

## Tax Alert

### Global Residence Programme Rules, 2013 for individuals who are non-EU/non-EEA/non-Swiss nationals



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#### Introduction

A Global Residence Programme (“GRP Rules”) has been introduced with effect from 1 July 2013 for individuals who are *not* nationals of the EU, EEA or Switzerland in terms of Legal Notice 167 of 2013 and Article 56(23) of the (Malta) Income Tax Act, Chapter 123 of the Laws of Malta (“ITA”), and which GRP Rules confer on the successful applicant a special tax status.

The GRP Rules replace the Residence Scheme for High Net Worth Individuals (HNWIs) applicable to non-EU/non-EEA/non-Swiss Nationals with effect from 1 July, 2013 and the scope of the GRP Rules are to set out more favourable conditions under the new programme. Guidelines have been issued by the Malta Inland Revenue which set out further detail with regard to the application and interpretation of the GRP Rules.

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#### Who is eligible to apply?

To apply under the GRP Rules, an individual must be a “third country national” being a person who is not an EU, EEA or Swiss national. Such person must also not be a “long-term resident” of Malta and consequently must not have long-term resident status under the Status of Long-term Residents (Third Country Nationals) Regulations, and must not have resided legally and continuously in Malta for five years.

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#### Conditions for application

An individual who is eligible to apply under the GRP Rules must prove to the satisfaction of the Commissioner for Revenue (“the Commissioner”) that such individual satisfies all of the conditions set out below:

- (a) The applicant holds a 'Qualifying Property Holding' which is defined as immovable property situated in the Maltese islands which was *either* (i) purchased in Malta for a consideration of not less than €275,000 or in Gozo or the South of Malta for a consideration of not less than €220,000; *or*, (ii) rented for not less than €9,600 per annum for a property situated in Malta or €8,750 for a property situated in Gozo or the South of Malta. In all cases, the said property must be occupied as the primary place of residence;
- (b) The applicant does not benefit under the Residents Scheme Regulations, the High Net Worth Individuals – EU/EEA/Swiss Nationals Rules, the High Net Worth Individuals – Non-EU/EEA/Swiss Nationals Rules, the Malta Retirement Programme Rules, the Qualifying Employment in Innovation and Creativity Rules or the Highly Qualified Persons Rules;
- (c) The applicant is in receipt of stable and regular resources which are sufficient to maintain himself and his dependents without recourse to the social assistance system in Malta;
- (d) The applicant is in possession of a valid travel document;
- (e) The applicant is in possession of sickness insurance which covers himself/herself and his/her dependents in respect of all risks across the whole of the EU normally covered for Maltese nationals;
- (f) The applicant is a fit and proper person; and
- (g) The applicant is fluent in Maltese or English.

The above noted conditions must be satisfied on an ongoing basis.

The application by the individual may also cover the dependents and special carer, under certain conditions, of the said individual.

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### **Tax treatment**

An individual in possession of the relevant special tax status certificate issued in terms of the GRP Rules would be subject to the following tax treatment in Malta:

- (a) Income from foreign sources would be chargeable to Malta income tax *only if remitted to Malta ('remittance basis' of taxation)* and at a flat rate of 15% with the possibility of claiming double taxation relief but subject to the minimum annual tax liability referred to below.
- (b) The income of a beneficiary, his spouse and children not chargeable at the rate of 15% is chargeable at the rate of 35%. Consequently, no separate tax computation is provided for.
- (c) Any other realised income that is not charged at the 15% income tax rate above and including realised capital gains arising in Malta on the transfer of a capital asset (other than immovable property situated in Malta) would be chargeable to Malta income tax at the rate of 35%.

In terms of the ITA, any realised capital gain arising in Malta on the transfer of immovable property situated in Malta would be subject to a final withholding tax of 12% of the transfer value (an exemption applies in special circumstances, including the disposal of immovable property occupied as an individual's "own residence" for a period of three years). An individual may opt for the 35% tax rate on the capital gain, if the property being transferred was acquired less than 12 years prior to the sale.

*Any realised capital gain arising outside of Malta, even if remitted to Malta, would be exempt from Malta tax in view of the non-Malta domicile of the individual.*

A minimum annual Malta income tax payment payable by the individual amounting to €15,000 in respect of income from foreign sources and remitted to Malta, inclusive of the number of dependents of the individual, applies in terms of the GRP Rules. This minimum tax is due for payment by not later than 30 April of the year in which the income is received in Malta and must be accompanied by a return made to the Commissioner confirming that all the conditions of the scheme have been satisfied.

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### **Procedure for application**

An application for special tax status in terms of the GRP Rules may only be submitted to the Commissioner through the services of a person that qualifies as an Authorised Registered Mandatory (Deloitte Malta is an *Authorised Registered Mandatory* in terms of the Scheme) and on the prescribed application form.

A non-refundable administrative fee of €6,000 is payable to the Commissioner on application. In the event that the qualifying owned property is situated in the South of Malta, the administrative fee is reduced to €5,500. A list of localities has been published for the purpose of identifying towns and villages defined in the rules as the "South of Malta" and is set out at the end of this Tax Alert.

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### **Minimum residence period**

There is no minimum residence period. However, an individual in possession of the relevant special tax status certificate may not reside in any other tax jurisdiction for more than 183 days in any calendar year.

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### **Grandfathering of HNWI non-EU/EEA/Swiss Nationals Rules**

As a result of the introduction of the GRP Rules and, in terms of Legal Notice 178 of 2013, 'grandfathering' provisions have been introduced in respect of the HNWI non-EU/EEA/Swiss Nationals Rules. In terms of these 'grandfathering' provisions, a person in possession of or having a pending application in respect of special tax status in terms of the above referred HNWI Rules may request the Commissioner, through an Authorised Registered Mandatory, for a determination in writing that the special tax status be migrated to that in terms of the GRP Rules or that the application in terms of the above referred HNWI Rules be considered as an application in terms of the GRP Rules.

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**Localities for the purposes of the definition of the South of Malta**

*Birzebbugia, Cospicua, Fgura, Ghaxaq, Gudja, Kalkara, Kirkop, Luqa, Marsascala, Marsaxlokk, Mqabba, Paola, Qrendi, Safi, Sta. Lucija, Senglea, Siggiewi, Tarxien, Vittoriosa, Xghajra, Zabbar, Zejtun, Zurrieq*

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