VERŻJONI ELETTRONIKA

L.N. 111 of 2013

INCOME TAX ACT
(CAP. 123)

Repatriation of Persons established in a Field of Excellence Rules, 2013

IN exercise of the powers conferred by articles 56(25) 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 Repatriation of Maltese Persons established in a Field of Excellence Rules, 2013.

(2) These rules shall be deemed to have come into force on the 1st January, 2013.

Interpretation.

2. In these rules, unless the context otherwise requires:

"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 of which the beneficiary holds more than 25% of the shares and with whom the beneficiary is employed at any time during the year, 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;

"Commissioner" means the Commissioner of Revenue;

"Corporation" means the Malta Enterprise Corporation established in terms of the Malta Enterprise Act; Cap. 463.

"eligible person" means an individual who is established in a field of excellence and returns as an ordinary resident in Malta provided that he had been ordinarily resident in Malta for at least twenty years but has not been ordinarily resident in Malta for the ten consecutive years prior to his return to Malta;

"field of excellence" means an area of professional competence in which an eligible person has excelled and which area is relevant for the manufacturing and research and development sectors, as may be defined in Guidelines which may be issued by Malta Enterprise Corporation in terms of the Malta Enterprise Act; Cap. 463.

"qualifying contract of employment" means the employment of an eligible person in a field of excellence in such sector/s as may be

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defined in the Guidelines;

"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.

Qualifying contract of employment.

3. (1) Income from a qualifying contract of employment qualifies under these rules when it is received by an eligible person 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 seventy-five thousand euro (€75,000) and consists of emoluments received by an eligible person.

(2) A qualifying contract of employment shall be considered to be such if such contract of employment is approved in writing by the Corporation.

Beneficiary.

4. (1) A beneficiary is an eligible person who, to the satisfaction of the Corporation, meets all of the following conditions:

(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 proves to the satisfaction of Malta Enterprise Corporation that he is in possession of educational and, or professional qualifications as are relevant in the profession or sector specified in the binding job offer or in the qualifying contract of employment as these may be further defined in Guidelines which may be issued by Malta Enterprise Corporation in terms of the Malta Enterprise Act;

Cap. 463.

(c) 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 Malta Enterprise Corporation.

(2) A beneficiary shall fully disclose for tax purposes and declare 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 which is chargeable to tax in Malta.

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Minimum amount chargeable to tax.

5. (1) When an individual exercises the option available under article 56(25) 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 seventy-five thousand euro (€75,000):

Provided that the rate of 15% shall apply without possibility to claim any relief, deduction, reduction, credit or set-off of any kind, sohowever that, notwithstanding the generality of the foregoing, a beneficiary shall be allowed deductions of tax under article 23 of the Income Tax Management Act: Cap. 372.

Provided that where an individual exercises the option available under article 56(25) of the Act, the income that is charged to tax at the rate of 15% shall be deemed to constitute the first part of the individual's total income for the year of assessment in question and the tax on the remaining income shall be calculated at the rate or rates that would have been applicable to that remaining income had the option not been exercised.

(2) The option available under article 56(25) of the Act may not be exercised in respect of any year of assessment preceding the year of assessment 2013.

(3) The option available under article 56(25) of the Act shall 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 after returning to reside in Malta.

Anti-abuse provisions.

6. 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*. Cap. 372.

Request for information.

7. (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 Corporation may require that individual to produce, within the time indicated by the Commissioner and the Corporation in that request,

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such further information and documents as the Commissioner and the Corporation 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 Corporation in accordance with this rule, the Commissioner and the Corporation may order that article 56(25) 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.

8. The option available under article 56(25) of the Act shall be exercised by means of a declaration signed by the beneficiary and endorsed by the Corporation 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.

9. (1) For the purposes of rule 4, the Corporation 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 Corporation may require and shall contain the information and documents therein requested.

Exercise of benefit.

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

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