

L.N. 317 of 2012**INCOME TAX ACT
(CAP. 123)****Malta Retirement Programme Rules, 2012**

IN exercise of the powers conferred by articles 56(23) and 96 of the Income Tax Act, the Minister of Finance, the Economy and Investment has made the following rules:-

Title. **1.** The title of these rules is the the Malta Retirement Programme Rules, 2012.

Interpretation. **2.** For the purposes of these rules, unless the context otherwise requires:

"Act" means the Income Tax Act;

"appointed day" means the date on which the Commissioner shall determine in writing that an individual qualifies for special tax status under these rules;

"application" means an application filed in terms of rule 3(1);

Cap. 12. "authorised mandatary" means a person who is in possession of a warrant to practise as an advocate under the Code of Organization and Civil Procedure, a person who holds a warrant to practise as a legal procurator under the Code of Organization and Civil Procedure, a person who has been appointed notary public in accordance with the provisions of the Notarial Profession and Notarial Archives Act, a person who holds a warrant to practise the profession of accountant under the Accountancy Profession Act, a person who is a member of the Institute of Financial Services Practitioners, a person who is a member of the Malta Institute of Taxation or a person who is a member of the Malta Institute of Accountants or a person who is a member of the Institute of Management:

Cap. 55.

Cap. 281.

Provided that a person that is not an individual, having at least 75% (directly or indirectly) of its shareholders, partners or other members, as the case may be, who are persons in possession of the above-mentioned warrants or being a member of the above-mentioned institutes, shall also be considered to be an authorised mandatary;

"authorised registered mandatary" means an authorised

mandatary who is registered with the Commissioner under these rules;

"beneficiary" means an EU, EEA or Swiss national, who is not in an employment relationship and who has been granted special tax status in terms of these rules:

Provided that a beneficiary may hold a non-executive post on the board of a company resident in Malta or partake in activities related to any institution, trust or foundation of a public character and of any other similar organisation or body of persons, also of a public character, which is engaged in philanthropic, educational or research and development work in Malta;

"Commissioner" means the Commissioner for Revenue;

"dependent" means:

(a) the beneficiary's spouse or person with whom the beneficiary is in a stable and durable relationship; or

(b) the beneficiary's unmarried minor children, adopted minor children of the beneficiary or of the spouse, as the case may be, where the beneficiary or the spouse has custody and the minor children are financially dependent on him and children of the beneficiary or of the beneficiary's spouse who are not minors but who, because of circumstances of illness or disability of a serious gravity, are unable to maintain themselves;

and in any case -

(i) is not a beneficiary under the Residents S.L. 123.79
Scheme Regulations, the High Net Worth Individuals - EU S.L. 123.129
/ EEA / Swiss Nationals Rules, the High Net Worth S.L. 123.130
Individuals Rules - Non-EU / EEA / Swiss Nationals
Rules, or the Highly Qualified Persons Rules; and S.L. 123.126

(ii) resides with the beneficiary in the qualifying property;

"EEA" means the members of the European Union, Iceland, Norway and Liechtenstein;

"lease" includes sub-lease;

"Minister" means the Minister responsible for Finance;

"occupational retirement scheme" means a retirement scheme established for, or by, an employer or a number of employers or an association representing employers, jointly or separately, for the benefit of employees and includes an overseas retirement scheme;

"overseas retirement plan" means a *bona fide* scheme or arrangement, organized under the laws of a country outside of Malta, which govern the rights and responsibilities of the parties thereto, and under which payments are made to beneficiaries for the principal purpose of providing retirement benefits;

"overseas retirement scheme" means a scheme or arrangement, organised under the laws of a country outside Malta with the principal purpose of providing retirement benefits;

"pension" means periodic payments paid to a former employee in respect of past employment including where remunerations are paid in respect of services rendered to a State or a political subdivision or local authority thereof. The term "pension" also includes remunerations paid as lifetime or temporary annuities, as well as regular income from an occupational retirement scheme, personal overseas retirement plan and insurance policies but does not include a pension in the form of a lump sum payment without periodic pension payments and any capital sum received by way of commutation of pension, retiring or death gratuity or received as consolidated compensation for death or injuries that are exempt under article 12(1)(h) of the Act;

"primary residence" means the dwelling house in which an individual habitually resides as his principal place of abode worldwide;

"property" means any immovable property situated in Malta or Gozo and any right over such property;

"public interest" includes the interests of public safety, the protection of public order, national security, territorial integrity, public health or morals;

"qualifying property" means either a qualifying owned property or a qualifying rented property, as the case may be;

"qualifying property holding" means a holding which arises where a beneficiary either:

- (a) owns qualifying owned property; or
- (b) rents qualifying rented property as a lessee;

and, in either case, occupies such property as his primary residence:

Provided that the persons who reside in the qualifying property are not persons other than the beneficiary, his dependents and special carers;

"qualifying owned property" means an immovable property purchased after 1 January 2011 at a consideration of not less than:

(a) two hundred and seventy-five thousand euro (€275,000) for a property situated in Malta; or

(b) two hundred and fifty thousand euro (€250,000) for a property situated in Gozo:

Provided that an immovable property purchased before 1 January 2011 for a consideration which is less than the amounts indicated in paragraphs (a) or (b) above shall be considered to be "qualifying owned property" insofar as the value of such immovable property as declared on the date of application by the applicant is not less than the amounts indicated in paragraphs (a) or (b) above as supported by a separate and independent architect valuation, including architect's plan, which documents are delivered to the Commissioner upon application:

Provided further that the Commissioner, or an officer, architect or surveyor authorised by him in writing, shall have full and free access to the qualifying owned property to the extent that such access is likely to assist him in determining the value of the said property;

"qualifying rented property" means a leased property taken on at a lease of not less than:

(a) nine thousand and six hundred euro (€9,600) per annum for a property situated in Malta; or

(b) eight thousand and seven hundred and fifty euro (€8,750) per annum for a property situated in Gozo;

"rights acquired under this law" means the right to pay tax at the rate of tax contemplated in article 56(23) of the Act and these Rules;

"special carer" is an individual who has been providing substantial and regular curative or rehabilitative health care services to the beneficiary or dependent in a systematic manner for at least three years prior to the application in terms of rule 3. The rendering of such service needs to be regulated by a contract of service and such

individual shall be registered with the relevant tax authorities in Malta;

"these rules" shall include the provisions of article 56(23) of the Act and the rules contained in these Rules;

"third-country national" means any person who is not a citizen of the European Union within the meaning of Article 20 of the Treaty on the European Union and the Treaty on the Functioning of the European Union:

Provided that, for the purposes of these rules, EEA nationals and Swiss nationals shall not be considered to be third-country nationals.

Special tax status.

3. (1) An individual, as duly represented by an authorised registered mandatary, may apply to the Commissioner for special tax status under these rules, in such form as the Commissioner may require and by paying an administrative fee of two thousand and five hundred euro (€2,500) upon application.

(2) Where it is established that the individual mentioned in sub-rule (1) qualifies as a beneficiary, the Commissioner shall determine in writing that such individual qualifies for special tax status under these rules.

Beneficiary.

4. A beneficiary is an individual who proves to the satisfaction of the Commissioner that:

(a) he holds a qualifying property holding;

S.L. 123.79
S.L. 123.129
S.L. 123.130
S.L. 123.126

(b) he is not a person who benefits under the Residents Scheme Regulations, the High Net Worth Individuals - EU / EEA / Swiss Nationals Rules, the High Net Worth Individuals - Non-EU / EEA / Swiss Nationals Rules or the Highly Qualified Persons Rules;

(c) he is neither a Maltese national nor a third-country national;

(d) he is in receipt of a pension, as supported by documentary evidence, all of which is received in Malta and constitutes at least 75% of the beneficiary's chargeable income;

(e) he is in possession of a valid travel document;

(f) he is in possession of sickness insurance in respect of all risks across the whole of the European Union normally

covered for Maltese nationals for himself and his dependents;

(g) he is not domiciled in Malta and that he does not, within five years from the date of application, intend to establish his domicile in Malta; and

(h) he is a fit and proper person.

5. (1) In these rules, the rate of fifteen cents (0.15) on every euro shall apply on any income arising outside Malta which is received in Malta by the beneficiary or dependent, with the possibility to claim relief of double taxation under article 74(a) and (b) of the Act: 15% rate.

Provided that the minimum amount of tax payable in terms of these rules in respect of any year of assessment shall be seven thousand and five hundred euro (€7,500) in respect of the beneficiary and five hundred euro (€500) per year of assessment for every dependent and every special carer.

(2) Income of a beneficiary or dependent that is not chargeable to tax under these rules at the rate referred to in sub-rule (1) shall be charged as separate income at the rate of thirty-five cents (0.35) on every euro.

(3) Any tax paid under these rules, excluding any tax paid under sub-rule (2), shall not be refundable.

6. (1) An individual shall, with effect from the appointed day, cease to possess special tax status under these rules: Cessation of status.

(a) if, at any time, after the appointed day, such individual does not hold a qualifying property;

(b) if the individual becomes a Maltese national or a third country national;

(c) if the individual fails to receive in Malta all the pension indicated in the documentary evidence submitted to the Commissioner according to rule 4(d);

(d) if, after the appointed day, the individual is not in possession of sickness insurance in respect of all risks normally covered for Maltese nationals for himself and dependents;

(e) if the individual establishes his domicile in Malta;

(f) if the individual acquires a permanent residence certificate in terms of article 7 of the Free Movement of S.L. 460.17

European Union Nationals and their Family Members Order;

(g) if the individual's stay is not in the public interest;

(h) if the individual resides in Malta for less than ninety days a year averaged over any five year period; or

(i) if the individual stays in any other jurisdiction for more than one hundred and eighty-three days in a calendar year.

(2) (a) An individual who ceases to possess special tax status for any of the reasons specified in sub-rule (1) shall notify the Commissioner of such event by not later than four weeks from the date when he becomes aware of such event. This notification is to be made on such form as may be required by the Commissioner.

(b) Where such notification is not made within the time specified, the person responsible for such event shall be charged an administrative penalty of five thousand euro (€5,000).

(3) An individual shall, with immediate effect, cease to possess special tax status from the relative year of assessment under these rules if he notifies the Commissioner of his intention not to remain in possession of special tax status on such form as the Commissioner may require.

Cap. 372.

(4) An individual shall, with effect from the beginning of the relative year of assessment, cease to possess special tax status under these rules if he is in breach of the Act and, or of the Income Tax Management Act.

(5) The Minister shall have the power to condone any failure to satisfy any one of the conditions in sub-rule (1) if:

(a) such failure was due to unforeseen circumstances which are beyond the control of the individual;

(b) such individual notifies the Minister of such failure; and

(c) such individual has exercised his best efforts to remedy the failure.

Request for
information.

7. For the purpose of ascertaining an individual's entitlement to rights acquired under these rules and ensuring the proper application of these rules, the Commissioner may require that individual to produce, within the time indicated by the Commissioner in that request, such information and documents as the Commissioner

may consider necessary, including certifications and declarations.

8. If an individual benefits under these rules where that person was not so entitled, the Commissioner may issue an assessment in terms of article 31 of the Income Tax Management Act.

Abuse of rights.

Cap. 372.

9. The return required in terms of article 10 of the Income Tax Management Act shall, in the case of a beneficiary under these rules, include such form as the Commissioner may require.

Annual
reporting
obligation.
Cap. 372.

10. (1) An individual shall authorise a person who is an authorised registered mandatary to act on his behalf in respect of all applications, correspondence, submissions, filings, declarations and notifications contemplated under these rules. All such acts are to be filed by the said authorised registered mandatary.

Authorised
registered
mandatary.

(2) The authorisation referred to in sub-rule (1) shall be made in such form as the Commissioner may require.

(3) Unless the Commissioner specifically authorizes in writing, a person may not authorise more than one authorised mandatary.

(4) Registration as an authorised registered mandatary with the Commissioner shall be made by filling in and delivering to the Commissioner such form as the Commissioner may require.

(5) Registration as authorised registered mandatary in terms of these rules shall be subject to such terms and conditions as the Commissioner may from time to time determine.

(6) Acceptance of registration in terms of these rules shall be notified by the Commissioner to the person requesting such registration.

(7) When a person who has been registered with the Commissioner desires to cancel such registration, he shall make a request in such form as the Commissioner may require.

