



**REDUCED RATE OF TAX APPLICABLE TO
"QUALIFYING" EXPATRIATES**

Expatriates in receipt of income payable in terms of a 'qualifying contract of employment' in respect of activities carried out in Malta, may opt to be subject to tax on such income at a flat rate of 15%.

The income charged to tax at such a reduced rate will be deemed to constitute the first part of the individual's total income and the tax on the remaining income is to be calculated at the standard rates applicable to such individual.

The reduced rate of tax was introduced by Act 1 of 2010 and is a further incentive aimed at attracting foreign investment to Malta. Income earned by eligible individuals as from 1 January 2010 may qualify from the reduced rate of 15%.

The Highly Qualified Persons Rules, 2011 enacted by virtue of Legal Notice 106 of 2011 ("the Rules") provide for the application of this incentive.

The Competent Authority for the purpose of these Rules is the Malta Financial Services Authority ("MFSA").

This Newsalert is intended to provide you with brief comments on the Rules.

Who may benefit from the reduced rate of tax?

For an individual to be eligible for the reduced rate of tax of 15%, such individual must:

- (i) qualify as a 'beneficiary' in terms of the Rules;
- (ii) derive income from a 'qualifying contract of employment'; and
- (iii) be engaged in employment activity constituting an 'eligible office'.

A 'beneficiary' is a person who:

- is an individual who is neither domiciled nor ordinarily resident in Malta;
- derives employment income subject to tax 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);

- is protected as an employee under Maltese law;
- has proved to the satisfaction of the MFSA that he is in possession of the required specific competence and professional qualifications (or professional experience);
- 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);
- resides in accommodation regarded as normal for a comparable family in Malta;
- is in possession of a valid travel document; and
- is in possession of sickness insurance.

Investment services and Insurance expatriates who already benefit from the incentives contemplated in Article 6 of the Income Tax Act do not qualify for the reduced rate of tax referred to above.

A 'qualifying contract of employment' is considered to be such if it gives rise to a minimum income of €75,000 (excluding the annual value of any fringe benefits) in respect of a year of assessment.

The employment activity contemplated in the contract of employment is an 'eligible office' if the employment is with companies licensed and/or recognised by the MFSA and consists of specified senior positions, including, amongst others, Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Investment Officer, Portfolio Manager, Senior Analyst, Actuarial Professional, and Chief Underwriting Officer.

Emoluments paid by a person receiving a benefit under the Business Promotion Act, or under similar incentive legislation, or by a person related to a person receiving such benefits, may not qualify as income from a qualifying contract of employment.

The Rules also provide that income amounting to more than €5,000,000 and derived from a qualifying contract of employment should not be subject to tax in Malta on the amount exceeding €5,000,000.

It is not possible to claim any relief, deduction, reduction, credit or set-off of any kind in the event that a beneficiary applies the reduced rate of tax.

How is such option exercised?

Individuals who intend to avail themselves of such option should apply to the MFSA to be granted a formal determination of their eligibility as beneficiaries under the Rules.

Furthermore, they should attach a declaration, duly endorsed by the MFSA, to their income tax return.

Beneficiaries should disclose for tax purposes emoluments received in respect of income from a qualifying contract of employment and all income received from a person related to the payer of such income as chargeable to tax in Malta irrespective of whether this is paid in respect of the performance of duties in Malta or otherwise.

The MFSA and/or the Commissioner of Inland Revenue may request the individual to produce, within a specific timeframe, additional documents and information for the purpose of ascertaining the individual's right to exercise the option.

As from which year of assessment may an individual apply the reduced rate of tax?

The option to have such income charged to tax at the reduced rate of 15% may be availed of as from year of assessment 2011 (year of income 2010).

However, individuals who, for a period of more than two years preceding 1 January 2011, were employed under a contract of employment requiring the performance of their duties in

Malta, may not benefit from the reduced rate of tax.

Is there a maximum period for the application of such reduced rate of tax?

There is no maximum period for the application of such reduced rate of tax in respect of EU nationals.

However, this option is available for a period of 5 consecutive years for EEA and Swiss nationals and for a period of 4 consecutive years for third-country nationals, after the expiry of which the employment income would be chargeable to tax at the standard rates of tax applicable to the individual. The 5/4 year period, during which the reduced rate of tax is applicable, commences in the year in which the recipient is first liable to income tax in Malta.

In the case of EEA and Swiss nationals, who up to two years before 1 January 2011, were under a contract of employment requiring the performance of their duties in Malta, the reduced rate of tax would apply for not more than three consecutive years and for not more than two consecutive years in the case of third-country nationals.

The said reduced periods of 3/2 years are increased to 4/3 respectively where the said persons would have been employed as aforesaid for up to only one year before the 1 January 2011.

Notwithstanding the above, the reduced rate of tax claimed by third country nationals will be deemed not to apply, with retrospective effect, if such individual either:

- physically stays in Malta, in the aggregate, for more than 1,460 days; or
- acquires directly or indirectly real rights over immovable property in Malta or holds a beneficial interest directly or indirectly consisting in, amongst others, real rights over immovable property situated in Malta.

The notes are designed to keep readers abreast with financial and tax developments. They are not intended to be a definitive or comprehensive analysis of the subject and should not be acted upon without prior consultation with the Partners or Senior Consultants of the firm. For further details please do not hesitate to contact:

PricewaterhouseCoopers
167, Merchants Street, Valletta VLT 1174, Malta
Tel: +356 21 247 000 Fax: +356 21 244 768

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