



## **Incentive Guidelines**

### **150% Tax Deductions on Cash Donations to Culture**

*(as per S.L. 123.102 and subsequent amendments)*

#### **1. Objective**

In Budget 2016, Government announced a new measure to encourage further partnerships between Malta's business community and the cultural sector. Through this measure, companies giving donations to registered not-for-profit cultural organisations, public cultural organisations, and to the Arts Council Malta for the purpose of achieving the targets outlined in its strategy Create 2020 or to act as an intermediary for cultural projects having a national interest, may deduct the amount donated at 150% against the income for the year of assessment when the donation was made.

#### **2. Application Submission**

One application per company per year listing all monetary donations made in the previous calendar year may be submitted for approval. Applications together with the required supporting documentation are to be submitted by the 30<sup>th</sup> January (or the following working day if the date occurs on a Saturday or Sunday) of the year following that in which the donations were made. Eligible applications will receive an Incentive Entitlement Certificate which shall be valid for the relevant Year of Assessment. Late applications will not be processed.

#### **3. Legal Basis**

Arts Council Malta may issue and publish updates to the official Incentive Guidelines covering this aid scheme in terms of Article 12 (2) (e) of the Arts Council Malta Act, Chapter 542 of the Laws of Malta.

Subsidiary legislation 123.102 to the Income Tax Act Cap 123 of the Laws of Malta forms the national legal basis of this incentive.

#### **4. Designated Authority**

This incentive is administered by the Arts Council Malta, hereinafter referred to as the 'Council'.



## 5. Definitions

**Company:** for the purpose of this incentive, the definition of a company is as defined in the Income Tax Legislation of the Laws of Malta (Cap 123), and shall include

- a. Limited Liability Companies,
- b. Partnerships that elected to be treated as a company in terms of article 27(6) of the Income Tax Management Act,

**Arts Council Malta:** for the purpose of this incentive, the term Arts Council Malta shall refer solely to:

- a. the activities organised by the Council for the purpose of achieving its objectives as outlined in its strategy Create 2020
- b. the Council when acting as an intermediary on behalf of a project having a national interest
- c. *Public Cultural Organisations as listed in the Second Schedule of the Arts Council Malta Act Cap 542 of the Laws of Malta and shall include: Teatru Manoel, Mediterranean Conference Centre, Malta Philharmonic Orchestra, Fondazzjoni Ċentru għall-Kreattività, Pjazza Teatru Rjal, Fondazzjoni Valletta 2018, Żfin Malta, Malta International Contemporary Art Space, and any other Public Cultural Organisation that may be added to this schedule in the future.*
- d. *Cultural Organisations having a Public interest as listed in the Third Schedule of the Arts Council Malta Act Cap 542 of the Laws of Malta and shall include: Fondazzjoni Patrimonju Malti, Malta Society of Arts, St John's Co-Cathedral Foundation and any other Public Cultural Organisation that may be added to this schedule in the future.*

**Beneficiary:** the party receiving the donation

**Donor:** the party making the donation

**Donation:** Any amount of money given to eligible cultural organisation on a no-strings-attached basis. A donation is given by a company for a specific activity in arts and culture, often reflecting the company's philosophy to contribute towards Malta's artistic and cultural development. Unlike sponsorships, which constitute a commercial transaction and often take the form of advertising or promotion within the cultural event, companies giving donations for arts and culture are providing a donation freely without requesting any services, promotion, placement and or exclusivity from the beneficiary.

This also means that the beneficiary does not charge VAT on the donation since a donation is out of the scope of VAT.

**A donor may only be acknowledged publicly by the beneficiary as a patron or supporter of the activity, via a mention and printing of a small company logo on the event programme where applicable only. Reference to the donor company can also be made in press releases issued by the beneficiary. Said mention and logo shall only refer the name of the company, not the**



**brand. In addition products or services offered by the donor company are not to be mentioned.**

**Not-for-profit cultural organisation:** is an organisation registered with the Commissioner for Voluntary Organisations established for a cultural purpose to operate in one or more areas of the cultural and creative sectors as identified in the First Schedule of the Arts Council Malta Act Cap 542 of the Laws of Malta. A not-for-profit organisation uses its surplus revenues to further achieve its purpose or mission, rather than distributing its surplus income to the organisation's shareholders (or equivalents) as profit or dividends.

**Year of Assessment:** The year for which the income tax is calculated and charged.

**Incentive Entitlement Certificate (IEC)** Incentive Entitlement Certificate means the certificate issued outlining the support granted and its terms and conditions.

## 6. Eligibility

**Who can apply as a donor?** This incentive is intended for Limited Liability Companies and those Partnerships that are registered to be treated as a company as long as the donor and the beneficiary are not related and the beneficiary is a genuine organisation active in the cultural sector.

Donors must not be defaulting on VAT, Income Tax and Social Security.

### **Who can be the beneficiary of an eligible donation?**

- i. Non-profit Cultural Organisations registered with the Commissioner Voluntary Organisations and compliant with their respective obligations. A list of registered organisations may be downloaded from the webpage of this incentive.
- ii. Public Cultural Organisations and Cultural Organisations having a public interest as defined in the Definitions section above.
- iii. Arts Council Malta: for the purpose of achieving its objectives as outlined in the strategy document Create 2020, or as an intermediary for projects having a national interest.
- iv. Malta Film Commission: for the purpose of this incentive, donations to the Malta Film Commission for the purpose of raising funds for specialised training projects for the local film industry, can be eligible as a tax deduction – in such cases Arts Council Malta is to be informed beforehand to ensure eligibility. Additionally the Council is to be listed as Witness



in the Donation Agreement entered into between the Donor and the Beneficiary as outlined in Section 8 of these Guidelines.

- v. Malta Film Fund: for the purpose of this incentive, beneficiaries of the Film Fund may also be considered eligible beneficiaries in order to raise additional funds for the part-funded project during the implementation of said project. The Malta Film Commission is empowered by the Council to provide the beneficiary with a reference letter or letter of approval, stating that the project is eligible for donations under this tax deduction scheme. In such cases, donations can only be made towards the initiative funded by the Film Fund and not for any other operation of the company. The Malta Film Commission is to sign the Donation Agreement entered into between the Donor and the Beneficiary as a third party Witness.

## **7. Incentive Description**

### ***Applicable Deduction***

The Council may approve a tax deduction equivalent to 150% of the monetary donation given to the beneficiary. The maximum deduction allowable, in any financial year, shall not exceed €50,000. Therefore, the total deduction claimed by a company in any year of assessment shall be the lesser of 150% of the total monetary donation given or €50,000 euro.

## **8. Qualifying Costs and Proof of Transaction**

Qualifying monetary donations are those made as of 1<sup>st</sup> January 2016, when the Legal Notice came into effect.

Donations must be given between 1st January and 31st December (both days included) of the year preceding the year in which the application for approval is submitted. As a result, for a claim to be submitted in 2017, the donations claimed must have been made in 2016. For each monetary donation given, the application for approval should also include a copy of a Donation Agreement as verification documentation, and Proof of Transaction documentation certified as true copies by a Certified Public Accountant (CPA).

### ***1. Verification Documentation***

The Council shall consider as eligible only Donation Agreements between the donor company and the beneficiary organisation which include:

- i. the name and details of the donor
- ii. the name and details of the beneficiary;
- iii. the Income Tax Registration numbers of both the donor and the beneficiary.



- iv. date of donation;
- v. the donation amount
- vi. description of the activity being supported, including date and venue where applicable
- vii. a clear description of the donation terms (donation in support of...)
- viii. declaration that no services, promotion, placement and/or exclusivity is being requested from or given by the beneficiary
- ix. a declaration by the beneficiary organisation that it is compliant with CVO regulations and obligations

A sample Donation Agreement may be downloaded from the incentive webpage, however donors and beneficiary may draw up their own agreements as long as the above mentioned details are included.

## 2. *Proof of Transaction*

- a. Original or true certified copies of Bank Statements clearly showing the transaction between the donor and the beneficiary. Acceptable transactions types include:
  - i. Direct Bank Transfer
  - ii. Bank Draft
  - iii. Cheque

### **AND**

- b. Where the donation was made by cheque, the cheque image
- c. Where the donation was made by direct bank transfer, unless the details of the beneficiary are clearly identifiable on the bank statements, a copy of the direct debit voucher.
- d. Where the donation was made by bank draft, a copy of draft and receipt of draft from bank).

**Copies of the above listed documents should be certified true copies by the bank or a Certified Public Accountant.**

**No other type of transaction will be considered eligible for the purpose of Tax Deductions.**

## 9. **Approval**

Following approval of the application submitted, the Council shall issue an Incentive Entitlement Certificate (IEC) in favour of the donor. Two original copies will be provided, which should be retained with the Financial Records of the company. The Inland Revenue Department retains the right to request the certificate when processing the Income Tax return submitted by the company.



The council retains the right to request further proof in relation to and/or to refuse any applications received should there be doubts on the validity of the donations being claimed for deductions, or should it result that either the beneficiary or the donor are not compliant as per Section 6 above.

The Council and the Inland Revenue Department reserve the right to recover any tax incentive the applicant may have benefited from in terms of these guidelines if the applicant fails to abide by such terms and conditions as outlined in these guidelines.

#### **10. Submission to IRD**

When compiling the tax return, companies should fill in TRA 57 reporting all the donations approved by the Arts Council and attach the IEC issued by the Arts Council. When a tax return is submitted electronically, the certificate should be kept with the company records and submitted to IRD only if requested.

#### **11. Verification of Claims**

The Council shall perform random checks on the claims received to verify that all criteria and obligations listed in this document have been honoured. Checks by the Council on claims received can take place up to 3 years from the Year of Assessment. Should the Council find that the Donor is in breach of the obligations, action will be taken to recall the tax deduction benefited from.

#### **12. Contact Details**

Further information on this incentive as well as information and guidance on the filling in of the application form may be obtained by contacting Arts Council Malta during office hours.

Postal Address: Arts Council Malta, Casa Scaglia, M.A. Vassalli Street, Valletta

Websites: <http://www.artscouncilmalta.org>

Email: [donateforarts@artscouncilmalta.org](mailto:donateforarts@artscouncilmalta.org)