

## HIGH NET WORTH INDIVIDUALS

### PART A. INTRODUCTION

These Guidance Notes outlines the new provisions which affect individuals who wish to apply for a special tax status under the *High Net Worth Individuals – EU/EEA/Swiss Nationals Rules* and the *High Net Worth Individuals – Non-EU/Non-EEA/Non-Swiss Nationals Rules*, collectively referred to in these notes as the **High Net Worth Individuals Rules**.

The *High Net Worth Individuals Rules* will run in parallel to the amended *Residents Scheme Regulations* but will not regulate holders of a valid permanent residence certificate issued by the Commissioner for Revenue in terms of the *Residence Scheme Regulations*. Such permit holders will continue to be regulated by the same Regulations as amended by Legal Notice 399 of 2011 but may choose to relinquish the benefits under such Regulations and apply for the special tax status.

Individuals who submitted their application under the *Residents Scheme Regulations* up to 14<sup>th</sup> September 2011 which application was acknowledged by the Commissioner for Revenue but was not processed due to the suspension of the same Regulations and wish to benefit from the special tax status under the *High Net Worth Individuals Rules* will need to submit a fresh application in accordance with the latter Rules.

#### To whom do these High Net Worth Individuals Rules apply?

Individuals who may benefit from these Rules are:

- EU nationals (excluding nationals of Malta);
- Nationals of Iceland, Norway and Liechtenstein;
- Nationals of Switzerland;
- Any individual who is not a citizen of the EU.

Legal Notice 400 of 2011 as amended by Legal Notice 41 of 2012 entitled '*The High Net Worth Individuals – EU/EEA/Swiss Nationals Rules*' (S.L. 123.129) applies to EU nationals, nationals of Iceland, Norway, Liechtenstein and Switzerland.

Legal Notice 403 of 2011 as amended by Legal Notice 42 of 2012 and Legal Notice XX of 2012 entitled '*The High Net Worth Individuals – Non-EU/Non-EEA/Non-Swiss Nationals Rules*' (S.L. 123.130) applies to any individuals who are not citizens of the EU, Iceland, Norway, Liechtenstein or Switzerland.

#### Note:

The material provided hereunder is solely for your guidance and is subject to periodic review and may subsequently be altered or withdrawn.

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*.

## **PART B. EU / EEA / SWISS NATIONALS**

### **1. Eligibility to apply for special tax status in terms of S.L. 123.129 entitled 'The High Net Worth Individuals – EU/EEA/Swiss Nationals Rules':**

#### **1.1. Who is eligible to apply?**

Individuals who are:

- EU nationals (excluding nationals of Malta);
- Nationals of Iceland, Norway and Liechtenstein; and
- Nationals of Switzerland;

may apply to the Commissioner for Revenue for special tax status.

Note that an individual may apply for special tax status in accordance with the *High Net Worth Individuals Rules* prior to entering into Malta.

#### **1.2. Conditions that must be satisfied**

An individual who is eligible to be granted special tax status must prove to the satisfaction of the Commissioner for Revenue that such individual satisfies all of the below conditions:

- (a) the applicant holds a Qualifying Property Holding. An applicant holds a Qualifying Property Holding if:
- a. he owns an immovable property in Malta purchased after 1<sup>st</sup> January 2011 for a consideration of not less than €400,000; or
  - b. a property purchased before 14<sup>th</sup> September 2011 for a consideration of not less than €116,000 by a person who filed an application under the *Residents Scheme Regulations*, which application was duly received and acknowledged by the Commissioner for Revenue before 14<sup>th</sup> September 2011; or
  - c. rents an immovable property in Malta for not less than € 20,000 annually as lessee.

In all of the above cases, the applicant and his / her family members would need to declare that he / she occupies the qualifying property as his / her principal place of residence worldwide.

It is important to note that:

- no person other than the beneficiary and his / her family members (see below) reside in the Qualifying Property at any time, and
- the Qualifying Property may not be let or sub-let.

Where the applicant would have already acquired or rented a Qualifying Property by the application date, a certified true copy of the contract providing evidence of such acquisition and title or lease, as the case may be, needs to be attached to the application. Where the applicant would not have acquired or rented a Qualifying Property by the application date, refer to Section 2.4 below.

“Family members” means:

- the beneficiary’s ascendants (the father or mother);
- the beneficiary’s descendants (children or descendants of such children);
- the beneficiary’s brothers, sisters;
- the beneficiary’s spouse/s, or
- individuals 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. These may include:
  - unmarried minor children of the applicant’s partner including adopted children where the applicant’s partner has custody and the children are dependent on the said partner;
  - civil partner;
  - partners where there is no civil partnership and it can be shown that they are in a ‘durable relationship’ with the applicant;
  - dependants, in the ascending line of the applicant or of his/her spouse provided that reasons and proof of such dependency is submitted;
  - more distant family members of the applicant or of his spouse who can demonstrate that they are dependant.

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.

(b) the applicant does not benefit from the *Residence Scheme Regulations* or the *Highly Qualified Persons Rules*.

A declaration to this effect needs to be made by the Authorised Registered Mandatory in Part 6 of the Application form.

(c) the applicant needs to be:

- a. an EU citizen but not a citizen of Malta; or
- b. a citizen of Iceland, Norway or Liechtenstein; or
- c. a citizen of Switzerland.

An applicant having citizenship of any country other than the countries mentioned above may be eligible to apply under these rules if he/she is also a citizen of one of the above.

In any case, an individual who is a citizen of Malta is not eligible to apply under these Rules and a declaration to this effect needs to be made by the Authorised Registered Mandatory (see below) in Part 6 of the Application form.

The applicant needs to provide a certified true copy of his/her main passport page with the Application form.

(d) the applicant is in receipt of stable and regular resources that are sufficient to maintain himself / herself and his family members without recourse to the social assistance system in Malta.

The Authorised Registered Mandatory needs to make a declaration to this effect in Part 7 of the Application form in relation to this requirement.

(e) the applicant is in possession of a valid travel document.

The applicant needs to provide a certified true copy of his / her main passport page or national official identity card to the application.

(f) the applicant is in possession of sickness insurance which covers himself and his family members in respect of all risks across the whole of the EU normally covered for Maltese nationals. The health insurance cover must be procured by a company licensed in Malta or by an international reputable health insurance company.

The applicant needs to provide a certified true copy of such insurance policy including details of the risks covered.

(g) the applicant is not domiciled in Malta and does not intend to establish his domicile in Malta within 5 years from the date of the application for special tax status.

The Authorised Registered Mandatory needs to make a declaration to this effect in Part 7 of the Application form.

(h) the applicant is a fit and proper person.

The Authorised Registered Mandatory needs to make a declaration to this effect in Part 7 of the Application Form. Where the Authorised Registered Mandatory is aware of any circumstance that affects this condition, the Authorised Registered Mandatory needs to identify such circumstances in Part 6 of the Application form.

In determining whether the applicant is a fit and proper person, the Commissioner for Revenue shall take into consideration a number of assessment criteria including matters such as the following:

- whether the individual is of good conduct and good morals;
- the individual's reputation and character amongst which whether the individual has a criminal record, convictions for fraud or other dishonesty;
- disqualification or censorship by professional or regulatory bodies, such as being barred from entry to any profession or occupation;
- being adjudged bankrupt by a competent Court or authority;
- being the subject of any current criminal or civil investigations, proceedings or litigation;
- offences connected to terrorism, money laundering, crimes against humanity and child abuse;

- whether in the past, the individual has been candid and truthful in all his dealings with the Maltese public administration.

## **2. Tax Treatment**

### **2.1. Beneficiary:**

An individual who has been granted special tax status in accordance with the *High Net Worth Individuals Rules*, hereinafter referred to as '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. This rate of tax will apply from the date of confirmation of the special tax status. Any chargeable income i.e. income arising in Malta or received in Malta, that the beneficiary might have prior to the date of confirmation of special tax status will be taxed according to the rates set out in Article 56(1), Income Tax Act.

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 a beneficiary is € 20,000 for any year of assessment, and
- a beneficiary with dependents must pay an additional € 2,500 for any year of assessment for every such dependent. Dependents are:
  - the beneficiary's spouse;
  - the beneficiary's unmarried minor children including adopted minor children of the beneficiary or of the spouse;
  - minor children who are in the custody of the beneficiary or the spouse and who are financially dependent on the beneficiary;
  - children who are not minors but, because of circumstances of illness or disability of a serious gravity are unable to maintain themselves.

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 HNWI status.

The above minimum amounts of tax payable are not refundable.

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

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.

- other chargeable income of the beneficiary [and his / her spouse] that is not charged to tax at the rate mentioned above will be charged to tax at the rate of thirty-five cents (0.35) on every euro.

It is important to note that under these Rules, a beneficiary and his spouse cannot opt for a separate tax computation.

In the year when the special tax status in accordance with the *High Net Worth Individuals Rules* is obtained or lost the minimum tax will be calculated on a pro-rata basis by applying a split-year treatment.

### **2.2. Income from employment in Malta:**

The special tax status granted in accordance with the *High Net Worth Individuals Rules* is a tax status and does not confer the beneficiary any further rights. Therefore all other laws need to be adhered to with respect to eligibility to work in Malta.

As indicated above, income arising in Malta from any trade, business, profession or vocation will be subject to a flat rate of tax of 35% on all the income derived therefrom.

### **2.3. Changes in Circumstances that have an effect on the minimum tax payable:**

The beneficiary, through the services of an Authorised Registered Mandatory must notify the Commissioner for Revenue whenever there is a change in the number of dependents of such beneficiary (example: when a child reaches the age of 18, in the cases of divorce or marriage or newborn child etc).

Such change needs to be notified to the Commissioner for Revenue within four weeks from when such change took place.

### **2.4. Provisional Tax**

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

### **2.5. Annual Tax Return**

An individual who benefits from special tax status must submit the Annual Tax Return which includes an annual declaration, 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 for Revenue 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 for Revenue 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 for Revenue will be subject to the generic penal provisions in the *Income Tax Management Act* as well as the *Criminal Code*.

It is important that you provide full and accurate information and any omissions may cause a delay to your application. If you are not sure how much detail to provide then more is preferable and you can use the various continuation sheets to help explain your position further. Giving misleading information or omitting or concealing information is viewed very seriously and would be seen as evidence of untrustworthiness. In such circumstances your vetting clearance may be refused, even though what you were seeking to conceal may not in itself have caused a problem.

### **2.6. Dependents and Family Members:**

Dependents (excluding the spouse) and / or family members who, in the year immediately preceding the year of assessment, have chargeable income i.e. income arising in Malta or received in Malta, in their own right need to register with the Commissioner for Revenue and will be subject tax at the progressive rates in terms of Article 56(1), Income Tax Act.

## **3. Cessation of Special Tax Status**

### **3.1. 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.

### **3.2. 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 Mandatory, the said beneficiary should authorise another Mandatory 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.

### **3.3. Where there is a failure in connection with the conditions applicable for special tax status:**

Where any of the conditions mentioned below no longer hold, 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 *High Net Worth Individuals Rules*.

The said conditions no longer hold where the beneficiary:

- a) does not hold a Qualifying Property Holding (described above) at any time after the appointed day; or
- b) is not 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; or
- c) 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
- d) establishes his domicile in Malta; or
- e) becomes a citizen of Malta; or
- f) does not remain a citizen of an EU Member State, Iceland, Norway, Liechtenstein or Switzerland; or
- g) 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:
  - interests of public safety;
  - the protection of public order;
  - national security;
  - territorial integrity;
  - public health or morals.
- h) 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 Mandatory, within four weeks of becoming aware any such event. Where it is found that the beneficiary failed to make such notification to the Commissioner for Revenue within the specified timeframe an administrative penalty of €10,000 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 Mandatory 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.

#### **4. 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 for Revenue in the request itself.

**5. 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 in 3 above but was not entitled to do so.

**PART C. NON-EU / NON-EEA / NON-SWISS NATIONALS**

**6. Eligibility to apply for special tax status in terms L.N. 403 of 2011 entitled 'The High Net Worth Individuals – Non-EU/Non-EEA/Non-Swiss Nationals Rules':**

**6.1. Who is eligible to apply?**

Individuals who are not:

- EU nationals;
- Nationals of Iceland, Norway and Liechtenstein; and
- Nationals of Switzerland;

may apply to the Commissioner for Revenue for special tax status.

Note that an individual may apply for special tax status in accordance with the *High Net Worth Individuals Rules* prior to entering into Malta.

**6.2. Conditions that must be satisfied**

An individual who is eligible to be granted for special tax status must prove to the satisfaction of the Commissioner for Revenue that such individual satisfies all of the below conditions:

- (i) the applicant holds a Qualifying Property Holding. An applicant holds a Qualifying Property Holding if:
- a. he owns an immovable property in Malta purchased after 1<sup>st</sup> January 2011 for a consideration of not less than €400,000; or
  - b. rents an immovable property in Malta for not less than € 20,000 annually as lessee.

In all of the above cases, the applicant and his / her family members would need to declare that he / she occupies the qualifying property as his / her principal place of residence worldwide.

It is important to note that:

- no person other than the beneficiary and his / her family members reside in the Qualifying Property at any time, and
- the Qualifying Property may not be let or sub-let.

Where the applicant would have already acquired or rented a Qualifying Property by the application date, an authenticated copy of the contract providing evidence of such acquisition and title or lease, as the case may be, needs to be attached to the application. Where the applicant would not have acquired or rented a Qualifying Property by the application date, refer to Section 8.4 below.

"Family members" means:

- the beneficiary's ascendants (the father or mother);
- the beneficiary's descendants (children or descendants of such children);
- the beneficiary's brothers, sisters,
- the beneficiary's spouse/s, or

- individuals 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.

These may include:

- unmarried minor children of the applicant's partner including adopted children where the applicant's partner has custody and the children are dependent on the said partner;
- civil partner;
- partners where there is no civil partnership and it can be shown that they are in a 'durable relationship' with the applicant;
- dependants, in the ascending line of the applicant or of his/her spouse;
- more distant family members of the applicant or of his spouse who can demonstrate that they are dependant.

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

- (ii) In the case of a person who declares that he does not intend to become a long-term resident of Malta in Part 6 of the Application form, such person may not spend more than 9 months in a calendar year in Malta. Such individual would be expected to leave Malta for a minimum period of 3 months in a calendar year. In this respect such individual will not become eligible for long-term residency status in accordance with the *Status of Long-Term Residents (Third Country Nationals) Regulations, 2008*. In such cases, the applicant need not enter into a qualifying contract to benefit from the *High Net Worth Individuals Rules*.
- (iii) In the case of a person who declares that he intends to become a long-term resident of Malta in Part 6 of the Application Form, such individual needs to become a party to a qualifying contract (see below for details on such contract). Applicants are required to contact Commissioner for Revenue within the Ministry responsible for Finance so as to become a party to a Qualifying Contract, and the Ministry of Foreign Affairs.

The following are considered to be long-term residents:

- a person who has long-term residence status in terms of the *Status of Long-Term Residents (Third Country Nationals) Regulations, 2006*;
- a person who applies for long-term resident status under the *Status of Long-Term Residents (Third Country Nationals) Regulations, 2006*; or
- third country nationals who have resided legally and continuously in Malta for five years. Periods of absence from Malta shall not interrupt the aforesaid period and shall be taken into account for its calculation where they are shorter than six consecutive months and do not exceed in total 10 months within the aforesaid five year period.

It is important to note that special tax status granted by the *High Net Worth Individuals Rules* does not grant the beneficiary a right to enter, stay and reside in Malta, at any time throughout the duration of such status.

**The Qualifying Contract:**

A qualifying contract is an agreement that is entered into between the Commissioner for Revenue and the applicant wherein the applicant contributes a non-refundable amount of €500,000 in his respect and €150,000 for every family member to the Government of Malta.

- (iv) the applicant does not benefit from the *Residence Scheme Regulations* or the *Highly Qualified Persons Rules*.

A declaration to this effect needs to be made by the Authorised Registered Mandatory in Part 8 of the Application form.

- (v) the applicant is in receipt of stable and regular resources that are sufficient to maintain himself / herself and his dependents without recourse to the social assistance system in Malta.

The Authorised Registered Mandatory needs to make a declaration to this effect in Part 8 of the Application form in relation to this requirement.

- (vi) the applicant is in possession of a valid travel document.

The applicant needs to provide a certified true copy of his / her main passport page or national official identity card to the application.

- (vii) the applicant 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. The health insurance cover must be procured by a company licensed in Malta or by an international reputable health insurance company.

The applicant needs to provide a certified true copy of such insurance policy including details of the risks covered.

- (viii) the applicant is not domiciled in Malta and does not intend to establish his domicile in Malta within 5 years from the date of the application for special tax status.

The Authorised Registered Mandatory needs to make a declaration to this effect in Part 8 of the Application form.

- (ix) the applicant is a fit and proper person.

The Authorised Registered Mandatory needs to make a declaration to this effect in Part 8 of the Application Form. Where the Authorised Registered Mandatory is aware of any circumstance that affects this condition, the Authorised Registered Mandatory needs to identify such circumstances in Part 7 of the Application form.

In determining whether the applicant is a fit and proper person, the Commissioner for Revenue shall take into consideration a number of assessment criteria including matters such as the following:

- whether the individual is of good conduct and good morals;
- the individual's reputation and character amongst which whether the individual has a criminal record, convictions for fraud or other dishonesty;
- disqualification or censorship by professional or regulatory bodies, such as being barred from entry to any profession or occupation;
- being adjudged bankrupt by a competent Court or authority;
- being the subject of any current criminal or civil investigations, proceedings or litigation;
- offences connected to terrorism, money laundering, crimes against humanity and child abuse
- whether in the past, the individual has been candid and truthful in all his dealings with the Maltese public administration.

(x) the applicant needs to be fluent in Maltese or English. A declaration to this effect is to be made in Part 8 in the Application form.

Where available, certified true copies of any certifications proving this requirement should be attached to the Application form; and

(xi) the applicant cannot be:

- an EU national;
- a national of Iceland, Norway or Liechtenstein; or
- a national of Switzerland.

An applicant who has dual-citizenship i.e. having citizenship of one of the above jurisdictions and a citizenship of another jurisdiction, is precluded from applying for special tax status under these Rules but may apply for special tax status in accordance with the Rules applicable for EU, EEA or Swiss nationals (please refer to Guidance Notes concerning applicants that are EU, EEA or Swiss nationals).

## **7. Tax Treatment**

An individual who has been granted special tax status in accordance with the *High Net Worth Individuals Rules*, hereinafter referred to as '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. This rate of tax will apply from the date of confirmation of the special tax status. Any chargeable income i.e. income arising in Malta or received in

Malta, that the beneficiary might have prior to the date of confirmation of special tax status will be taxed according to the rates set out in Article 56(1), Income Tax Act.

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 a beneficiary is € 25,000 for any year of assessment, and
- a beneficiary with dependents must pay an additional € 5,000 for any year of assessment for every dependent. Dependents are:
  - the beneficiary's spouse;
  - the beneficiary's unmarried minor children including adopted minor children of the beneficiary or of the spouse;
  - minor children who are in the custody of the beneficiary or the spouse and who are financially dependent on the beneficiary;
  - children who are not minors but, because of circumstances of illness or disability of a serious gravity are unable to maintain themselves.

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 HNWI status.

The above minimum amounts of tax payable are not refundable.

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

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.

- other chargeable income of the beneficiary and his/her spouse that is not charged to tax at the rate mentioned above will be charged to tax at the rate of thirty-five cents (0.35) on every euro.

It is important to note that under these Rules, a beneficiary and his spouse cannot opt for a separate tax computation.

In the year when the special tax status in accordance with the *High Net Worth Individuals Rules* is obtained or lost the minimum tax will be calculated on a pro-rata basis by applying a split-year treatment.

### **7.1. Income from employment in Malta**

The special tax status granted in accordance with the *High Net Worth Individuals Rules* is a tax status and does not confer the beneficiary any further rights. Therefore all other laws need to be adhered to with respect to eligibility to work in Malta. In the case of

individuals who declare their intention of becoming long-term residents of Malta and became a party to the Qualifying Contract, such work permit will be issued by the Commissioner for Revenue.

As indicated above, income arising in Malta from any trade, business, profession or vocation will be subject to a flat rate of tax of 35% on all income derived therefrom.

### **7.2. Changes in Circumstances that have an effect on the minimum tax payable:**

The beneficiary, through the services of an Authorised Registered Mandatory must notify the Commissioner for Revenue whenever there is a change in the number of dependents of such beneficiary (example: when a child reaches the age of 18, in the cases of divorce or marriage or newborn child etc).

Such change needs to be notified to the Commissioner for Revenue within four weeks from when such change took place.

### **7.3. Provisional Tax**

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

### **7.4. Annual Tax Return**

An individual who benefits from special tax status must submit the Annual Tax Return which includes an annual declaration 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 for Revenue 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 for Revenue will be subject to the generic penal provisions in the *Income Tax Management Act* as well as the *Criminal Code*.

It is important that you provide full and accurate information and any omissions may cause a delay to your application. If you are not sure how much detail to provide then more is preferable and you can use the various continuation sheets to help explain your position further. Giving misleading information or omitting or concealing information is viewed very seriously and would be seen as evidence of untrustworthiness. In such circumstances your vetting clearance may be refused, even though what you were seeking to conceal may not in itself have caused a problem.

### **7.5. Dependents and Family Members:**

Dependents (excluding the spouse) and / or family members who, in the year immediately preceding the year of assessment, have chargeable income i.e. income arising in Malta or received in Malta, in their own right need to register with the Commissioner for Revenue and will be subject tax at the progressive rates in terms of Article 56(1), Income Tax Act.

## **8. Cessation of Special Tax Status**

### **8.1. 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.

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

A beneficiary will cease to possess special tax status with immediate effect from the relative year of assessment, 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 Mandatory, the said beneficiary should authorise another Mandatory 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.

### **8.3. Where there is a failure in connection with the conditions applicable for special tax status:**

Where any of the conditions mentioned below no longer hold, 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 *High Net Worth Individuals Rules*.

The said conditions no longer hold where the beneficiary:

- a. does not hold a Qualifying Property Holding (described above) at any time after the appointed day; or
- b. is not 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; or

- c. 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
- d. establishes his domicile in Malta; or
- e. declared that he had no intention of becoming a long-term resident at application stage and stays in Malta for a period longer than 9 months in a calendar year; or
- f. becomes a national of Malta; or
- g. becomes a national of another EU Member State, Iceland, Norway, Liechtenstein or Switzerland; or
- h. the beneficiary's stay is deemed not to be in the public interest. This includes instances where the beneficiary's stay affects the:
  - interests of public safety;
  - the protection of public order;
  - national security;
  - territorial integrity;
  - public health or morals; or
- i. 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 Mandatory, within four weeks of becoming aware any such event. Where it is found that the beneficiary failed to make such notification to the Commissioner for Revenue within the specified timeframe an administrative penalty of €10,000 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 Mandatory 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.

### **9. 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 for Revenue in the request itself.

**10. 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 in 3 above but was not entitled to do so.