

# **BDO MALTA**

## **Highly Qualified Persons Rules 2011**



The *Highly Qualified Persons Rules (2011)*, are a set of regulations designed to stimulate foreign investment in Malta. These came into effect by virtue of Legal Notice 106 of 2011 and amended by Legal Notice 428 of 2011.

The Rules state that expatriates in receipt of income arising from qualifying contracts of employment in Malta may opt to pay tax at a reduced flat rate of 15% on such income. This flat rate applies to income earned after 1 January 2010 and to employees of companies licensed or recognized by the Malta Financial Services Authority or the Lotteries and Gaming Authority (i.e. the *competent authority*).

The individual concerned must satisfy a number of conditions in order to benefit from this scheme, namely that:

- The employment activity must constitute an eligible office;
- The income must be derived by means of a qualifying contract of employment; and
- The qualifying contract of employment of the eligible office is in respect of the employment of a qualifying beneficiary.

### **Eligible Office**

The employment activity in the contract of employment is an *eligible office* if it is with companies licensed and/or recognised by the competent authority. The Rules also list the following senior positions which would qualify as eligible offices:

- Chief Executive Officer;
- Chief Risk Officer including Fraud and Investigations Officer;
- Chief Financial Officer;
- Chief Operation Officer;
- Chief Technology Officer;
- Chief Commercial Officer;
- Portfolio Manager;
- Chief Investment Officer;
- Senior Trader/Trader;
- Senior Analyst (including Structuring Professional);
- Actuarial Professional;
- Chief Underwriting Officer;
- Chief Insurance Technical Officer;
- Odds Compiler Specialist;
- Head of Research and Development;
- Search Engine Optimisation;
- System Architecture;
- Head of Marketing;
- Head of Distribution Channels; and
- Head of Investor Relation.

### **Qualifying Contract of Employment**

A *qualifying contract* is an employment contract which gives rise to a minimum income of €75,000 earned in the particular year of assessment. This amount excludes the annual value of any fringe

benefits. An additional incentive in the Rules is that any income derived from a qualifying contract which exceeds €5,000,000 would not be subject to tax in Malta on the amount above €5,000,000.

### Qualifying beneficiary

In order for an individual to be considered as a *qualifying beneficiary*, he or she must:

- Derive 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;
- Be domiciled in any country other than Malta;
- Be protected as an employee under the provisions of Maltese law;
- Prove to the satisfaction of the competent authority that he or she is in possession of the required specific competence and professional qualifications;
- Fully disclose for tax purposes and declare emoluments received in respect of income from a qualifying contract of employment;
- Prove to the competent authority that he or she performs the activities of an eligible office;
- Be in receipt of stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family without recourse to social assistance in Malta;
- Reside in accommodation regarded as normal for a comparable family in Malta, thereby meeting all the general health and safety standards in force in Malta;
- Be in possession of a valid travel document and of sickness insurance both for himself/herself and his/her family.

Taxpayers who already benefit from the incentives for investment services and insurance expatriates under Article 6 of the Income Tax Act are excluded from this scheme.

### Applicability

Individuals who meet the requirements set out in the Rules and who would wish to avail themselves of the 15% tax rate should:

- Apply to the relevant competent authority in order to obtain a formal determination of their eligibility as beneficiaries;
- Attach a declaration form, duly endorsed by the competent authority, to their income tax return;
- Include in their income tax return all 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 chargeable to tax in Malta, irrespective of where the duties have been performed.

In addition, the Rules stipulate that the individuals' employment income must have been earned on or after 1 January 2010 for the benefit to apply. However, any individuals who were under a contract of employment which:

- preceded the 1 January 2010; and
- required the performance of duties in Malta for a period of less than two years;

may also benefit from this reduced rate of tax.

## EEA or Swiss nationals vs. Third Country Nationals

The flat 15% tax rate applies for a consecutive period of five years for EEA and Swiss nationals or four years in the case of third-country nationals. This period commences in the year in which the individual is first liable to tax in Malta. Any income derived after this timeframe has expired would be charged at the standard rates of tax applicable to the said individuals.

Furthermore, it should be noted that:

- in the case of EEA and Swiss nationals who were under a contract of employment requiring the performance of their duties in Malta for up to two years before the 1 January 2010, the reduced rate of tax would apply for no longer than three consecutive years; and
- in the case of third-country nationals who were under a contract of employment requiring the performance of their duties in Malta for up to two years before the 1 January 2010, the reduced rate of tax would apply for not more than two consecutive years.

These periods are increased to four and three years respectively where the said individuals would have been employed for up to one year before the 1 January 2010.

In the case of third-country nationals, this tax benefit shall be withdrawn with retrospective effect if the beneficiary:

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

The tax benefit shall also be withdrawn with immediate effect if the granting of benefits and the beneficiary's stay in Malta are not in the public interest.

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

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