

Tax Alert

The Residence Programme Rules, 2014 for individuals who are EU, EEA or Swiss nationals



28 August 2014

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Introduction

A Malta Residence Programme, entitled 'The Residence Programme Rules' ("TRP Rules") has been introduced with effect from 1 July 2013 for individuals who are nationals of the EU, EEA or Switzerland (but not Maltese nationals) in terms of Legal Notice 270 of 2014 and Articles 56(23) and 96 of the (Malta) Income Tax Act, Chapter 123 of the Laws of Malta ("ITA"), and which TRP Rules confer on the successful applicant a special tax status.

The TRP Rules replace the Residence Scheme for High Net Worth Individuals (HNWIs) applicable to EU/EEA/Swiss Nationals with effect from 1 July, 2013 and the scope of the TRP Rules are to set out more favourable conditions under the new programme which rules are in line with those applicable to Non-EU/non- EEA, or Non- Swiss Nationals in terms of the Global Residence Programme.

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Who is eligible to apply?

To apply under the TRP Rules, an individual must be an EU, EEA or Swiss National but who is not a Maltese national. Such person must also *not* be a "Permanent resident" of Malta or have applied for a Permanent Residence Certificate and not be in possession of a permanent residence certificate in terms of the Free Movement of European Union Nationals and their Family Members Order (S.L. 460.17).

Should an individual who has been granted special tax status in terms of the TRP Rules become a Permanent Resident of Malta such individual will lose his status and be subject to tax in Malta on his worldwide income at the progressive rates of taxation up to a maximum of 35%.

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Who qualifies as a dependant of the applicant?

The eligible dependants of the applicant who should also apply for the scheme if they reside with the beneficiary in the qualifying property are:

- (a) The beneficiary's spouse or person with whom the beneficiary is in a stable and durable relationship;
- (b) Minor children including adopted minor children and children who are in the care and custody of the beneficiary or the person mentioned in paragraph (a) above;
- (c) Children who are under the age of twenty-five, including adopted children and children who are in the care and custody of the beneficiary; or the person mentioned in paragraph (a) above, provided that such children are *not* economically active;
- (d) Children including adopted children and children who are in the care and custody of the beneficiary or the person mentioned in paragraph (a) above, who are not minors but who because of circumstances of illness or disability of a serious gravity, are unable to maintain themselves;
- (e) Dependent brothers, sisters and direct relatives in the ascending line of the beneficiary or the person mentioned in (a) above;

In order to apply as a dependant of the applicant, in all cases (a) to (e) above a dependant should not be benefitting 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 Global Residence Programme Rules, the Qualifying Employment in Innovation and Creativity Rules or the Highly Qualified Persons Rules.

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Conditions for application

An individual who is eligible to apply under the TRP 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 and no persons other than the beneficiary, his dependants and household staff (who have been employed by the applicant for at least two years prior to the application) may reside in the property;
- (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 Global Residence 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 can adequately communicate in English or Maltese, and which are the 2 official languages in Malta.

The above noted conditions must be satisfied on an ongoing basis. The applicant will lose his special tax status should he become a Third Country National.

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Tax treatment

A beneficiary in possession of the relevant special tax status certificate issued in terms of the TRP Rules, his spouse and children referred to in (b) and (d) in the list of dependants would be subject to the following tax treatment in Malta:

- (a) Income from foreign sources would be chargeable to Malta income tax as from the year in which the special tax status was granted *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 the beneficiary, his spouse and children referred to in (b) and (d) in the list of dependents 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 non-refundable *minimum annual* Malta income tax payment payable by the beneficiary amounting to €15,000 in respect of income from foreign sources that is remitted to Malta, applies in terms of the TRP 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 is payable in full in *both* the year when the special tax status was granted and in the year when the individual ceases to possess the said special tax status. The payment must be accompanied by a return made to the Commissioner confirming that all the conditions of the scheme have been satisfied. The said return is not required to be submitted in the year that the special tax status is granted.

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Procedure for application

An application for special tax status in terms of the TRP 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 are 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 EU/EEA/Swiss Nationals Rules

As a result of the introduction of the TRP Rules and, in terms of Legal Notice 268 of 2014, ‘grandfathering’ provisions have been introduced in respect of the HNWI 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 TRP Rules or that the application in terms of the above referred HNWI Rules be considered as an application in terms of the TRP 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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