L.N. 106 of 2011

INCOME TAX ACT
(CAP. 123)

Highly Qualified Persons Rules, 2011

IN exercise of the powers conferred by articles 56(21) and 96 of the Income Tax Act, the Minister of Finance, the Economy and Investment has made the following rules:

1. (1) The title of these rules is the Highly Qualified Persons Rules, 2011. Citation and coming into force.

(2) These rules shall be deemed to have come into force on the 1st January, 2011.

2. (1) In these rules, unless the context otherwise requires: Interpretation.

"the Act" means the Income Tax Act; Cap. 123.

"artificial arrangement" shall include an arrangement in terms of which a beneficiary receives any benefit or payment, in whatever form, from a person who is related to his employer and such beneficiary does not declare for tax purposes such benefit or payment in Malta or is not liable to tax on such income in Malta;

"business incentive laws" includes the Malta Enterprise Act and the Business Promotion Act; Cap. 463. Cap 325.

"Commissioner" means the Commissioner of Inland Revenue;

"competent authority" means the body referred to in article 12(1) of the Financial Institutions Act; Cap. 376.

"eligible office" is an employment or office listed in the Schedule;

"professional qualifications" means qualifications attested by evidence of education qualifications or, by way of derogation, when provided for by national law, attested by at least five years of professional experience of a level comparable to education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer;

"education qualification" means any diploma, certificate or other evidence of formal qualifications issued by an educational

establishment attesting the successful completion of a post-secondary education programme, namely a set of courses provided by an educational establishment recognised as a education institution by the State in which it is situated. An education qualification shall be taken into account, on condition that the studies needed to acquire it lasted at least three years;

"professional experience" means the actual and lawful pursuit of the profession concerned;

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

"rights acquired under this law" means the right to elect to pay tax at the reduced rate of tax contemplated in article 56(21) of the Act and these rules;

"these rules" shall include the provisions of article 56(21) 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.

(2) A person shall be deemed to be related to a body of persons if:

(a) that person and the body of persons are, directly or indirectly, controlled or beneficially owned to the extent of more than twenty-five percent (25%) by the same persons; or

(b) that person owns, directly or indirectly, more than twenty-five percent (25%) of the ordinary share capital or voting rights of the body of persons.

Qualifying contract .

3. (1) Income from a qualifying contract of employment qualifies under these rules when it is received by a beneficiary and consists in income subject to tax under article 4(1)(b) of the Act (exclusive of the annual value of any fringe benefits) of a minimum of €75,000 and consists of emoluments from an eligible office.

(2) A qualifying contract of employment shall be considered to be such if the employment activity contemplated in the contract of employment is an eligible office.

(3) Income shall not be construed to be income from a

qualifying contract of employment if it is paid by the employer who has received a benefit or benefits under business incentive laws or arrangement in terms of the business incentive laws or is paid by a person who is related to the employer who has received a benefit or benefits under any business incentive laws or arrangement in terms of business incentive laws.

4. A beneficiary is an individual who meets all of the following conditions: Beneficiary.

(a) he is an individual who derives income subject to tax under article 4(1)(b) of the Act, being 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 Malta in connection with such work or duties, or on leave during the carrying out of such work or duties;

(b) he is protected as an employee under Maltese law, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else, is paid, and has the required adequate and specific competence, as proven to the satisfaction of the competent authority;

(c) he proves to the satisfaction of the competent authority that he is in possession of professional qualifications;

(d) he is not a person who has benefitted under article 6 of the Act;

(e) he fully discloses for 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;

(f) he proves to the satisfaction of the competent authority that he performs activities of an eligible office; and

(g) he proves to the satisfaction of the competent authority that:

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

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

(v) he is not domiciled in Malta.

Minimum amount chargeable to tax.

5. (1) When an individual exercises the option available under article 56(21) of the Act in respect of a year of assessment, the minimum amount of income which shall be chargeable to tax at the reduced rate provided for in that sub-article in respect of that year of assessment shall be deemed to be €75,000:

Provided that the minimum amount of income of €75,000 shall be adjusted annually in line with the Retail Price Index as published in the Gazette by the National Statistics Office:

Provided further that should income from a qualifying contract of employment exceed the sum of €5,000,000, no further tax would be charged on income from a qualifying contract of employment in excess of €5,000,000:

Provided also that the rate of 15% shall apply without possibility to claim any relief, deduction, reduction, credit or set-off of any kind. Notwithstanding the generality of foregoing, a beneficiary shall be allowed deductions of tax under article 23 of the Income Tax Management Act.

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(2) The option available under article 56(21) of the Act may not be exercised in respect of any year of assessment preceding the year of assessment 2012.

Claw-back of benefits.

6. (1) Subject to the provisions of rule (7), the option available under article 56(21) of the Act shall, with respect to EEA and Swiss nationals, apply for a consecutive period of five years commencing from the year preceding the first year of assessment in which that person is first liable to tax under the provisions of the Act.

(2) Subject to the provisions of rule (7), the option available under article 56(21) of the Act shall, with respect to third-country nationals, apply for a consecutive period of four years commencing from the year preceding the first year of assessment in which that person is first liable to tax under the provisions of the Act.

(3) Rights acquired under this law shall be deemed to have been withdrawn with immediate effect if the grant of benefits under these rules and the beneficiary's stay in Malta are not in the public interest.

(4) Rights acquired under this law shall be deemed to have been withdrawn with retrospective effect if a beneficiary is a third-country national and he either -

(a) physically stays in Malta, in the aggregate, for more than 1,460 days; or

(b) directly or indirectly acquires real rights over immovable property situate in Malta or holds a beneficial interest directly or indirectly consisting in, *inter alia*, of real rights over immovable property situated in Malta.

Persons already in Malta.

7. (1) The option available under article 56(21) of the Act may not be exercised by any person who was employed for a period exceeding two years preceding the 1st January, 2011, under a contract of employment requiring the performance of his duties in Malta.

(2) A person referred to in rule 6(1), who is an EEA or Swiss national who up to two years before the entry into force of these rules was employed under a contract of employment requiring the performance of his duties in Malta, shall benefit from these rules for not more than three consecutive years commencing from the year of assessment 2011. In the event, that such an EEA or Swiss national would have been employed as aforesaid for up to one year, such person shall benefit under these rules for not more than four consecutive years commencing from the year of assessment 2011.

(3) A person referred to in rule 6(2), who is a third-country national who up to two years before the entry into force of these rules was employed under a contract of employment requiring the performance of his duties in Malta, shall benefit under these rules for not more than two consecutive years commencing from the year of assessment 2011. In the event that such a third-country national would have been employed as aforesaid for up to one year, such person shall benefit under these rules for not more than three consecutive years commencing from the year of assessment 2011.

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Anti-abuse provisions.

8. (1) Where any person, in order to obtain benefits under these rules, makes use of artificial arrangements, the Commissioner shall, by order in writing, determine the liability to tax of the said person, for any year of assessment, in such manner and in such amount as may be necessary, in the circumstances of the case to nullify benefits obtained under these rules. A person who disagrees with an order served upon him as aforesaid shall have the same rights to object to that order and to appeal from a decision of the Commissioner refusing that objection as if that order were an assessment issued under the Income Tax Management Act and the relevant provisions of that Act relating to objections and appeals shall apply *mutatis mutandis*:

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Provided that if any person claims a benefit under these rules when that person was not entitled to the said benefit, such person shall be liable to pay a penalty equal to the amount of benefit claimed and if the benefit was in fact paid to him that person shall in addition be liable to repay the benefit received and to additional tax of seven per cent per month or part thereof commencing from the month in which the said benefit was paid to him up to the month in which he repaid the benefit and any payment made by the said person in respect of the tax repayable by him in terms of this proviso shall first be applied against any additional tax due thereon:

Provided further that liability to pay additional tax in terms of the preceding proviso shall not be applicable when the person referred to therein proves that he has acted in good faith.

(2) For the purposes of this rule, 'benefit' shall mean the total tax saved by an individual who elects to apply these rules.

Request for information.

9. (1) For the purpose of ascertaining an individual's right to exercise the option referred to in these rules and ensuring the proper application of these rules, the Commissioner and the competent authority may require that individual to produce, within the time indicated by the Commissioner and the competent authority in that request, such further information and documents as the Commissioner and the competent authority may consider necessary, including certifications and declarations of the employer of that individual.

(2) If an individual fails, without any valid reason, to comply with any request relating to his income made to him by the Commissioner and the competent authority in accordance with this rule, the Commissioner and the competent authority may order that article 56(21) of the Act shall not apply to that income. In such a case, the Commissioner may make an assessment and the tax on that

income shall be calculated at the rates provided for in the Act without any reference to the said sub-article.

Manner in which option is exercised.

10. The option available under article 56(21) of the Act shall be exercised by means of a declaration signed by the beneficiary and endorsed by the competent authority made on such form or in such manner as the Commissioner may require and attached to or included in the tax return for the relative year of assessment. It shall not be deemed to have been validly exercised unless the income to which it applies has been fully and correctly declared in the said tax return and unless the said declaration and tax return are filed by not later than the relative tax return date:

Provided that when the said declaration or the relative tax return is filed later than the tax return date, the Commissioner may treat the option as having been validly exercised if he is satisfied that the delay was due to a reasonable excuse.

Determinations and attestations.

11. (1) For the purposes of rule 4, the competent authority shall issue a formal determination relating to anything which needs to be proven to its satisfaction in terms of these rules.

(2) An application for a formal determination relating to eligibility under these rules shall be made on such form or in such manner as the competent authority may require and shall contain the information and documents therein requested.

(3) After consultation with the competent authority, the Minister responsible for justice shall determine whether a beneficiary's stay in Malta is not in the public interest.

Exercise of benefit.

12. For the purposes of rule 9, the competent authority shall, following an application, filed by a beneficiary, endorse the form required by the Commissioner.

Eligible offices.

13. For the purposes of rule 3, the employments and offices which are eligible for the reduced rate of tax are listed in the Schedule.

SCHEDULE

(Rules 2 and 13)

Eligible employments and offices

Employments with companies licensed and/or recognised by the competent authority consisting in 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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