L.N. 403 of 2011

INCOME TAX ACT
(CAP. 123)

High Net Worth Individuals - Non-EU/Non-EEA/Non-Swiss Nationals Rules, 2011

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:

Citation and coming into force.

1. (1) The title of these rules is the High Net Worth Individuals - Non-EU/Non-EEA/Non-Swiss Nationals Rules, 2011.

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

Interpretation.

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

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

"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);

"authorised mandatory" means a person who is in possession of a warrant to practise as an advocate under the Code of Organisation and Civil Procedure, a person who holds a warrant to practise as a legal procurator under the Code of Organisation 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 Management; Cap. 12. Cap. 55. Cap. 281.

"authorised registered mandatory" means an authorised mandatory who is registered with the Commissioner under these rules;

"Commissioner" means the Commissioner of Inland Revenue;

"dependent" means the beneficiary's spouse, 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;

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

"family members" means beneficiary's ascendants in the direct line, descendants in the direct line, brothers, sisters, spouse/s or persons with whom beneficiary is in a stable and durable relationship;

"lease" includes sub-lease;

"long-term resident" means:

S.L. 217.05 (a) a person who has long-term resident status in terms of the Status of Long-term Residents (Third Country Nationals) Regulations;

S.L. 217.05 (b) a person who applies for long-term resident status under the Status of Long-term Residents (Third Country Nationals) Regulations; or

(c) third country nationals who have resided legally and continuously in Malta for five years. Periods of absence from Malta shall not interrupt the aforesaid period and shall be taken into account for its calculation where they are shorter than six consecutive months and do not exceed in total ten months within the aforesaid five-year period;

"Minister" means the Minister responsible for Finance;

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

"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 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 contract" means a contract in a form prescribed by the Minister;

"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 the beneficiary and his family members;

"qualifying owned property" means a property purchased after 14 September 2011 at a consideration of not less than four hundred thousand euro (€400,000), or a property purchased before 14 September 2011 for a consideration of not less than one hundred and sixteen thousand euro (€116,000) by a person who filed an application under the Residents Scheme Regulations which was duly received and acknowledged by the Commissioner before 14 September 2011:

Provided that, for the purposes of this definition, the Commissioner shall have the discretion, upon good cause being shown, to treat a property covered by a promise of sale in respect of which notice thereof under the Duty on Documents and Transfers Act has been given to the Commissioner before 14 September 2011, and the relative deed of transfer in respect of which is published by 31 March 2012, as a property purchased by an applicant as aforesaid before 14 September 2011;

"qualifying rented property" means a leased property taken on at lease of not less than twenty thousand euro (€20,000) per annum;

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

3. (1) An individual, as duly represented by an authorised registered mandatory, may apply to the Commissioner for special tax status under these rules in such form as the Commissioner may require and by paying the fee that the Minister may prescribe.

(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;

(b) in the case of a person who intends to become a long-term resident or who is already a long term resident, he is a party to a qualifying contract;

S.L. 123.79
S.L. 123.126

(c) he is not a person who benefits under the Residents Scheme Regulations or the Highly Qualified Persons Rules;

(d) he is in receipt of stable and regular resources which are sufficient to maintain himself and his dependents 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 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;

(h) he is a fit and proper person;

(i) he is fluent in one of the official languages of Malta; and

(j) he is a third country national and is not a Maltese national.

Fifteen percent rate.

5. (1) In these rules, the rate of fifteen cents (0.15) on every euro shall apply with the possibility to claim relief of double taxation under article 74(a) and (b) of the Act:

Provided that the minimum amount of tax payable in terms of these rules in respect of any year of assessment shall be twenty-five thousand euro (€25,000):

Provided further that a beneficiary with dependents shall, in addition to the minimum amount of tax payable of twenty-five thousand euro (€25,000), pay another five thousand euro (€5,000) per year of assessment for every dependent.

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

(3) A beneficiary and his spouse shall be precluded from opting for a separate computation for the purposes of article 50 of the Act.

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

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

(b) if the individual is not in receipt of stable and regular resources which are sufficient to maintain himself and his dependents without recourse to the social assistance system in Malta;

(c) if, after the appointed day, he is not in possession of sickness insurance in respect of all risk normally covered for Maltese nationals for himself and his dependents;

(d) if he establishes his domicile in Malta;

(e) if he is a long-term resident without being a party to a qualifying contract;

(f) if he becomes a Maltese national, an EEA national

or a Swiss national;

(g) if he resides in Malta for less than ninety days in a calendar year;

(h) if the beneficiary's stay is not in the public interest; or

(i) if he stays in any other jurisdiction for more than one hundred and eighty-three days in a calendar year and fails to provide documentary proof to this effect.

(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 ten thousand euro (€10,000).

(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 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.

Abuse of rights.

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. Cap. 372.

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 authorize 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.

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