



Seed Investment Scheme Guidelines

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MIMCOL

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1. INTRODUCTION:

1.1. Scope and Purpose

The Seed Investment Scheme (the 'Scheme') has been introduced in order to help start-ups raise equity finance.

More specifically, the Scheme provides for the granting of tax reliefs in the form of tax credits to individual investors resident in or operating in Malta investing in such start-up businesses.

In this regard, tax credits may be available in terms of the Scheme to individual investors resident in or operating in Malta who subscribe on their own behalf to fully paid up equity shares at par¹ in start-ups qualifying as 'qualifying companies²' and who qualify as 'qualifying investors³', up to the relative capping.

1.2. Duration of the Scheme

The Scheme is deemed to have come into force on the 1st January 2022 in relation to investments made as from basis year 2022 onwards, and shall remain effective until the 31st December 2023 or upon such later date as may be determined by the Minister responsible for finance by order published in the Government Gazette.

In any event, the Scheme shall cease to have effect upon the application of the Scheme to five million Euro (€5,000,000) of investments in the start-ups (i.e. 'qualifying companies'), or to such other amount of investments in qualifying companies as may be established by the Minister responsible for Finance by order published in the Government Gazette.

1.3. Legal Basis

The Seed Investment Scheme (Income Tax) Rules, 2022.

The terms and conditions covering this Scheme are in line with Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (the 'Regulation')⁴.

1.4. Competent Entity

The Malta Investment Management Company Limited (the 'Competent Entity' or 'MIMCOL') is the competent entity responsible for the administration of the Scheme.

¹ Refer to Section 2.3: Eligible Investment

² Refer to Section 2.1: Qualifying Company

³ Refer to Section 2.6: Qualifying Investor

⁴ Regulation:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0651&from=EN>

2. ELIGIBILITY

2.1. Qualifying Company

A company will qualify as a 'qualifying company' for the purposes of the Scheme if it satisfies the following cumulative conditions and has been issued with the relative compliance certificate:

- a) is a Small and/or Medium Sized Enterprise;
- b) is incorporated in Malta or is controlled and managed from Malta or has a place of business in Malta;
- c) has been in existence and engaged in carrying out qualifying activities for a period not exceeding 3 years following its first commercial sale;
- d) is not listed on any stock exchanges;
- e) does not have more than 10 employees;
- f) has gross assets of not more than €250,000 (immediately preceding the issue of equity shares to the qualifying investor).

2.1.1. *Small and/or Medium Sized Enterprise ('SME')*

For the purposes of these Guidelines and the Rules, the term 'small and/or medium sized enterprise' means undertakings fulfilling the criteria laid down in Annex I of the Regulation.

2.1.2. *First Commercial Sale*

For the purposes of these Guidelines and the Rules, the term 'first commercial sale' has the meaning assigned to it in the Regulation, in terms of which a 'first commercial sale' means the first sale by a company on a product or service market (excluding limited sales to test the market).

2.1.3. *Qualifying Activities*

A qualifying company may carry out any activity, the income derived from which is chargeable under the relevant provisions of the Act⁵, other than any one of the excluded activities outlined in Section 2.1.4 of these Guidelines.

2.1.4. *Excluded Activities*

An undertaking cannot qualify under the Rules if it is engaged in any one or more of the following activities:

- a) Dealing in immovable property, shares, securities and/or other financial instruments;
- b) Dealing in goods other than in the normal course of business;
- c) Carrying on banking, insurance or any other activity covered by the Investment Services Act⁶, the Banking Act,⁷ and the Financial Institutions Act⁸;

⁵ Income Tax Act, Article 4(1)(a)

⁶ Chapter 370 of the Laws of Malta

⁷ Chapter 371 of the Laws of Malta

⁸ Chapter 376 of the Laws of Malta

- d) Providing legal, accounting or other professional services;
- e) Activities relating to development of immovable property;
- f) Receiving royalties or license fees;
- g) Operating or managing hotels, hostels, guest houses or residential care homes;
- h) Carrying on activities in connection with the generation of electricity and other energy sources;
- i) The holding of shares, whether directly or indirectly, in any company which carries out any of the activities listed in any one or more of paragraphs above.

2.1.5. *Non-eligible Undertakings*

The following undertakings are precluded from obtaining the status of a 'qualifying company':

- a) undertakings in difficulty;
- b) undertakings subject to an outstanding recovery order;
- c) undertakings that are expressly excluded from receiving the aid granted through the Scheme in terms of the Regulation;
- d) undertakings which directly or indirectly hold shares in a company which carries out any excluded activity⁹.

2.1.6. *Undertakings in Difficulty*

For the purposes of these Guidelines and the Rules, 'undertakings in difficulty' has the meaning assigned to it in the Regulation.

2.1.7. *Status of 'qualifying company'*

The status of a 'qualifying company' shall only be granted at the discretion of the Competent Entity upon the satisfaction of the above-mentioned conditions, as set out in the Rules, and pursuant to the provision by the applicant of all information and/or documentation required as part of the application process or otherwise requested by the Competent Entity during the said application process.

A certificate shall be issued by the Competent Entity in favour of an applicant attesting to its status as a 'qualifying company', once such applicant is deemed to qualify as a 'qualifying company' for the purposes of the Rules by the Competent Entity. For more information on this, refer to Section 4 of these Guidelines.

2.2. **Qualifying Investor**

In order for a person to be eligible to qualify as a 'qualifying investor' in terms of the Rules, such person must be:

- a) a natural person being a person other than a legal entity who is not an undertaking for the purposes of Article 107(1) of the Treaty on the Functioning of the European Union (2007);

and either (b) or (c) below:

⁹ Refer to Section 2.1.4: Excluded Activities

- b) a resident in Malta; or
- c) a non-resident individual who is a national of an EU or EEA Member State whose worldwide income, at an individual level or coupled with that of his spouse, is at least 90% derived from Malta under the relevant provisions of the Act,

to the extent that he or she bears the full risk of his or her investment.

2.2.1. Eligibility for benefits

In order to be eligible for the benefits of the Scheme, an investor must:

- a) Subscribe to fully paid up equity shares at par in a qualifying company on his or her own behalf;
- b) Continue to hold the investment in the qualifying company for a period of not less than 3 years;
- c) Not be connected to the qualifying company prior to the subscription to the equity shares in the said qualifying company.

2.2.2. 'Connected to a qualifying company'

The following persons shall be deemed to be 'connected to a qualifying company':

- a) the investor's spouse, descendants and ascendants in the direct line and their relative spouses, his brothers or sisters; and their descendants;
- b) a partner in a commercial or civil partnership of the qualifying investor;
- c) a shareholder of the qualifying company in which it invests, including business angels and financial institutions, irrespective of their ownership;
- d) an investor, or any of the persons mentioned in paragraph (a) above, who is an employee of the qualifying company;
- e) an investor who, prior to the qualifying investment, already holds shares, whether directly or indirectly in the qualifying company;
- f) an investor who is, upon winding up of the qualifying company, entitled to any of its assets, where such right existed in favour of the said investor prior to the company being granted the status of qualifying company in terms of the Rules;
- g) an investor who has advanced to the qualifying company, funds by way of loan the terms of which establish the right of conversion into shares or other similar equity rights in the qualifying company.

Therefore, the above-mentioned persons should be deemed to be 'connected to a qualifying company' and should not qualify as 'qualifying investors' with respect to that qualifying company to which they are so connected.

2.2.3. Non-Eligible Investors

The following are excluded from being granted the status of a 'qualifying investor':

- a) undertakings in difficulty;
- b) undertakings subject to an outstanding recovery order;
- c) undertakings that are expressly excluded from receiving the aid granted through the Scheme in terms of the Regulation

2.2.4. Status of 'Qualifying Investor'

Unless there are exceptional circumstances, the Competent Entity should issue an investor with a Qualifying Investor Self- Assessment Compliance Certificate in relation to his or her investment in a particular qualifying company on the basis of the investor's self-declaration attesting to the satisfaction of the above-mentioned conditions in the relevant application form submitted to the Competent Entity, and pursuant to the provision by the applicant of all required information and/or documentation.

2.3. Eligible Investments

An eligible investment in terms of the Scheme is an investment made by way of the subscription to a fresh issue of fully paid up, non-redeemable equity shares¹⁰ at par on the investors own behalf in a qualifying company¹¹.

The following conditions must be satisfied:

- a) The investment in a qualifying company must be made within a period of 2 years from when that qualifying company is first issued with a compliance certificate for the status of 'qualifying company' by the Competent Entity;
- b) Investments in a qualifying company qualifying in terms of the Rules shall not, in aggregate, exceed €750,000.

As an exception to section (a) above, an investment in a qualifying company may be made in instalments over a period of more than 1 year, as long as the commitment to invest is made within the 2 year period referred to in section (a) (and subject to the achievement of defined targets or criteria).

In such case, the relative compliance certificate in relation to the qualifying investor will only be issued once the investment is made, and the qualifying investor should thus avail of the tax benefits in terms of the Rules as the investment, or part thereof, is made.

¹⁰ Refer to Income Tax Act, definition in Article 2

¹¹ Refer to Section 2.1: Qualifying Company

3. DESCRIPTION OF INCENTIVE

3.1. Tax Credit

In terms of the Rules, a qualifying investor shall benefit from a tax credit equivalent to a sum amounting to 35% of the aggregate value of the investments made by the said qualifying investor in a qualifying company/ies, provided that the total tax credit applicable to any such investor shall not exceed €250,000 per annum, and provided that the total threshold available for the Scheme not be exhausted

The applicable tax credit shall be set off against the tax due by the relative qualifying investor in respect of any income or gains brought to charge to tax in the year of assessment immediately following the basis year during which the relevant investment/s is/are made.

Should any part of the applicable tax credit not be absorbed in that year of assessment, the qualifying investor may carry forward the remaining part of the tax credit and set it off against any tax due for any subsequent year of assessment, until it is fully absorbed.

Without prejudice to the relevant provisions of the Income Tax Management Act, Chapter 372 of the Laws of Malta¹², any tax credits available in terms of the Rules shall not give rise to a right to any tax refund.

3.2. Disposal of Eligible Investments

3.2.1 *Capital gains*

3.2.1.1 In the first three years

The tax due in respect of income derived from the disposal of the investment in a qualifying company within the first three years from the date of subscription of the equity shares by a qualifying investor who qualified for benefits in terms of the Rules relative to such investment, is to be calculated on the basis of the higher of :

- the market value of the said investment, and
- the consideration received by the qualifying investor,

and shall be charged to tax at the applicable rates set out in the Act.¹³

The amount on which tax is chargeable shall not be reduced by the cost of acquisition of the investment, nor by any deduction or credit.

3.2.1.2 After three years

¹² Income Tax Management Act, Article 48

¹³ Income Tax Act, Chapter 123 of the Laws of Malta, Article 56.

Gains or profits derived from the disposal of the investment in a qualifying company after the lapse of three years from the date of subscription to the equity shares by the qualifying investor shall be exempt from tax.

3.2.2. *Losses*

Losses incurred in any year of assessment by a qualifying investor from the disposal of an investment in a qualifying company or as a result of the liquidation of such a qualifying company shall not be allowed as a deduction in respect of income or gains chargeable under the relevant provisions of the Act.

3.3. Cumulation of Aid

The rules on cumulation of aid outlined in Article 8 of the Regulation are applicable in respect of the incentive granted under the Scheme.

3.4. Abuse of Scheme

3.4.1. *Claw back of tax credit*

Where the Competent Entity or the Commissioner for Revenue obtain / become otherwise in possession of any information that, had it been available during the application process, would have resulted in the status of a qualifying company being refused, then all amounts invested by qualifying investors in that qualifying company, which would have benefited from a tax credit in terms of the Rules, shall be brought to charge under the relevant provisions of the Act¹⁴.

Similarly, where the Competent Entity or the Commissioner for Revenue obtain / become otherwise in possession of any information that, had it been available during the application process, would have resulted in the status of a qualifying investor being refused, then all amounts invested by that qualifying investor in qualifying company/ies, which would have benefited from a tax credit in terms of the Rules, shall be brought to charge under the relevant provisions of the Act¹⁵.

Interest shall be charged on such amount indicated above at the rate of 1% for every calendar month of the amount availed of as a tax credit by the qualifying investor.

3.4.2. *Anti-abuse mechanism*

In any of the following instances, the qualification status granted in terms of the Rules may be withdrawn:

- (a) If a person benefits under the Rules where that person was not so entitled; or
- (b) If a person benefits under the Rules in a manner which the Commissioner for Revenue deems to be contrary to the purpose of the Rules.

¹⁴ Income Tax Act, Article 4 and Article 5.

¹⁵ Income Tax Act, Article 4 and Article 5.



Furthermore, the Commissioner for Revenue may issue an assessment in any manner and in such amount as may be necessary in the circumstances in order to nullify or modify the benefits claimed by such person and the consequent advantage obtained.

4. APPLICATION PROCESS

4.1 General information

All applications made in terms of these Guidelines should be submitted to the Competent Entity.

Applicants may download the relative application forms from the following website: <https://www.seedinvestment.com.mt/>.

Completed application forms, together with all accompanying documentation, may be submitted electronically, posted, or delivered by hand.

4.2 Application Process for Qualifying Company

4.2.1 *Application for status as a qualifying company*

Undertakings wishing to obtain the status of a 'qualifying company' in accordance with Section 2.1, must submit an application for determination of eligibility under this Scheme before 31 December 2023 or at such later date as may be determined by the Minister responsible for Finance by order published in the Government Gazette.

4.2.2 *Documentation required for determination of application*

For the purpose of making a determination for eligibility, the Competent Entity shall consider whether the applicant undertaking satisfies the conditions set out in the Rules and in these Guidelines.

The Competent Entity may also request such documentation and information as it deems fit, and further reserves the right to carry out onsite inspections during the application process or subsequent to the issue of the Compliance Certificate for Qualifying Company.

All complete applications which are compliant with the conditions set out in the Rules and these Guidelines shall be assessed by the Competent Entity.

In this respect, the following information and documentation must be provided by the applicant undertaking to the Competent Entity for the said application to be processed by the Competent Entity:

- a) A certified true copy of the latest Memorandum and Articles of Association of the undertaking from the Maltese Registrar of Companies ('Registrar') or the equivalent statute;
- b) A good standing certificate duly issued by the Registrar up to 1 month prior to the date of application, or equivalent document;
- c) A copy of the latest Audited Financial statements (where available);
- d) Duly completed Application Form;
- e) Duly completed Self-Declaration Form;
- f) Duly completed SME Declaration Form

4.2.3 *SME Declaration Form*

In accordance with Section 2.1, an applicant undertaking must ensure that it qualifies as an SME within the meaning of the Regulation in order to be eligible for the status of a 'qualifying company'.

4.2.4 *Notification of results*

On being satisfied that an applicant undertaking satisfies the conditions set out in the Rules and these Guidelines, the Competent Entity shall issue a Compliance Certificate for Qualifying Company with a unique certification number in favour of the said applicant undertaking, in line with the Rules.

The Compliance Certificate for Qualifying Company shall be issued, subject to the terms and conditions as may be imposed by the Competent Entity.

Failure to provide the full and/or correct information upon application, failure to comply with the terms and conditions stipulated in the Compliance Certificate for Qualifying Company, and/ or failure to satisfy, on an ongoing basis, the eligibility criteria set out in Section 2 may trigger the applicability of the mechanisms outlined in Section 3.4.

4.2.5 *Annual Documentation*

A qualifying company shall submit the following documentation annually in order to maintain the status of a qualifying company:

- a) Duly completed Annual Confirmation Form confirming that throughout the relevant accounting period the eligibility criteria for the status of a 'qualifying company' continued to be met;
- b) A copy of the audited financial statements (including schedules to the Income Statement) for that period;
- c) Duly completed SME Declaration Form;
- d) Duly completed Self-Declaration Form;
- e) A good standing certificate duly issued by the Registrar of Companies up to 1 month prior to the date of submission of the Annual Confirmation Form referred to in paragraph (a) above, or an equivalent document;
- f) Any other document which may be required by the Competent Entity.

The Annual Confirmation Form mentioned in paragraph (a) above, together with all supplementary documentation/ information indicated in paragraphs (b) to (f) above, is to be submitted to the Competent Entity annually by not later than 30 days from the anniversary of the date of issuance of the Compliance Certificate for Qualifying Company.

4.2.6 *Onsite Inspections*

The Competent Entity and/ or the Inland Revenue Department may carry out onsite visits to determine:

- a) whether the relative investment has been implemented in line with the parameters set in the Rules and in these guidelines; and
- b) the truthfulness, correctness and accuracy of the contents of the application and documentation submitted with respect to the 'qualifying company'.

4.3 Application Process for Qualifying Investor

4.3.1. *Application for status as a qualifying investor*

Individuals wishing to obtain the status of a 'qualifying investor' in relation to an investment in a particular qualifying company in accordance with Section 2.2, must submit an application under this Scheme before 31 December 2023 or at any later date as may be determined by the Minister responsible for finance by order published in the Government Gazette.

4.3.2. *Documentation required for determination of application*

An investor should assess, and where applicable declare in the relevant application form to be submitted to the Competent Entity, that the relevant conditions for the status of a 'qualifying investor' in relation to his or her investment in a particular qualifying company in terms of the Rules and these Guidelines are duly satisfied.

Unless there are exceptional circumstances, the Competent Entity should issue an investor with a Qualifying Investor Self- Assessment Compliance Certificate in relation to his or her investment in that particular qualifying company, on the basis of the above-mentioned self-declaration whereby the investor attests to the satisfaction of the relevant conditions in the application form submitted to the Competent Entity, and pursuant to the provision by the applicant of all required information and/or documentation.

The Competent Entity may also request such documentation and information as it deems fit during the application process or subsequent to the issue of the Qualifying Investor Self-Assessment Compliance Certificate.

In this respect, the following information and documentation must be provided by the applicant investor to the Competent Entity in order for the said application to be processed by the Competent Entity:

- a) Duly completed Application Form;
- b) Duly completed Self-Declaration Form;
- c) Due diligence information:
 - a certified true copy of applicant's passport;
 - a certified true copy of applicant's identity card (if applicable);
 - bank reference letter/s addressed to the Competent Entity relating to the applicant indicating the period of time for which the applicant has had a relationship with the relative bank;
 - a copy of a recent utility bill of the applicant;
 - information on and evidence of source of wealth of the applicant;
- d) Proof of investment by the applicant in the relevant Qualifying Company (e.g. good standing certificate of the Qualifying Company; a copy of the allotment of shares agreement; a copy of the contract of subscription of shares);
- e) Any documentation not mentioned above as may be required by the Competent Entity or the Inland Revenue Department.

4.3.3. *Notification of results*

On being satisfied that the applicant investor has submitted the relevant application form, wherein the investor duly declared and attested to the satisfaction of the conditions set out in the Rules and these Guidelines, and submitted the relevant documentation, the Competent Entity shall issue a Qualifying Investor Self- Assessment Compliance Certificate with a unique certification number in favour of the said applicant investor specifically in respect of his or her investment in a particular qualifying company, in line with the Rules.

The Qualifying Investor Self- Assessment Compliance Certificate shall be issued, subject to the terms and conditions as may be imposed by the Competent Entity.

Failure to provide the full and/or correct information upon application, failure to comply with the terms and conditions stipulated in the issued Compliance Certificate and/ or failure to satisfy, on an ongoing basis, the eligibility criteria set out in Section 2 may trigger the applicability of the mechanisms outlined in Section 3.4.

4.3.4. *Utilisation of Tax Credits*

No tax credit shall be due to a qualifying investor for a year of assessment unless it is claimed in the appropriate section of his or her tax return together with the completed supporting attachment (being RA 20).

4.3.5. *Annual documentation*

A qualifying investor shall submit the following documentation annually in order to maintain the status of a qualifying investor with respect to his or her investment in a particular qualifying company:

- a) Duly completed Annual Confirmation Form;
- b) Duly completed Self-Declaration Form;
- c) A declaration in relation to the total investments made in each qualifying company to date;
- d) Copy of the qualifying investor's annual tax return;
- e) Evidence issued by the relevant authority of investment in qualifying company;
- f) Any other document/s which may be required by the Competent Entity or the Inland Revenue Department.

The Annual Confirmation Form mentioned in paragraph (a) above, together with all supplementary documentation/ information indicated in paragraphs (b) to (f) above, is to be submitted to the Competent Entity annually, by not later than 30 days from the anniversary of the date of issuance of the Qualifying Investor Self- Assessment Compliance Certificate for that investment.



5. CONTACT DETAILS

Further information on the scheme, as well as information and guidance on the filling in of the application form may be obtained by contacting MIMCOL during office hours.

Postal Address:

Clock Tower,
Level 1,
Tigne Point,
Malta

Tel: +356 21497970

Email: info@mimcol.com

Website:

<http://mimcol.com.mt/sis/>

These Guidelines have been published for information purposes only and shall be read and construed together with the Rules to the extent that these Guidelines are not in conflict with the said Rules or otherwise with the Act.