New Beneficial Maltese Tax Regime to Attract Financial Services Professionals

By means of Legal Notice 106 of 2011 'Highly Qualified Persons Rules, 2011', new rules have been issued by virtue of which individuals in receipt of employment income from an 'eligible office' will be subject to a flat rate of tax of 15% on their employment income instead of the progressive rates of tax which are capped at 35%.

The new rules came into force with effect from 1 January 2011 and apply to employment income which is subject to income tax in Malta as from year of assessment 2012 (basis year 2011) and subsequent years. The rationale behind the implementation of such rules is to attract expatriates who work within the financial services industry by incentivising them to relocate to Malta, thereby continuing to increase Malta's attractiveness as a reputable financial services centre.

Employment income from an eligible office will benefit from a reduced tax rate of 15% if it amounts to at least €75,000 per annum. In the event that the income exceeds €5 million, the excess is exempt from tax. An eligible office is defined, as an employment with a company licensed and/or recognized by the Malta Financial Services Authority (MFSA) consisting of the following employments or offices:

- Chief Executive Officer, Chief Risk Officer, Chief Financial Officer, Chief Operations Officer, Chief Technology Officer;
- Portfolio Manager, Chief Investment Officer, Senior Trade/Trader, Senior Analyst (including Structuring Professional), Actuarial Professional, Chief Underwriting Officer, Chief Insurance Technical Officer;
- Head of Marketing, Head of Investor Relations.

The conditions which need to be satisfied in order for the professional to benefit from the 15% reduced rate of tax are the following:

- The individual derives employment income which is subject to tax in Malta in respect of work carried out in Malta or in respect of any period spent outside Malta in connection with such work;
- The individual is in possession of professional qualifications and has at least five years experience;
- The individual has not benefitted from any other deductions available to investment services expatriates;
- The contract of employment is subject to Maltese laws for the purposes of carrying out genuine and effective work;
- The individual fully declares in his Maltese personal income tax return all income derived from his contract of employment;
- The individual proves to the satisfaction of the MFSA that:
    i. He is in receipt of stable and regular resources which are sufficient to maintain himself and his family members without recourse to social assistance in Malta;
    ii. He resides in accommodation regarded as normal for a comparable family in Malta and which meets the general health and safety standards in force in Malta;
    iii. He is in possession of a valid travel document;

iv. He is in possession of sickness insurance in respect of all risks normally covered for Maltese nationals for himself and his family members; and
v. He is not domiciled in Malta.

The employment income may not qualify for the 15% reduced rate of tax if:

- The employer has received any benefits under business incentive laws applicable in Malta;
- The employee holds more than 25% (directly or indirectly) of the company paying the emoluments; and
- A claim is made for any relief, deduction, reduction, credit or set-off.

Any rights are withdrawn with retrospective effect if the individual is a third country national and he either:

- Physically stays in Malta, in the aggregate, for more than four years; or
- Directly or indirectly acquires any immovable property, including any rights thereon, situated in Malta.

The reduced rate of tax applies for a consecutive period of five years for EEA and Swiss nationals and for a consecutive period of four years for other nationals. Persons who were employed under a contract of employment requiring the performance of their duties in Malta before 1 January 2009 cannot benefit from the flat rate of 15%.

EEA and Swiss nationals who commenced their employment between 1 January 2009 and 31 December 2009 will be able to benefit from the reduced rate for three consecutive years starting from year of assessment (YA) 2011 (for third country nationals the flat rate applies for two consecutive years starting from YA 2011).

EEA and Swiss nationals who commenced their employment between 1 January 2010 and 31 December 2010 will be able to benefit from the reduced rate for four consecutive years starting from YA 2011 (for third country nationals the flat rate applies for three consecutive years starting from YA 2011).