

Rules related to Qualifying Contracts of Employment

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Introduction

Individuals in receipt of employment income from an 'eligible office' will be subject to a flat rate of tax of 15% instead of the progressive rates of tax which usually apply on employment income arising in Malta.

Legal Notice 106 of 2011, 'Highly Qualified Persons Rules, 2011' lists the conditions that must be satisfied for an employee to benefit from a such tax rate.

The rules came into force with effect from 1 January 2011 and apply to income which is brought to charge in year of assessment 2012 (basis year 2011) and subsequent years.

Minimum employment Income

Income from a qualifying contract of employment is subject to tax at a flat rate of 15% if the said employment income amounts to at least €75,000 (seventy five thousand Euros) and consists of emoluments from an 'eligible office'. If the income from a qualifying contract of employment exceeds the amount of €5 million, the excess is exempt from tax.

Definition of 'eligible office'

An eligible office is defined as an employment with a company licensed and/or recognised by the Malta Financial Services Authority (MFSA) consisting in the following employments or offices:

- Chief Executive Officer, Chief Risk Officer, Chief Financial Officer, Chief Operations Officer, Chief Technology Officer,
- Portfolio Manager, Chief Investment Officer, Senior Trader/Trader, Senior Analyst (including Structuring Professional), Actuarial Professional, Chief Underwriting Officer, Chief Insurance Technical Officer,
- Head of Marketing, Head of Investor Relations.

Conditions

An individual may benefit from the 15% tax rate if he satisfies all of the following conditions:

1. He is an individual who derives employment income subject to income tax in Malta;
2. The contract of employment is subject to the laws of Malta and proves to the satisfaction of the MFSA that the contact is drawn up for exercising genuine and effective work;

3. He proves to the satisfaction of the MFSA that he is in possession of professional qualifications and has at least five years professional experience;
4. He has not benefitted from deductions available to investment services expatriates with respect to relocation costs and other deductions (under article 6 of the Income Tax Act);
5. He fully discloses for tax purposes and declares 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 as chargeable to tax in Malta;
6. He proves to the satisfaction of the MFSA that he performs activities of an eligible office; and
7. He proves to the satisfaction of the MFSA that:
 - (i) he 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;
 - (ii) he 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;
 - (iii) he is in possession of a valid travel document;
 - (iv) he is in possession of sickness insurance in respect of all risks normally covered for Maltese nationals for himself and the members of his family; and
 - (v) he is not domiciled in Malta.

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Exclusions

The employment income may not qualify for the 15% reduced rate if it is paid by an employer who received any benefits under business incentive laws or is paid by a person who is related to the employer who received any benefits under any business incentive laws .

The employment income will not qualify for the 15% reduced rate if a claim is made for any relief, deduction, reduction, credit or set-off of any kind except for any income tax deducted at source.

Any rights are withdrawn with retrospective effect if a beneficiary is a third country national and he either:

- physically stays in Malta, in the aggregate, for more than four years; or
- directly or indirectly acquires real rights over immovable property situate in Malta or holds a beneficial interest directly or indirectly consisting in, *inter alia*, of real rights over immovable property situated in Malta.

The employment income will not qualify for the 15% reduced rate if the employee holds more than 25% (directly or indirectly) of the company paying such emoluments.

Applicability

The benefit applies for a consecutive period of five years for EEA and Swiss nationals and for a consecutive period of four years for other nationals. The benefit may not be availed of by any person who was employed under a contract of employment requiring the performance of his duties in Malta before 1 January 2009.

If the individual is employed under a contract of employment after 1 January 2009, he may still benefit from these rules as follows:

Commencement of employment	Nationality	
	EEA or Swiss National	Third Country National
Between 1 January 2009 and 31 December 2009	Not more than three consecutive years - starting from YA 2011	Not more than two consecutive years - starting from YA 2011
Between 1 January 2010 and 31 December 2010	Not more than four consecutive years - starting from YA 2011	Not more than three consecutive years - starting from YA 2011



Administrative issues

The minimum amount of €75,000 is adjusted annually in line with the Retail Price Index.

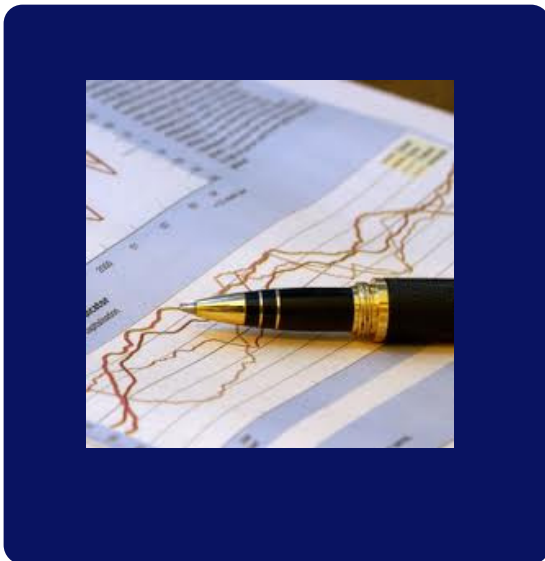
Any person who claims a benefit under these rules when he wasn't entitled to the said benefit is liable to pay a penalty equal to the amount of benefit claimed and if the benefit was in fact paid to him that person is also liable to repay the benefit received and to additional tax of 7% per month or part thereof.



Application Process

The MFSA shall issue a formal determination relating to anything which needs to be proven to its satisfaction in terms of these rules. An application for a formal determination relating to eligibility under the rules shall be made on a prescribed form.

The benefit is exercised by means of a declaration signed by the beneficiary and endorsed by the MFSA made on a prescribed form 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. 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.



Taxand's Take

The 'Highly Qualified Persons Rules' are intended to attract a number of expatriates with expertise in the financial services sector and relocate to Malta.

The tax savings resulting from the rules are substantial and should therefore increase the attractiveness of the country as a working location and accelerate the pace of highly skilled persons moving to the Island.

Individuals who have recently moved to Malta should also consider whether or not they may qualify and benefit from these rules.



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