

SUBSIDIARY LEGISLATION 123.160**RESIDENCE PROGRAMME RULES**

1st July, 2013*

LEGAL NOTICE 270 of 2014, as amended by Legal Notice 69 of 2020.

1. The title of these rules is the Residence Programme Rules. Citation.
2. For the purposes of these rules, unless the context otherwise requires: Interpretation.
 - "Act" means the Income Tax Act; Cap. 123.
 - "appointed day" means the date on which the Commissioner shall determine in writing that an individual is granted special tax status under these rules;
 - "application" means an application filed in terms of rule 3(1);
 - "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. 12.
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 but who is not a Maltese national who has been granted special tax status in terms of these rules;
 - "Commissioner" means the Commissioner for Revenue;
 - "dependant" means:
 - (a) the beneficiary's spouse or person with whom the beneficiary is in a stable and durable relationship;
 - (b) minor children including adopted minor children and

*see rule 1(2) of these Rules as originally promulgated.

children who are in the care and custody of the beneficiary or the person mentioned in paragraph (a) above;

- (c) children who are under the age of twenty-five, including adopted children and children who are in the care and custody of the beneficiary; or the person mentioned in paragraph (a) above, provided that such children are not economically active;
- (d) children including adopted children and children who are in the care and custody of the beneficiary or the person mentioned in paragraph (a) above, who are not minors but who because of circumstances of illness or disability of a serious gravity, are unable to maintain themselves;
- (e) dependent brothers, sisters and direct relatives in the ascending line of the beneficiary or the person mentioned in (a) above;

and in any case -

S.L. 123.79
S.L. 123.129
S.L. 123.130
S.L. 123.134
S.L. 123.148
S.L. 123.141
S.L. 123.126

- (i) is not a beneficiary 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, the Malta Retirement Programme Rules, the Global Residence Programme Rules, the Qualifying Employment in Innovation and Creativity Rules or the Highly Qualified Persons Rules; and
- (ii) resides with the beneficiary in the qualifying property;

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

"household staff" is an individual who has been in an employment relationship, as evidenced by a contract of service, with the beneficiary for at least two years prior to the application in terms of rule 3: provided that the Commissioner is satisfied that the service is required to be provided in whole or in part within the qualifying property;

"lease" includes sub-lease;

"Ministers" means the Minister responsible for Finance and the Minister responsible for the Economy, Investment and Small Business;

"minor" is a person of either sex who has not yet attained the age of eighteen years;

"not economically active" means a person who is not working and not seeking work or not available for work;

"permanent resident of Malta" means:

- (a) a person who has right of permanent residence in terms of article 6 and is in possession of a permanent residence certificate issued in terms of article 7 of the Free Movement of European Union Nationals and their Family Members Order; or S.L. 460.17
- (b) a person who applies for right of permanent residence in terms of article 6 of the Free Movement of European Union Nationals and their Family Members Order; S.L. 460.17

"primary residence" means the dwelling house in which an individual habitually resides in 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 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 (a) the beneficiary; and (b) persons that qualify as his dependants or household staff provided that the Commissioner has been notified that such dependents or household staff will be so residing;

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

- (a) subject to the provisions of paragraph (b) below, two hundred and seventy-five thousand euro (€275,000) for a property situated in Malta; or
- (b) two hundred and twenty thousand euro (€220,000) for a property situated in Gozo or in the south of Malta;

Provided that an immovable property purchased before the date of publication of these rules 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 are delivered to the Commissioner upon application:

Provided further that where the Commissioner, or any officer authorised by him in writing, architect or surveyor 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 property taken on at lease of not less than:

- (a) subject to paragraph (b) below, 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 or in the south of Malta;

"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;

Cap. 363.

"south of Malta" means the areas within set boundaries as designated in the Second Schedule to the Local Government Act of the localities listed in the Schedule to these Rules;

"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.
Amended by:
L.N. 69 of 2020.

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 a non-refundable administrative fee of six thousand euro (€6,000) upon application:

Provided that in applications in respect of which the qualifying property is a qualifying owned property situated in the south of Malta, the non-refundable administrative fee shall be that of five thousand and five hundred euro (€5,500) to be paid 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 is granted special tax status under these rules.

(3) Following the death of a beneficiary, the special tax status granted in terms of sub-rule (2) shall be granted to a dependant of that deceased beneficiary who has inherited the property that was the primary residence of such beneficiary, or who rents a qualifying rented property immediately after the death of the said beneficiary and satisfies all the other requirements set out in rule 4. Such status shall only be transferred once the said dependent provides proof to the Commissioner that all the requirements of rule 4 are satisfied in such manner as the Minister for Finance may determine further to consultation with the Commissioner.

4. A beneficiary is an individual who is not a permanent resident of Malta and who proves to the satisfaction of the Commissioner that:

Beneficiary.

- (a) he is an EU, EEA or Swiss national but is not a Maltese national;
- (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, the Malta Retirement Programme Rules, the Global Residence Programme Rules, the Qualifying Employment in Innovation and Creativity (Personal Tax) Rules or the Highly Qualified Persons Rules;
 - S.L. 123.79
 - S.L. 123.129
 - S.L. 123.130
 - S.L. 123.134
 - S.L. 123.148
 - S.L. 123.141
 - S.L. 123.126
- (c) he holds a qualifying property holding;
- (d) he is in receipt of stable and regular resources which are sufficient to maintain himself and his dependants without recourse to the social assistance system in Malta;
- (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 dependants;
- (g) he can adequately communicate in one of the official languages of 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 in the year immediately preceding the year of assessment which is received in Malta (including income arising outside Malta and received in Malta during the whole of the year in which the special tax status was granted) by the beneficiary, the beneficiary's spouse and children referred to in paragraph (b) and (d) of the definition of the term "dependant" in rule 2, 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 the income arising outside Malta of the persons referred to in this sub-rule shall be fifteen thousand euro (€15,000) for any year of assessment. Such minimum amount is payable in full in both the year when the special tax status was granted and in the year when the individual ceases to possess the said special tax status.

(2) Income of a beneficiary, the beneficiary's spouse and children referred to in paragraph (b) and (d) of the definition of the term "dependant" in rule 2 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) Notwithstanding any provision in the Income Tax Acts -

- (a) subject to the provisions of paragraph (b), the

minimum tax referred to in the proviso to sub-rule (1) shall be payable by not later than the 30th April of the year immediately preceding the relevant year of assessment. Such payment shall be accompanied by a return made to the Commissioner that provides proof that all the requirements of rule 4 continue to be satisfied. The said return, which shall be in such form as the Commissioner may determine, does not need to be submitted in the year in which the special tax status is granted;

- (b) in the case of the year in which the special tax status is granted, where, it is evident that the special tax status will not be granted before the 30th April, the minimum tax referred to in the proviso to sub-rule (1) is to be paid before the special tax status is granted;
 - (c) any tax paid under the provisions of sub-rule (1) shall not be refundable.
- (4) (a) Notwithstanding any provision in the Act, an individual who falls under the definition of "permanent resident of Malta" in rule 2, will be taxable on any income accruing in or derived from Malta or elsewhere, and whether received in Malta or not in respect of income mentioned in article 4 of the Act and subject to tax at the rates mentioned in article 56 of the Act.
- (b) In the case where the individual referred to in paragraph (a) is a beneficiary, dependent or household staff, the relevant authorised registered mandatory shall -
- (i) enquire and obtain information from the relevant beneficiary as to whether the beneficiary any of his dependants falls under the said definition of "permanent resident of Malta" as at the 31st December of each year from the year of the appointed date onwards; and
 - (ii) notify the Commissioner of any individual that is a beneficiary dependent that falls under the said definition of "permanent resident of Malta" by not later than the 30th April following the 31st December referred to in paragraph (a) on such form as the Commissioner may determine. Where the authorised registered mandatory is not able to obtain such information, he is to notify the Commissioner by the said 30th April of this state of affairs and provide proof that at least two attempts at enquiry were made. Where such notifications are not made within the time specified, the authorised registered mandatory shall be charged an administrative penalty of ten thousand euro (€10,000).

Cessation of status.

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

- (a) if the individual becomes a Maltese national or a third country national;
- (b) if, at any time, after the appointed day, such individual does not hold a qualifying property holding, including in the case where the said individual lets or sublets the qualifying property holding;
- (c) if, at any time, after the appointed day, such individual becomes a permanent resident of Malta;
- (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 his dependants;
- (e) if the individual's stay is not in the public interest, or
- (f) if the individual stays in any other jurisdiction for more than one hundred and eighty-three days in a calendar year.

(2) 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.

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.

(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. Cap. 372.

(5) The Ministers shall jointly 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 Ministers of such failure; and
- (c) such individual has exercised his best efforts to remedy the failure.

7. (1) 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 or the relevant authorised registered mandatary 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.

Request for and exchange of information.

S.L. 460.17	(2) Notwithstanding any other provision in any act, the Commissioner and the competent authority in relation to the Free Movement of European Union Nationals and Their Family Members Order may exchange information that is in their possession concerning an individual - (a) making an application in terms of rule 3; (b) that is a beneficiary; or (c) that has right of permanent residence in terms of the Free Movement of European Union Nationals and their Family Members Order.
S.L. 460.17	Such information may be exchanged for the purposes of these rules and for the purposes of the right of permanent residence in terms of the Free Movement of European Union Nationals and their Family Members Order.
Abuse of rights. Cap. 372.	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.
Annual reporting obligation. 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.
Authorised registered mandatory.	10. (1) An individual shall authorise a person who is an authorised registered mandatory 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 mandatory. (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 mandatory. (4) Registration as an authorised registered mandatory 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 mandatory 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. (8) Where an authorised registered mandatory repeatedly fails to carry out a function required under these rules, he shall cease to be an authorised registered mandatory. For the purposes of this paragraph, "repeatedly" means more than two failures of carrying out functions required under these rules.

SCHEDULE

(Rule 2)

Localities for the purposes of the definition of "south of Malta"

Birżebbuġia

Cospicua

Fgura

Għaxaq

Gudja

Kalkara

Kirkop

Luqa

Marsascala

Marsaxlokk

Mqabba

Paola

Qrendi

Safi

Santa Luċija

Senglea

Sigġiewi

Tarxien

Vittoriosa

Xgħajra

Żabbar

Żejtun

Żurrieq
