

## The MALTA RETIREMENT PROGRAMME, 2012

These Guidance Notes outline the new provisions which affect individuals who wish to apply for special tax status under the Malta Retirement Programme Rules, 2012 (MRP).

The MRP is a programme designed to attract nationals of the EU, EEA and Switzerland who are not in an employment relationship and are in receipt of a pension as their regular source of income. Individuals benefitting from this Programme may hold a non-executive post on the board of a company resident in Malta. This implies that the beneficiary would be prohibited from being employed by the company in any capacity.

Such individuals may also partake in activities related to any institution, trust or foundation of a public character and any other similar organisation or body of persons, which are also of a public character, that is engaged in philanthropic, educational or research and development work in Malta.

**Note:**

This guidance outlines the Inland Revenue Department's application and interpretation of the Rules. The material provided hereunder is solely for your guidance. It sets out the main factors that are taken into account by an individual considering this programme. Any practices described in this guidance note are subject to periodic review and may subsequently be altered or withdrawn. If practices were to be changed or revoked this would not normally be done so retrospectively.

You are responsible for your own tax affairs in Malta. It is advisable to keep supporting documentation at all times. The Commissioner for Revenue reserves the right to ask about your tax affairs in accordance with the provisions of the *Income Tax Acts*.

## I. Who may apply?

Applicants meeting **all** of the following criteria are eligible to submit an application in terms of the *Malta Retirement Programme*:

- 1) Owns or rents an immovable property which the individual occupies as his principal place of residence worldwide. The values of the property needs to be as follows:
  - a. Owned:
    - i. Malta: €275,000
    - ii. Gozo: €250,000

The property needs to have been bought after 1<sup>st</sup> January 2011. However if a property was purchased before 1<sup>st</sup> January 2011 for an amount which is less than the above-mentioned amounts, such property may also satisfy this requirement if the individual declares in his application that the property was bought for less than the amounts indicated above and the said declaration is supported by the following documentation. This documentation needs to be submitted together with the application:

- A separate and independent architect valuation of the property; and
- Architect's plan of the property.

The Commissioner for Revenue may authorise an officer, architect or surveyor in writing to full and free access to the immovable property to the extent that the declared value of the property is ascertained.

A certified copy of the final deed of purchase needs to be submitted together with the application.

- b. Rented:
  - i. Malta: €9,600 annually;
  - ii. Gozo: €8,750 annually.

The lease needs to be taken out for not less than a twelve month period and is evidenced by a certified lease agreement submitted together with the application.

The lease agreement needs to indicate details of whether the property is being rented as furnished or otherwise. Any separate agreement relating to furnishings etc needs to be attached and the relative amounts indicated in the application form.

The final deed of purchase as well as the lease agreement, as the case may be, needs to provide full details of the vendor or lessor, as the case may be. This includes, in the case of an individual: the full name and surname, passport or identity card number and residential address. In the case of vendors / lessors that are not individuals, the details that need to be indicated include the name, company registration number, income tax registration number as well as the registered address.

- 2) Is not a beneficiary in terms of any of the below tax Regulations:
  - a. *Residents Scheme Regulations*;
  - b. *High Net Worth Individuals Rules*; or
  - c. *Highly Qualified Persons Rules*.

However an individual may renounce to the benefits provided under any of the above-mentioned Rules prior to submitting an application in terms of *Malta Retirement Programme*.

- 3) Is either:
  - a. an EU national (excluding a Maltese national); or
  - b. a national of Iceland, Norway or Liechtenstein; or
  - c. a national of Switzerland.
  
- 4) Is in receipt of a pension which is supported by the original documentary evidence. An individual is deemed to be receiving a pension if he is in receipt of:
  - a. periodic payments paid in respect of past employment. This include where the services were rendered to a State or political subdivision or local authority of the State; or
  - b. remunerations paid as lifetime or temporary annuities; or
  - c. regular income from an occupational retirement scheme, personal overseas retirement plan or insurance policies.

An individual will not be deemed to be receiving a pension if he is in receipt of a lump sum payment or any capital sum received by way of commutation of pension, retiring or death gratuity.

The entire pension declared in the application to be received by the individual in accordance with the documentary evidence must be received in Malta. Where a pension is not wholly received in Malta the beneficiary cannot apply. Furthermore this pension needs to constitute at least 75% of the individual's Malta chargeable income for any particular tax year.

Therefore for any particular tax year, an individual's chargeable income needs to be made up of at least 75% pension and 25% of 'other' income. All the chargeable income may be constituted of pension income.

- 5) Is in possession of a valid travel document, certified proof of which is submitted together with the application.
  
- 6) Is in possession of sickness insurance which covers himself and his dependents in respect of all risks across the whole of the EU normally covered for Maltese nationals. In the eventuality that the applicant is not in a position to transpose EU health rights or rights under a Reciprocal Agreement that Malta is a signatory to, the health insurance cover must be procured by a company licensed in Malta or by an international reputable health insurance company and a certified copy of the insurance policy needs to be submitted together with the application documentation.
  
- 7) Is not domiciled in Malta and does not intend to establish his domicile in Malta within five years from the date of application.
  
- 8) Is a fit and proper person. The individual is required to submit an updated police conduct certificate (accompanied with the Apostille Certificate as indicated below) accompanied by a sworn declaration before a Commissioner for Oaths in Malta confirming whether the individual was not found guilty of any civil or criminal convictions as well as providing a confirmation of any civil or criminal ongoing proceedings. If the individual was found guilty, details of such convictions need to be provided in a separate declaration signed in original by the respective individual. The Commissioner reserves the right to make further questions for the purposes of this requirement.
  
- 9) Has applied for a Registration Certificate in Malta in terms of the Free Movement of European Union Nationals and their Family Members Order (S.L. 460.17) and a copy of the acknowledgement or Residence Card/Document is to be submitted with the application.

## II. Procedure for Application

An application for special tax status under the MRP may only be submitted to the Commissioner for Revenue through the services of an Authorised Registered Mandatary (ARM). The applicant needs to authorise such services by completing Part 1 of the Application form.

Any public documents executed in the territory of a country other than Malta which will be produced in Malta, in relation to the *Malta Retirement Programme Rules*, needs to be accompanied by an Apostille Certificate in terms of the *Hague Convention of 5th October 1961 Abolishing the requirement of Legalisation for Foreign Public Documents*. The following are deemed to be public documents:

- (a) documents emanating from an authority or an official connected with the courts or tribunals of the State;
- (b) administrative documents;
- (c) notarial acts;
- (d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

Where the jurisdiction executing the relevant public document is not a signatory to the above-mentioned Convention, the document should be legalised by a Notary or Lawyer (who should also cite in the legalisation declaration, whenever possible, the professional institute or association to which s/he belongs).

It is important to note that an application for special tax status will only be valid if signed and submitted by the Authorised Registered Mandatary.

An Authorised Registered Mandatary is a person which:

- holds a warrant to practice as an advocate under the *Code of Organisation and Civil Procedure*; or
- holds a warrant to practice as a legal procurator under the *Code of Organisation and Civil Procedure*; or
- has been appointed notary public in accordance with the provisions of the *Notarial Profession and Notarial Archives Act*; or
- holds a warrant to practice as an accountant under the *Accountancy Profession Act*; or
- is a member of the Institute of Financial Services Practitioners; or
- is a member of the Malta Institute of Taxation;
- is a member of the Malta Institute of Accountants; or
- is a member of the Malta Institute of Management;

or is at least 75% (directly or indirectly) owned by persons in possession of the above-mentioned criteria, and who is registered as such with the Commissioner for Revenue under the MRP.

**NOTE:** Authorised mandataries that are registered with the Commissioner for Revenue for the purposes of the HNWI will be deemed authorised for the purposes of the MRP. A list of such Authorised Registered Mandataries may be found at the Inland Revenue Department's website.

### ***A. Where to apply:***

Applications and the necessary supporting documentation are to be submitted to the International Tax Unit at the following address:

Commissioner for Revenue  
International Tax Unit  
MFSA Building  
Notabile Road  
Attard  
BKR 3000

The envelope should clearly be marked as “**Application: Malta Retirement Programme**”

### ***B. Administrative Fee:***

A non-refundable administrative fee of €2,500 needs to be paid upon application by means of a bank draft payable to the ‘Director General (Inland Revenue Department)’.

### ***C. Step-by-step procedure of the application process:***

Once an application is submitted to the Director General (Inland Revenue Department), it is checked for completeness accordingly. An acknowledgement letter is sent to the respective ARM indicating any missing documents, and a letter of intent is issued. This is accompanied with a notice of primary residence that needs to be completed and signed in original by the applicant. The letter of intent will be valid for twelve months from the date of such letter.

Once the Commissioner for Revenue is in receipt of the notice of primary residence and all the required documentation is in order, this including submission of a certified true copy of the registration certificate issued by the Department of Citizenship and Expatriate Affairs, special tax status will be confirmed.

It is important that full and accurate information is provided in the application form and accompanying documents. In cases of doubt as to how much detail is to be provided then more is preferable. Any omissions or incorrect details may cause a delay in the processing of the relevant application. Giving misleading information or omitting or concealing information is viewed very seriously and would be seen as evidence of untrustworthiness.

## **III. Tax Treatment**

An individual who has been granted special tax status in accordance with the MRP, hereinafter referred to as “beneficiary”, the beneficiary will be subject to a rate of fifteen cents (0.15) on every euro thereof on any income that is received in Malta from foreign sources by the beneficiary or his dependents (see below). This rate of tax will apply from the date of confirmation of the special tax status which is referred to as the “appointed day” up to “day of cessation of status. Progressive tax rates are to apply in the days prior to the appointed day or subsequent to the day of cessation of status.

Dependents may be any of the below:

- the beneficiary’s spouse;
- person with whom the beneficiary is in a stable and durable relationship -  
Individuals will be considered to be in a stable and durable relationship with the applicant, if, at the time of application, these persons are in a situation of permanent cohabitation, tied by bonds of mutual affection and mutual dependency. Such relationships need to be long-term, committed affiliations. 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 thereafter;

- the beneficiary's unmarried minor children,
- adopted minor children of the beneficiary
- children who are in the custody of the beneficiary or the spouse and such children are financially dependent on the beneficiary;

Financial dependency should be interpreted as meaning that the person needs financial support from the applicant or the spouse in order to meet his/her essential needs and should not be interpreted to mean that the person requires the support from the applicant or the spouse in order to have a certain level of income. Such dependency must have existed immediately before or very recently before the applicant applies for special tax status.

- children of the beneficiary or of his spouse who are not minors but who, because of circumstances of illness or disability of a serious gravity are unable to maintain themselves.

None of the above individuals may be beneficiaries under the *Residents Scheme Regulations* (S.L. 123.79), *High Net Worth Individuals - EU / EEA / Swiss Nationals Rules* (S.L. 123.129), *the High Net Worth Individuals Rules - Non-EU / EEA / Swiss Nationals Rules* (S.L. 123.130) or *Highly Qualified Persons Rules* (S.L. 123.126).

Other chargeable income of the beneficiary and his spouse that is not charged to tax as separate income at the rate mentioned above will be charged to tax at the rate of thirty-five cents (0.35) on every euro. This may include bank interest received from a local source or dividends received from a company registered in Malta. As indicated above, this type of income may not exceed 25% of the beneficiary's chargeable income.

### **A. Minimum Tax**

Beneficiaries of special tax status in terms of the MRP will need to pay a minimum tax of seven thousand five hundred euro (€7,500) annually and a further five hundred euro (€500) in respect of every dependent and every special carer.

The minimum tax for the first year will be payable not later than the tax return date. In the first year the beneficiary will not be subject to Provisional Tax (see below).

Such beneficiary retains the right to request a claim for relief of double taxation under Article 74 (a) and (b), *Income Tax Act*, provided that the minimum amount of tax payable by the beneficiary is as provided above. If the tax payable according to the tax computation (including any credit for relief of double taxation) is such that it is less than the minimum tax required to be paid as aforesaid, the amount to be paid will be the said minimum.

As the minimum tax payable according to the Rules indicate a minimum remittance of €50,000 [€7,500 / 15% = €50,000]. In view of the requirement that the pension needs to constitute at least 75% of the individual's chargeable income, as a corollary to this, the pension received and remitted needs to be at least €37,500 [€50,000 \* 75%].

In the year when the special tax status is confirmed or cancelled, the minimum tax will be calculated on a pro-rata basis by applying a split-year treatment.

### **B. Provisional Tax**

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

## **IV. Special Carer**

### ***A. Who may be a special carer?***

A special carer is an individual who has been providing substantial and regular, curative or rehabilitative health care services to the beneficiary or his dependents in a systematic manner for at least three years prior to an application for special tax status in terms of the Malta Retirement Programme. A special carer may reside with the beneficiary in the qualifying property.

Subject to providing sufficient proof to the satisfaction of the Commissioner, the Commissioner may deem this requirement to be satisfied where, despite the service not being rendered for a minimum period of three years but has been rendered on a regular basis for a long and established period. Such as - where a previous carer passed away, a new carer has been engaged or a carer has been required only recently.

It is important that the rendering of such service is regulated by a contract of service.

### ***B. Tax Treatment***

A special carer would be subject to tax in Malta at the rates set out in Article 56(1) and is precluded from benefitting from the 15% tax rate.

In all cases the special carer needs to register with the relevant tax authorities in Malta. The applicant as well as the authorised registered mandatary needs to inform the carer of this obligation.

### ***C. Working in Malta***

In the case that the special carer is a third country national and therefore would need a work permit issued by the Employment and Training Corporation (ETC) in Malta. In this respect kindly refer to the relevant guidelines issued by the ETC. These guidelines may be accessed through the following link: <http://etc.gov.mt/etc-portal/page/3/ELU-Guidelines.aspx>.

Further to the above, the application for special tax status in terms of the MRP would need to be accompanied by a letter addressed to the Department Manager (Employers Services), which letter must be received not later than fifteen days from the date of the same letter. The letter must include details of the applicant for special tax status in terms of the MRP, as well as details of the individual/s who are requesting a work permit to be issued. This letter will need to be endorsed by the International Tax Unit and submitted to the ETC by the arm. A template of this letter may be found in Annex 1 to these Guidelines.

## **V. Changes in circumstances that have an effect on the minimum tax payable**

The beneficiary, through the services of his Authorised Registered Mandatary must notify the Commissioner whenever there is a change in the number of dependents or special carers of such beneficiary. Such changes need to be notified to the Commissioner within four weeks from when the beneficiary became aware of the change.

## VI. Annual Tax Return

An individual who benefits from special tax status must submit the Annual Tax Return which includes an annual declaration, by means of which wherein any material changes that affect the beneficiary's special tax status need to be indicated.

In order to ensure that an individual may properly benefit from this tax treatment, the Commissioner may require the individual benefiting from a special tax status to produce information and documents including certifications and declarations within a time specified by the Commissioner in the request itself.

Further to the above, any person who knowingly makes a false declaration or statement in any documentation submitted to the Commissioner will be subject to the generic penal provisions in the *Income Tax Management Act* as well as the *Criminal Code*.

## VII. Cessation of Special Tax Status

### ***A. By choice of the beneficiary:***

A beneficiary may opt to cease to possess the special tax status by notifying the Commissioner for Revenue of his intention not to remain in possession of the special tax status from a particular date in the future. Cessation will take effect from the date indicated in the notification, which date cannot be in excess of three months from the date of receipt of such notification by the Commissioner for Revenue. If no date is indicated in the notification, cessation will have immediate effect.

### ***B. By default of the Income Tax Acts:***

A beneficiary will cease to possess special tax status with immediate effect, if the same beneficiary is in breach of any provisions of the Income Tax Acts. Examples of such defaults include:

- where routine compliance obligations are not abided with such as cases of tax evasion and misrepresentation;
- where requests for information by the Commissioner for Revenue are not replied to in time.

Where, for any reason the beneficiary is no longer represented by an Authorised Registered Mandatary, the said beneficiary should authorise another Mandatary and inform the Commissioner for Revenue of this change as soon as possible as otherwise the obligations under the Income Tax Acts will not be able to be fulfilled.

### ***C. Where there is a failure in connection with the conditions that need to be satisfied throughout the special tax status:***

Where any of the conditions mentioned below are no longer satisfied, the relevant individual ceases to possess the special tax status with retrospective effect as from the date on which the Commissioner for Revenue had determined in writing that such individual qualifies for a special tax status under the MRP. The special tax status will be terminated if the beneficiary:

- a) does not hold a qualifying property at any time after the appointed day; or
- b) becomes a Maltese national or;
- c) does not remain a citizen of an EU Member State, Iceland, Norway, Liechtenstein or Switzerland; or

- d) fails to receive in Malta all the pension indicated in the documentary evidence submitted to the Commissioner; or
- e) is not in possession of sickness insurance in respect of all risks normally covered for Maltese nationals for himself or his dependents after the appointed day; or
- f) establishes his domicile in Malta; or
- g) acquires a permanent residence certificate in terms of Article 7 of the *Free Movement of European Union Nationals and their Family Members Order*; or
- h) The beneficiary's stay is deemed not to be in the public interest by the Minister of Justice. This includes instances where the beneficiary's stay affects the:
  - a. interests of public safety;
  - b. the protection of public order;
  - c. national security;
  - d. territorial integrity;
  - e. public health or morals.
- i) If the individual resides in Malta for less than ninety days a year averaged over any five year period. Therefore the individual needs to reside in Malta for a minimum of 450 days out of any 1,825 day period. You may be requested to provide sufficient evidence to show that this requirement has been satisfied. This includes documents relating to transactions carried out in the course of day to day living (bank statements, transaction documents, bills, receipts for electricity, phone (excluding mobile phone), service charge and other day to day living expenses), travel records connected with trips into and out of Malta amongst others; or
- j) Stays in any other jurisdiction for more than 183 days in a calendar year. The beneficiary needs to make a declaration to this effect in the Annual Tax Return.

The beneficiary needs to notify the Commissioner for Revenue, through the services of his / her Authorized Registered Mandatary, within four weeks of becoming aware any such event. Where it is found that the beneficiary failed to make such notification to the Commissioner within the specified timeframe an administrative penalty of €5,000 applies.

The Minister responsible for Finance has the power to condone a failure in relation to any one of the conditions mentioned above. The Minister responsible for Finance may excuse such a failure where the individual notifies the said Minister within four weeks of such failure and in this form the individual provides:

- sufficient explanation that the failure was due to unforeseen circumstances; and
- sufficient proof that the best efforts were exercised to remedy the indicated failure.

It is important to note that reliance placed by the beneficiary or the Authorised Registered Mandatary on any other person to perform the task cannot be cited as being the reason for a failure due to unforeseen circumstances or sufficient proof that best efforts to remedy the relevant failure.

## **VIII. Power to request information:**

For the purpose of ascertaining an individual's entitlement to the right to pay tax at the reduced rate indicated in 3 above, the Commissioner for Revenue may require the individual applying for special tax status to produce information and documents, including certifications and declarations. The indicated documents must be produced within a time indicated by the Commissioner in the request itself.

## **IX. Abuse of Rights:**

The Commissioner for Revenue retains the right to issue an assessment in terms of Article 31 of the *Income Tax Management Act*, if an individual benefits from the right to pay tax at the reduced rate of tax indicated above but was not entitled to do so.

Annex 1

**Letter addressed to the Employment and Training Corporation to be endorsed by the International Tax Unit**

ARM name  
ARM address 1  
ARM number

Date

Department Manager (Employers Services)  
Employment and Training Corporation  
Hal Far Road  
Hal Far  
BBG 3000

Dear Sir,

(Title) (identification details of applicant) who is seeking to be approved as a beneficiary in terms of the *Malta Retirement Programme Rules, 2012* needs the services of a special carer, details of who may be found below:

(original signature of ARM)

For office use only: