the Board may also request appropriate expertise from, or collaboration with, third parties, as it may deem necessary.

(3) In the exercise of its powers and functions under this Act, the Board shall have the right of access to all relevant information, and may seek the clarifications and explanations that it may deem necessary for its deliberations and conclusions.

(4) Every member of the Board shall regard and deal with all documents and information relating to matters contemplated by or pursuant to the provisions of this Part of this Act as secret and confidential and shall make and subscribe before a Commissioner for Oaths a declaration on oath to this effect in the form prescribed which shall be deposited with the Attorney General.

(5) Any person who, except as provided for or allowed under this Act or for the purposes thereof, communicates or attempts to communicate to any other person any matter or thing coming to his notice or being in his possession in the performance of his duties as a member of the Board shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than two hundred liri and not more than two thousand liri or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

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## PART IX

### FINAL PROVISIONS

*Amended by:*  
*IV. 2001.32.*

Power to make  
regulations.  
*Amended by:*  
*IV. 2001.32, 34.*

**59.** (1) The Minister may make regulations to give effect to any of the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may in particular

include provision with respect to -

- (a) the form of applications, returns, statements, reports and other documents for the purposes of this Act;
- (b) the procedure to be followed in matters relating to the provisions of this Act, including the processing of applications made for the purposes of this Act;
- (c) such other promotional measures as he may deem appropriate and subject to such conditions as he may deem fit, which measures may include, but shall not be limited to -
  - (i) measures of a fiscal nature whereby the tax payable by an enterprise may be reduced or absorbed by tax credits or by exempting or taxing at reduced rates of income tax the profits, or part thereof, derived by an enterprise from a trade, business, profession or vocation;
  - (ii) the provision of financial assistance in the form of grants, subsidies, loans and loan guarantees;
  - (iii) measures directed at encouraging employment and training;
  - (iv) measures directed at encouraging investment in research and development;
  - (v) measures directed at encouraging investment for the protection of the environment;
  - (vi) measures directed at assisting firms in difficulty and assisting them in restructuring;
- (d) special provision with respect to such micro, small or medium sized enterprises as may from time to time be prescribed;
- (e) the designation of any authority or person to exercise any of the functions of the Corporation under this Act.

(2) The power of the Minister under subarticle (1) shall be exercised with the concurrence of the Minister responsible for Tourism where the measures relate to operations in the tourism sector and with the concurrence of the Minister responsible for Agriculture and Fisheries where the measures relate to operations in the agricultural or fisheries sector.

(3) Where the Minister proposes to make regulations in accordance with the provisions of this Act and those regulations provide that an enterprise may be wholly or partly exempted from being liable to income tax which, but for the provisions of such regulations, would have been payable, the power of the Minister to make such regulations shall be exercised with the concurrence of the Minister responsible for Finance.

(4) Where the Minister proposes to make regulations in accordance with the provisions of this Act and those regulations provide for the granting of any assistance, a copy of such proposed regulations shall be forwarded to the State Aid Monitoring Board which shall communicate its comments to the Minister on the

proposed assistance to be granted within thirty days of receiving a copy of the proposed regulations.

Exercise of the Corporation's functions under this Act.

*Added by:*

*XI. 1997.21.*

*Amended by:*

*XV. 1997.2;*

*IV. 2001.32.*

**60.** The Corporation may, with the approval of the Minister, exercise its functions and powers under this Act through the agency of other persons:

Provided that any decision taken as result of any delegation of powers or functions made in accordance with the provisions of this article will not be effective unless definitely approved by the Corporation.

Transitory provisions relating to the Aids to Industries Ordinance.

*Amended by:*

*IX. 1993.17;*

*IV. 2001.32.*

Cap. 159.

**61.** (1) On the coming into force of this Act, the provisions of the Aids to Industries Ordinance shall cease to have effect in respect of any person carrying on or carrying out, or intending to carry on or carry out, any trade or business contemplated in article 3(1) or in article 24, without prejudice to anything done or omitted to be done or still to be done thereunder by or in respect of any such person, and, in particular, to any relief granted to or any liability, whether criminal or civil, incurred by any such person under that Ordinance.

Cap. 159.

(2) On the coming into force of this Act, the procedure for granting any relief from customs duty under article 8 of the Aids to Industries Ordinance, and for regulating all matters relating thereto, shall be that set out in article 17 and the relevant regulatory provisions of this Act, to the exclusion of the provisions of that Ordinance.

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