



Dear Clients & Colleagues,

Malta legislates for a 15% final tax on the income of expatriate executives in the financial services industry.

Highly Qualified People Rules, 2011

These rules apply to qualified expatriates who work in the financial services industry.

Act 1 of 2010 entitled the *Budget Measures Implementation Act, 2010*, enacts Article 56 (21) of the *Income Tax Act (ITA)* which provides that, where certain conditions are satisfied, an individual shall be taxed at the rate of 15% on his employment income derived from a qualifying employment. Article 56 (21) provides that the detailed conditions in terms of which an individual may benefit from the 15% beneficial rate of tax shall be prescribed in rules to be published. These are now published by Legal Notice 106 of 2011 entitled the *Highly Qualified Persons Rules, 2011* (referred to as “Rules” below).

Eligible Office

With effect from year of assessment 2011 (that is, calendar year 2010), the 15% flat rate of tax applies to individuals employed in the financial services sector. More specifically in order to benefit from this beneficial tax rate, the individual must be employed by a company licensed or recognised by the Malta Financial Services Authority (MFSA) and must hold an *eligible office*. Companies licensed or recognized by the MFSA include credit institutions, financial institutions, Insurance companies, PCCs, insurance intermediaries (including brokers, agents, managers), investment services license holders (including fund managers and fund administrators), funds, pension schemes (including pensions scheme administrators). An *eligible office* is an employment in one of the following posts (or equivalent by another name):

- Chief Executive Officer, Chief Risk Officer, Chief Financial Officer, Chief Operations Officer,
- Chief Technology Officer;
- Head of Marketing, Head of Investor Relations.



- Portfolio Manager, Chief Investment Officer, Senior Trader or Trader, Senior Analyst (including Structuring Professional), Actuarial Professional, Chief Underwriting Officer, Chief Insurance Technical Officer;

Qualifying Income

The 15% reduced rate of tax is applicable in respect of emoluments payable under a contract of employment if the employment activity contemplated therein is an *eligible office*. The minimum annual amount which may be taxable at 15% is € 75,000 which amount is subject to an annual adjustment in line with the Retail Price Index. Furthermore any qualifying income above € 5,000,000 is not subject to tax in Malta.

Where the option to have the said income taxed at 15% is exercised, for the purposes of applying the progressive rates of tax on non-qualifying income, that qualifying income is deemed to constitute the first part of the expatriate's total income for the relevant year of assessment and the applicable rate of tax for the purpose of non-qualifying income shall be determined as if the qualifying income was subject to tax at the normal progressive rates of tax.

The 15% rate of tax is a final tax and cannot be reduced by means of relief for double taxation, credit or set-off of any kind.

Conditions

An expatriate must satisfy the following conditions in order to be eligible to the option to have his qualifying income taxed at 15%:

1. Minimum employment income of € 75,000 (excluding the value of fringe benefits) in respect of the holding of an *eligible office*
2. Protection "*as an employee under Maltese law, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the directive of, someone else, is paid and, as the required adequate and specific competence, as is proven to the satisfaction of the*" MFSA.
3. Possession of professional qualifications proven to the satisfaction of the MFSA.
4. MFSA must be satisfied that the individual performs activities of an *eligible office*.



5. Furthermore, MFSA must be satisfied that the individual:

- 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 and which meets the general health and safety standards in force in Malta;
- Is in possession of a valid travel document;
- Is in possession of sickness insurance in respect of all risks normally covered for Maltese nationals for himself and the members of his family;
- Is not domiciled in Malta.

Furthermore, in order to be eligible to this benefit, besides declaring for tax purposes all income received from the employer in respect of the *eligible office*, an applicant is required to declare as chargeable to tax in Malta, all income received from any party related to his employer with regards to the *eligible office*.

This benefit would not apply if the employer or a related entity received any form of benefit at any time provided in terms of the Malta Enterprise Act, the Business Promotion Act or the Investment Services or Insurance Expatriate benefits under Article 6 of the ITA.

Period of application

The benefit is available as from year of assessment 2011 (which taxes income earned in 2010) for a period of five years in the case of EEA and Swiss Nationals and four years in case of other Nationals. In both cases the years commence from the year in which the expatriate takes up residence in Malta and derives income which is subject to tax in Malta. However the rules provide that expatriates who were employed in Malta:

- For a period of between one and two years immediately prior to 1 January 2011, can only benefit from the reduced tax rate for a maximum period of for a maximum period of three years if EEA or Swiss Nationals, or two years for third-country nationals;
- For of period of not than one year prior to 1 January 2011, can only benefit from the reduced rate of tax for a period of four years if EEA or Swiss Nationals, or three years for third-country nationals;



Furthermore expatriates who have been employed to work in Malta for more than two years prior to the 1st January 2011 cannot benefit from these rules.

Claw-back of the benefit

The Rules provide for the immediate withdrawal of the benefit where the grant thereof and the expatriate's presence in Malta is not in the public interest.

Furthermore, in the case of non EEA or non-Swiss nationals, the benefit is deemed to be automatically relinquished with retrospective effect if the expatriate physically stays in Malta in the aggregate for more than 1,460 days (4 years) or is he directly or indirectly acquires real rights (thereby excluding personal rights such as leasing rights) over immovable property situated in Malta or directly or indirectly holds a beneficial interest therein.

Procedure

The Rules lay down that the 15% option to tax shall be exercised by means of a declaration signed by the expatriate and endorsed by the MFSA. The said declaration (on a prescribed form) must be submitted together with the tax return for the relative year of assessment by not later than the relative tax return date, that is 30th June following the calendar year in which the income was earned. Late filings of declarations are deemed not to constitute a valid exercise of the option to be taxed at 15%, unless the CIR is satisfied that the delay was due to a reasonable cause.

As regards the conditions for eligibility required to be proved to the satisfaction of the MFSA, an application (on a prescribed form) may be made to the MFSA for a formal determination by the MFSA that the relevant conditions are satisfied.

Request for information

The Rules grant the power to the CIR and the MFSA to request further information and documents from the applicant, including certificates and declarations of the applicant's employer, to enable them to ascertain the applicant's eligibility to the 15% regime.



Anti-abuse provisions

The Rules contain an anti-abuse provision which nullifies the 15% benefit obtained in circumstances where an applicant makes use of artificial arrangements (including the payment of non-taxable income by a related party to the expatriate) in order to secure the said benefit. In such a situation penalties would be applicable.

For more information please feel free to contact us: info@trust4trust.com