Taxalert
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UPDATE TO HIGH NET WORTH INDIVIDUALS ("HNWI") RULES & GUIDELINES

Individuals who have been granted HNWI status are taxable at the rate of 15% on receipt of foreign source income in Malta and also have the possibility of claiming double tax relief on such income.

The HNWI rules introduced in terms of Legal Notices 400 and 403 of 2011 (the 'Rules') have replaced the Residents Scheme Regulations.

A Taxalert was issued in October 2011 setting out brief comments in respect of the Rules including the conditions required to qualify for the said 15% tax rate.

The Rules and guidelines have recently been amended and this Taxalert sets out the changes made to the said Rules and guidelines. The Rules have been updated by means of Legal Notices 41 and 42 of 2012. The updated guidelines may be found at:

http://www.ird.gov.mt/regulations/hnwi.aspx

Main changes

The following are the principal changes that have been made:

1. The condition which required an applicant to reside in Malta for a minimum period of 90 days in a calendar year has been removed. However, such an individual must ensure that s/he does not reside in another jurisdiction for more than 183 days in a calendar year

2. An applicant is considered to hold a Qualifying Property Holding if s/he owns an immovable property in Malta purchased after 1 January 2011 for a consideration of not less than €400,000, and not after the 14 September 2011 as was previously required

3. An applicant will now also be deemed to hold a Qualifying Property Holding if:

   (a) an application under the Residents Scheme Regulations was filed before 14 September 2011, and

   (b) the applicant entered into a lease agreement prior to the 14 September 2011 for an amount of not less than €4,150 per annum and deposits a copy of such agreement, attested by a notary or advocate to the Inland Revenue by the 31 March 2012, or

   (c) The promise of sale agreement in respect of the property must have been registered with the Commissioner of Inland Revenue by 14 September 2011 and the applicant must submit an authenticated copy of the final deed of purchase proving that the final deed of purchase was published by 31 March 2012.

4. With respect to Non-EU/EEA/Swiss nationals:

   - an applicant must state at the outset whether s/he will be applying as a long-term resident or not. In the event that the applicant's intention is not to be a long-term resident, then such person cannot stay in Malta for more than 9 months in a calendar year. A person who stays in Malta for more than 9 months in a calendar year shall be considered a long-term resident and is required to enter into a 'Qualifying Contract' with the Government of Malta.

   - in the case of long-term residents, the requirement to contribute an amount to the Government of Malta of €500k and €150k for each dependant in terms of the guidelines has been removed. However, reference to this concept is still made in a generic manner in the guidelines. Details in this respect, e.g. on the amount thereof and the circumstances in which it would be imposed have not yet been published.

Other changes

In addition to the above, there have also been some minor changes and/or additions to the guidelines:

1. Individuals with whom the beneficiary is in a “stable and durable relationship” has been defined as including persons in a situation of permanent cohabitation, tied by bonds of mutual affection and mutual dependency. Such relationships need to be long-term, committed affiliations. Furthermore, persons claiming to be in a "stable and durable relationship" with the applicant must have come to Malta at the same time as the applicant or just before or very recently after.

2. The concession of waiving the administrative fee of €6,000 will continue to apply in respect of applications submitted until the 15 September 2012.

3. The guidelines now also include a Step-by-Step procedure in respect of the manner in which the applications will be processed.

Tax Treatment

As previously outlined, once HNWI status has been acquired, the foreign source income, which is received in Malta is taxable at the rate of 15%, together with the possibility of claiming double tax relief on such income subject to the minimum annual tax liability.

The guidelines have included further detail under this section by providing the following additional information:

1. In the year when the special tax status is obtained or lost, the minimum tax will be calculated on a pro-rata basis.

2. A section relating to income from employment in Malta has been included. Income arising in Malta from any trade, business, profession or vocation will be subject to a flat rate of tax of 35%.

3. The minimum tax for the first year will be payable not later than the tax return date and will not be subject to provisional tax.

4. A beneficiary is subject to payment of provisional tax in accordance with the Payment of Provisional Tax (P.T.) Rules.

Current Holders of a Permanent Resident (PR) Scheme Certificate

Individuals registered under the current PR scheme, shall still be entitled to pay the minimum tax required by the PR regulations, rather than the minimum required by the HNWI Rules.

PricewaterhouseCoopers
167, Merchants Street,
Valletta VLT 1174, Malta
Tel: +356 21 247 000 Fax: +356 21 244 768
www.pwc.com/mt