VERŻJONI ELETTRONIKA

L.N. 382 of 2014

EXTERNAL TRANSACTIONS ACT
(CAP. 233)

Investment Registration Scheme (Amendment) Regulations, 2014

IN exercise of the powers conferred by articles 11(2) of the External Transactions Act the Minister for Finance has, after consultation with the Central Bank of Malta, made the following regulations:-

Citation.

S.L. 233.11

1. The title of these regulations is the Investment Registration Scheme (Amendment) Regulations, 2014, and these regulations shall be read and construed as one with the Investment Registration Scheme Regulations, hereinafter referred to as "the principal regulations".

Amends regulation 2 of the principal regulations.

2. Regulation 2 of the principal regulations shall be amended as follows:

(a) in the definition "applicable date" in sub-regulation (1) thereof, for the words "between 4 November 2013 and 30 September 2014" there shall be substituted the words "between 4 November 2013 and 30 November 2014";

(b) in the definition "fiduciary" in sub-regulation (1) thereof, for the words "means any private foundation or any person who is engaged to hold in his name or owns any eligible assets for another person under a mandate or a trust;" there shall be substituted the words "means any private foundation or any person who is engaged to hold in his name or owns any eligible assets for another person under a mandate or a trust and shall include a company referred to in regulation 2(2)(b)(iv);";

(c) at the end of paragraph (b) of sub-regulation (2) thereof, there shall be added the words "and (iv) shares representing assets, where the preparation and filing of audited accounts are not mandatory under the law of their place of registration, and the applicant is otherwise unable to provide to the satisfaction of the Commissioner audited accounts by a reputable audit firm, companies referred to in sub-paragraph (i) shall be deemed to be fiduciaries of the beneficial owner of the said shares, holding assets on behalf of the beneficial owner of such shares and where there are several shareholders, the interest of the applicant in the eligible assets shall be the proportion of his rights to assets available for distribution on a winding up of the company as represented by the proportion of

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his shareholding to the total number of the shares in existence having rights to assets available for distribution on a winding up of the company. Provided that on the application of the beneficial owner, being the shareholder of such company, such assets shall be separately assessed for eligibility under paragraphs (a) to (g) but shall not include any shareholder loans or advances to such companies as is referred to in paragraph (f);"; and

(d) in paragraph (f) of sub-regulation (2) thereof, for the words "or other advances extended to a company registered in a reputable jurisdiction" there shall be substituted the words "or other advances extended directly or indirectly to a company registered in a reputable jurisdiction".

Amends regulation 4 of the principal regulations.

3. In regulation 4 of the principal regulations, for the words "until 30 September 2014" there shall be substituted the words "until 30 November 2014".

Amends regulation 6 of the principal regulations.

4. In regulation 6 of the principal regulations for the words "on date of registration." there shall be substituted the words "on date of registration:" and immediately thereafter there shall be added the following new proviso:

"Provided that where an asset belonging to the applicant on the 4 November 2013 has been converted by the applicant into an eligible asset, consisting of a deposit fixed for one year held with credit institutions licensed in Malta, during the period between 4 November 2013 and the registration date, such asset shall qualify as an eligible asset for registration under this Scheme.".

Amends regulation 7 of the principal regulations.

5. Regulation 7 of the principal regulations shall be amended as follows:

(a) in paragraph (c) of sub-regulation (2) thereof, for the words "or other advances to a company in a reputable jurisdiction, a duly authenticated copy of the agreement by virtue of which funds were advanced by the applicant to such company" there shall be substituted the words "or other advances extended directly or indirectly to a company in a reputable jurisdiction, a duly authenticated copy of the agreement by virtue of which funds were advanced directly or indirectly by the applicant to such company";

(b) in paragraph (d) of sub-regulation (2) thereof, for the words "or other written confirmation from the relevant licensed financial intermediary;" there shall be substituted the

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words "or other written confirmation from the relevant licensed financial intermediary and in the case of an eligible asset to which the proviso to regulation 6 applies a written confirmation from the applicant that the asset that has been converted belonged to the applicant on the 4 November 2013.";

(c) in paragraph (f) of sub-regulation (2) thereof, for the words "where eligible assets are held by a third party in a fiduciary capacity," there shall be substituted the words "where eligible assets are held by a third party, including a company referred to in regulation 2(2)(b)(iv), in a fiduciary capacity,"; and at the end of paragraph (f) there shall be added the following new sub-paragraph:

"(iii) where the fiduciary is a company referred to in regulation 2(2)(b)(iv), a certified copy of the company's memorandum and articles of association and its certificate of registration and its register of members; and a confirmation bearing the original signature of the directors of the said company authenticated in the jurisdiction of registration of the company evidencing that (a) the applicant is the beneficial owner of the shares, alone or with others, and controls the same, alone or with others; and (b) the company is the beneficial owner of all the assets of the company subject of the application:

Provided that the existence of any shareholder loans or advances, any liabilities to third parties and any security agreement relating to the assets shall not hinder the making of such confirmation and may be referred to in the directors' statement should the directors consider it appropriate to do so. The directors may also attach a copy of the latest unaudited accounts of the company in any form they may take should they consider it appropriate to do so."; and

(d) in sub-regulation (3) thereof, for the words "other assets" there shall be substituted the words "other eligible assets"; and for the words "This rule shall also apply if the assets are held by a fiduciary." there shall be substituted the words "This rule shall also apply if the eligible assets are held by a fiduciary.".

Amends regulation 8 of the principal regulations.

6. In paragraph (f) of sub-regulation (1) of regulation 8 of the principal regulations for the words "the registered assets were held in or outside Malta on 4 November 2013;" there shall be substituted the words "the registered assets were held in or outside Malta on 4

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November 2013 or in the case of registered assets referred to in the proviso to regulation 6 such registered assets were held in Malta on the applicable date;".

Amends regulation 12 of the principal regulations.

7. In sub-regulation (1) of regulation 12 of the principal regulations for the words "of the Income Tax Act." there shall be substituted the words "of the Income Tax Act:", and immediately thereafter there shall be added the following new proviso:

"Provided that in the case of an eligible asset to which the proviso to regulation 6 applies, notwithstanding the provisions of article 9B of the Income Tax Act, the exemption from tax on income referred to in sub-article (2)(a) of the said Act shall not apply and the exemption from tax on income referred to in sub-article (2)(b) of the said Act shall apply to the extent that the said income has not been declared in any income tax return which has been furnished to the Commissioner by 4 November 2013, and no tax has been assessed with respect thereto in any assessment raised under the Income Tax Acts and notified before 31 May 2014.".

Amends regulation 13 of the principal regulations.

8. Sub-regulation (2) of regulation 13 of the principal regulations shall be amended as follows:

(a) paragraph (b) thereof shall be re-numbered as paragraph (c);

(b) immediately after paragraph (a) thereof there shall be added the following new paragraph:

"(b) in the case of an eligible asset to which the proviso to regulation 6 applies, seven and one half per centum of the current market value of the registered asset;"; and

(c) in the second proviso thereto, for the words "Provided that in respect of eligible assets referred to in paragraphs (a) and (b) which were held abroad on 4 November 2013" there shall be substituted the words "Provided also that in respect of eligible assets referred to in paragraphs (a) and (c) which were held abroad on 4 November 2013", and for the words "for at least three years after date of registration." there shall be substituted the words "for at least three years after date of registration:", and immediately thereafter there shall be added the following:

"Provided further that in the case where the eligible asset consists of shares in the capital of a company

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registered or incorporated in Malta or in a reputable jurisdiction outside Malta which does not own any asset other than immovable property or where more than ninety five percent of its assets consist of immovable property, the current market value of the company shall be reduced by the excess of the current market value of the immovable property, upon which the current market value of the shares was determined, over the original cost on date of purchase of the said immovable property owned by the company.

Where in the case of a company referred to in regulation 2(2)(b)(iv), the eligible asset is an immovable property forming part of the assets of a company which does not own any asset other than immovable property or where more than ninety five per cent of its assets consist of immovable property, reference shall be made to the original cost of the immovable at the date of purchase. In the case of all other eligible assets owned by such company reference shall be made to the current market value of the eligible assets, including when the eligible assets are themselves shares within sub-paragraph 2(2)(b)(iv), and no reference shall be made to the current market value of the shares in the company itself.

Furthermore, no reference shall be made to any accounts of the company (unless the applicant is able to provide to the satisfaction of the Commissioner audited accounts by a reputable audit firm) or to any liabilities, any reserves, shareholder loans or advances:

Provided further that, in respect of eligible assets referred to in paragraphs (a) and (c) which have been subject to a registration fee of five per centum, where the beneficial owner of the eligible asset and in whose name or for whose benefit a Registration Certificate has been issued pursuant to these regulations does not retain the repatriated assets locally for a period of three years after the date of registration, he shall be considered as never having been entitled to the exemptions referred to in article 9B of the Income Tax Act, and shall forfeit the right not to refund any benefit, exemption or advantage acquired before the registration.".

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