

Tax update

Reduced rate of tax applicable to highly qualified persons



Summary

New rules specific to expatriates holding an employment under a qualifying contract of employment in an eligible office in Malta have been introduced effective from 1 January 2010. The scheme which is a further incentive in attracting foreign investment to Malta is industry specific and focuses mainly on a narrow range of industries comprising the banking, financial, investment and insurance sectors. The rules lay down the conditions for a highly qualified person to exercise his option for a beneficial rate of tax of a flat 15% on emoluments instead of the standard rates of tax.

Legal Notice 106 of 2011 (hereinafter referred to as "the Rules") as subsequently amended by Legal Notice 192 of 2011 provides details and conditions of the expatriate tax regime which shall be deemed to have come into force on the 1 January 2010.

The competent authority for the purposes of these rules is the Malta Financial Services Authority (hereinafter referred to as "the Authority").

The Conditions

The new rules apply to employment income earned by expatriates from a qualifying contract of employment on or after 1 January 2010. The rules also apply if the expatriate had been in employment under a qualifying contract of employment requiring the performance of duties in Malta for a period not exceeding two years prior to 1 January 2010.

The general conditions are:

- The employment or office is required to be an 'eligible office' in terms of the Schedule to the Rules;
- The employment activity under the eligible office is required to be governed by a qualifying contract of employment;
- The qualifying contract of employment of the eligible office is in respect of the employment of a qualifying beneficiary.

Eligible Office

The term 'Eligible Office' comprises eligible employments or offices held with companies licensed and/or recognised by the Authority and consisting of the following employments or offices:

- (a) Chief Executive Officer, Chief Risk Officer, Chief Financial Officer, Chief Operations Officer, Chief Technology Officer;
- (b) Portfolio Manager, Chief Investment Officer, Senior Trader/Trader, Senior Analyst (including Structuring Professional), Actuarial Professional, Chief Underwriting Officer, Chief Insurance Technical Officer;
- (c) Head of Marketing, Head of Investor Relations.

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Qualifying Contract of Employment

A qualifying contract of employment is defined in the Rules as follows:

- (1) Consists of employment income derived by a beneficiary;
- (2) Is of a minimum value of €75,000 per annum (excluding the value of any fringe benefits);
- (3) Is related to work satisfying the definition of 'eligible office'; and,

- (4) The employer or any related person to the employer has not benefitted from any business incentive laws or any arrangement in terms of the business incentive laws and is not paid by a person who is related to the employer and who has received a benefit or benefits under business incentive laws or arrangements.

The Beneficiary

A beneficiary in terms of these Rules is an individual who meets all of the following conditions:

- (a) is an individual who is not domiciled in Malta;
- (b) derives emoluments payable under a qualifying contract of employment, and received in respect of work or duties carried out in Malta (or in respect of any period spent outside of Malta in connection with such work or duties), or on leave during the carrying out of such work or duties;
- (c) is protected as an employee under Maltese law;
- (d) has proved to the satisfaction of the Authority that he is in possession of professional qualifications, including educational qualifications in terms of the Rules;
- (e) has not applied for benefits under the Investment and Insurance Services Expatriate Scheme (Article 6) of the Income Tax Act;
- (f) fully discloses for income tax purposes and declares emoluments received in respect of income from a qualifying contract of employment and all income received from a person related to his employer paying out income from a qualifying contract as chargeable to tax in Malta;
- (g) has proved to the satisfaction of the Authority that he performs activities of an eligible office; and,
- (h) has proved to the satisfaction of the Authority that the individual:
 - (i) is in receipt of stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system in Malta;

(ii) resides in accommodation regarded as normal for a comparable family in Malta and which meets the general health and safety standards in force in Malta;

(iii) is in possession of a valid travel document;

(iv) is in possession of sickness insurance in respect of all risks normally covered for Maltese nationals covering himself and the members of his family.

Malta tax treatment

The applicable tax rate should an individual exercise his option in terms of these Rules and in respect of income derived from a qualifying contract of employment is a flat rate of 15%. The minimum tax payable under these Rules is €11,250 equivalent to a minimum income of €75,000; whilst, the maximum tax payable under these Rules amounts to €750,000 equivalent to an income of €5,000,000. Any income exceeding €5,000,000 and received in respect of a qualifying contract of employment is not subject to tax in Malta. The income charged to tax at the reduced rate of 15% will be deemed to constitute the first part of the individual's total income and the tax on the remaining income is to be calculated at the standard rates applicable to such individual.

Duration

In the case of EEA (including EU nationals) and Swiss nationals the Rules will apply for a consecutive period of five years; whereas for third country nationals the Rules will apply for a consecutive period of up to four years (hereinafter referred to as "the duration") after the expiry of which the employment income would be chargeable to tax at standard rates of tax applicable to the individual. The duration in terms of these rules commences as from the year in which that person was first liable to tax in Malta.

Any period of employment exercised in Malta prior to 1 January 2010 but after 1 January 2008 will be deducted from the duration and accordingly:

- EEA and Swiss nationals who for up to 2 years prior to 1 January 2010 were under a contract of employment requiring the performance of their duties in Malta may benefit from the said Rules

for a period of up to 3 years increasing to 4 years where the individual has been employed for up to 1 year prior to 1 January 2010; and,

The rules lay down the conditions for a highly qualified person to exercise his option for a beneficial rate of tax of a flat 15% on emoluments instead of the standard rates of tax

- Third country nationals who for up to 2 years prior to 1 January 2010 were under a contract of employment requiring the performance of their duties in Malta may benefit from the said Rules for a period of up to 2 years increasing to 3 years where the individual has been employed for up to 1 year prior to 1 January 2010.

Moreover, in the case of third country nationals, any rights under this scheme will be withdrawn with retrospective effect if a beneficiary either:

- (1) Physically stays in Malta, in the aggregate, for more than 1,460 days; or,
- (2) Directly or indirectly acquires real rights over immovable property situated in Malta or holds a beneficial interest directly or indirectly consisting in, inter alia, real rights over immovable property situated in Malta.

A person, who exercised employment in Malta prior to 1 January 2008, cannot opt for this scheme.

Applicability

The option in terms of these Rules may be exercised by an individual as follows:

- (1) The beneficiary is required to apply to the Chairman, Malta Financial Services Authority for a formal determination relating to his eligibility under these Rules in such form and manner and as prescribed by the Commissioner of Inland Revenue (hereinafter referred to as “the Commissioner”); and,
- (2) The beneficiary is also required to attach and sign a declaration made on form RA17 and which is duly endorsed by the Authority to his personal tax return for the relative year of assessment. This declaration will be required to be completed in such form and manner as the Commissioner may prescribe; and,
- (3) The beneficiary is required to file his personal tax return together with all the required declarations and attachments not later than the tax return date.

Contact

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