

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 of Inland 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 14th September 2011 which application was acknowledged by the Commissioner of Inland 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 entitled '*The High Net Worth Individuals - EU/EEA/Swiss Nationals Rules*' applies to EU nationals, nationals of Iceland, Norway, Liechtenstein and Switzerland.

Legal Notice 403 of 2011 entitled '*The High Net Worth Individuals - Non-EU/Non-EEA/Non-Swiss Nationals Rules*' 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provided hereunder is solely for your guidance and is subject to periodic review and may subsequently be altered or withdrawn.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 of Inland 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 L.N. 400 of 2011 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 of Inland 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 of Inland 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 1st January 2011 for a consideration of not less than €400,000; or
 - b. the said applicant, having already filed an application under the *Residents Scheme Regulations*, which application was duly received and acknowledged by the Commissioner of Inland Revenue, either
 - i. owns an immovable property in Malta which was purchased before the 14th of September 2011 for a consideration of not less than €116,000, or
 - ii. became a party to a promise of sale before the 14th of September 2011 to purchase and acquire an immovable property in Malta for a consideration of not less than €116,000. In this case the Commissioner of Inland Revenue has the discretion to treat such property as a property purchased by the applicant before the 14th of September 2011. This applies insofar as:
 1. good cause is shown by the applicant; and
 2. the promise of sale in respect of which notice under the *Duty on Documents and Transfers Act* has been given, was registered with the Commissioner of Inland Revenue prior to the 14th of September 2011; and
 3. the applicant provides an authenticated copy of the final deed of purchase to the Commissioner of Inland Revenue, proving that the final deed of purchase was published by a date not later than the 31st of March 2012. If the applicant fails to do so the application will no longer be valid after the lapse of 6 months from the date of the letter of intent (see below); or
 - c. rents an immovable property in Malta for not less than € 20,000 annually as lessee.

Any individual who had filed an application under the *Residents Scheme Regulations* before 14th September 2011 but was not issued with a certificate in terms of such Regulations before 1st January 2011 will be deemed to hold a

Qualifying Property as indicated above if the applicant satisfies the following condition. The applicant needs to have entered into a lease agreement prior to the 14th September 2011 for an amount of not less than €4,150 per annum and deposits a copy of such agreement, attested by a notary or advocate, to the Expatriates Section, Block 1, Inland Revenue Department, Floriana by not later than the 31st March 2012.

In such cases the applicant is required to present a copy of the acknowledgement received by the Commissioner of Inland Revenue together with the application for special tax status under the *High Net Worth Individuals Rules*.

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;
- 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 dependents without recourse to the social assistance system in Malta.

The Authorised Registered Mandatory needs to make a declaration to this effect in Part 6 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 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.

- (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 6 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 6 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 5 of the Application form.

In determining whether the applicant is a fit and proper person, the Commissioner of Inland 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. Procedure for Application

An application for special tax status under the *High Net Worth Individuals Rules* may only be submitted to the Commissioner of Inland Revenue through the services of an Authorised Registered Mandatory (ARM). The applicant needs to authorise such services by completing Part 4 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 *High Net Worth Individuals 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 Mandatory.

2.1. Authorised Registered Mandatory

An Authorised Registered Mandatory 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 of Inland Revenue under the *High Net Worth Individuals Rules*.

A list of such Authorised Registered Mandatories may be found at the Inland Revenue Department's website.

2.2. Where to apply:

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

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

The envelope should clearly be marked as '**Application: High Net Worth Individuals**'

2.3. Administrative Fee

A non-refundable administrative fee as prescribed by the Minister responsible for Finance applies for every application submitted. As prescribed in Legal Notice 424 of 2011 entitled '*Notice of Application Fees in terms of the High Net Worth Individuals - EU / EEA / Swiss Nationals Rules, 2011 and the High Net Worth Individuals - Non-EU / EEA / Swiss Nationals Rules, 2011*', the applicable fee is €6,000 which needs to be paid by bank draft payable to the 'Commissioner of Inland Revenue' and attached to the Application form.

On the basis of an extra-statutory concession, the above-mentioned application fee of €6,000 is waived in the case of applications for special tax status under the *High Net Worth Individuals Rules* which are made further to an application under the *Residents Scheme Regulations* and which application was duly received and acknowledged by the Commissioner of Inland Revenue before 14th September 2011. The waiver is subject to presentation of a copy of the acknowledgement together with the application.

This concession will continue to apply in respect of applications submitted until the 15th of September 2012.

2.4. Step-by-step procedure of the application process:

Once an application (together with the Questionnaire and bank draft covering the respective fee) is submitted to the Commissioner of Inland Revenue, it is checked for completeness accordingly.

If the application is found to be correctly completed and contains all the necessary documentation, an acknowledgement of such application will be sent to the respective ARM.

On the other hand, if the application is found to be incomplete and / or has missing documents, a letter will be sent to the respective ARM indicating the missing documents and / or the reason as to why the application may not be processed further unless and until such application is rectified.

An applicant need not be the owner or lessee of a qualifying property at time of application. Such application would still be valid if a copy of the final deed of sale, promise of sale or lease agreement is not attached to the application form. However, individuals who would have acquired or rented a Qualifying Property by the date of application are to attach a certified true copy of the relevant contract with the application form.

A valid application will be forwarded for the due diligence process to commence. Once this process has been completed, the ARM will be notified of the outcome.

If the outcome is positive and:

- The applicant holds a qualifying property which he / she declares to occupy as his / her principal place of abode worldwide, the Commissioner of Inland Revenue will confirm the special tax status in accordance with *High Net Worth Individuals Rules*.
- The applicant does not hold a qualifying property and / or has not yet taken up residence therein, the Commissioner of Inland Revenue will issue a letter of intent informing the ARM of the documents that need to be submitted so that the confirmation of the special tax status is issued.

The letter of intent indicated above will be valid for twelve months from the date of such letter.

If the outcome of the due diligence process is negative, the application will not be processed further and the ARM will be notified accordingly.

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.

3. 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.

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.

3.1. 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.

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.

3.2. 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 of Inland 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 within four weeks from when such change took place.

3.3. Provisional Tax

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

3.4. 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 of Inland 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 of Inland Revenue will be subject to the generic penal provisions in the *Income Tax Management Act* as well as the *Criminal Code*.

4. Cessation of Special Tax Status

4.1. By choice of the beneficiary

A beneficiary may opt to cease to possess the special tax status by notifying the Commissioner of Inland 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 of Inland Revenue. If no date is indicated in the notification, cessation will have immediate effect.

4.2. 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 of Inland 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 of Inland Revenue of this change as soon as possible as otherwise the obligations under the Income Tax Acts will not be able to be fulfilled.

4.3. 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 of Inland 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 of Inland 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 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.

5. 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 of Inland 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.

6. Abuse of rights:

The Commissioner of Inland 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

7. 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':

7.1. 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 of Inland 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.

7.2. 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 of Inland 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 1st January 2011 for a consideration of not less than €400,000; or
 - b. the said applicant, having already filed an application under the *Residents Scheme Regulations*, which application was duly received and acknowledged by the Commissioner of Inland Revenue, either:
 - i. owns an immovable property in Malta which was purchased before the 14th of September 2011 for a consideration of not less than €116,000, or
 - ii. became a party to a promise of sale before the 14th of September 2011 to purchase and acquire an immovable property in Malta for a consideration of not less than €116,000. In this case the Commissioner of Inland Revenue has the discretion to treat such property as a property purchased by the applicant before the 14th of September 2011. This applies insofar as:
 1. good cause is shown by the applicant; and
 2. the promise of sale in respect of which notice under the *Duty on Documents and Transfers Act* has been given, was registered with the Commissioner of Inland Revenue prior to the 14th of September 2011; and
 3. the applicant provides an authenticated copy of the final deed of purchase to the Commissioner of Inland Revenue, proving that the final deed of purchase was published by a date not later than the 31st of March 2012. If the applicant fails to do so the application will no longer be valid after the lapse of 6 months from the date of the letter of intent (see below); or
 - c. rents an immovable property in Malta for not less than € 20,000 annually as lessee.

Any individual who had filed an application under the *Residents Scheme Regulations* before 14th September 2011 but was not issued with a certificate in terms of such Regulations before 1st January 2011 will be deemed to hold a Qualifying Property as indicated above if the applicant satisfies the following

condition. The applicant need to have entered into a lease agreement prior to the 14th September 2011 for an amount of not less than €4,150 per annum and deposits a copy of such agreement, attested by a notary or advocate, to the Expatriates Section, Block 1, Inland Revenue Department, Floriana by not later than the 31st March 2012.

In such cases the applicant is required to present a copy of the acknowledgement received by the Commissioner of Inland Revenue together with the application for special tax status under the *High Net Worth Individuals Rules*.

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 the Ministry of Finance, Economy and Investment so as to become a party to a Qualifying Contract, and the Ministry of Foreign Affairs.

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 Government of Malta and the applicant wherein the applicant contributes an amount to the Government of Malta.

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.

- (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 7 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 7 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.

- (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 7 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 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 5 of the Application form.

In determining whether the applicant is a fit and proper person, the Commissioner of Inland 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 7 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).

8. Procedure for Application

An application for special tax status under the *High Net Worth Individuals Rules* may only be submitted to the Commissioner of Inland Revenue through the services of an Authorised Registered Mandatory (ARM). The applicant needs to authorise such services by completing Part 4 of the Application form.

Any public documents executed in the territory of a country other than Malta which will be produced in Malta together with an application for special tax status under the *High Net Worth Individuals 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 Mandatory.

8.1. Authorised Registered Mandatory

An Authorised Registered Mandatory is a person who:

- 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 of Inland Revenue under the *High Net Worth Individuals Rules*.

A list of such Authorised Registered Mandatories may be found at the Inland Revenue Department's website.

8.2. Where to apply:

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

Commissioner of Inland Revenue
International Tax Unit
MFSA Building
Notabile Road
Attard

The envelope should clearly be marked as '**Application: High Net Worth Individuals**'

8.3. Administrative Fee

A non-refundable administrative fee as prescribed by the Minister responsible for Finance applies for every application submitted. As prescribed in Legal Notice 424 of 2011 entitled '*Notice of Application Fees in terms of the High Net Worth Individuals - EU / EEA / Swiss Nationals Rules, 2011 and the High Net Worth Individuals - Non-EU / EEA / Swiss Nationals Rules, 2011*', the applicable fee is €6,000 which needs to be paid by bank draft payable to the 'Commissioner of Inland Revenue' and attached to the Application form.

On the basis of an extra-statutory concession, the above-mentioned application fee of €6,000 is waived in the case of applications for special tax status under the *High Net Worth Individuals Rules* which are made further to an application under the *Residents Scheme Regulations* and which application was duly received and acknowledged by the Commissioner of Inland Revenue before 14th September 2011. The waiver is subject to presentation of a copy of the acknowledgement together with the application.

This concession will continue to apply in respect of applications submitted until the 15th of September 2012.

8.4. Step-by-step procedure of the application process:

Once an application (together with the Questionnaire and bank draft covering the respective fee) is submitted to the Commissioner of Inland Revenue, it is checked for completeness accordingly.

If the application is found to be correctly completed and contains all the necessary documentation, an acknowledgement of such application will be sent to the respective ARM.

On the other hand, if the application is found to be incomplete and / or has missing documents, a letter will be sent to the respective ARM indicating the missing documents and / or the reason as to why the application may not be processed further unless and until such application is rectified.

An applicant need not be the owner or lessee of a qualifying property at time of application. Such application would still be valid if a copy of the final deed of sale, promise of sale or lease agreement is not attached to the application form. However, individuals who would have acquired or rented a Qualifying Property by the date of application are to attach a certified true copy of the relevant contract with the application form.

A valid application will be forwarded for the due diligence process to commence. Once this process has been completed, the ARM will be notified of the outcome.

If the outcome is positive and:

- The applicant holds a qualifying property which he / she occupies as his / her principal place of abode worldwide, and is a party to the qualifying contract if the applicant intends to become a long-term resident of Malta, the Commissioner of Inland Revenue will confirm the special tax status in accordance with *High Net Worth Individuals Rules*.
- The applicant does not hold a qualifying property and / or does not occupy such property as his / her principal place of abode worldwide, the Commissioner of

Inland Revenue will issue a letter of intent informing the ARM the documents that need to be submitted so that the confirmation of the special tax status is issued.

The letter of intent indicated above will be valid for twelve months from the date of such letter.

If the outcome of the due diligence process is negative, the application will not be processed further and the ARM will be notified accordingly.

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.

9. 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.

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.

9.1. 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.

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.

9.2. 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 of Inland 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 within four weeks from when such change took place.

9.3. Provisional Tax

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

9.4. 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 of Inland 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 of Inland 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.

10. Cessation of Special Tax Status

10.1. By choice of the beneficiary

A beneficiary may opt to cease to possess the special tax status by notifying the Commissioner of Inland 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 of Inland Revenue. If no date is indicated in the notification, cessation will have immediate effect.

10.2. 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 of Inland 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 of Inland Revenue of this change as soon as possible as otherwise the obligations under the Income Tax Acts will not be able to be fulfilled.

10.3. 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 of Inland 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 stays in Malta for a period longer than 9 months in a calendar year; or
- f. declared that his intention was to become a long-term resident and is no longer a party to a qualifying contract; or
- g. becomes a national of Malta; or
- h. becomes a national of another EU Member State, Iceland, Norway, Liechtenstein or Switzerland; or
- i. 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
- 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 of Inland 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 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.

11. 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 of Inland 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.

12. Abuse of rights:

The Commissioner of Inland 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.