High Net Worth Individuals Rules announced on the 15th September 2011

The High Net Worth Individuals Rules will run in parallel to the Residents Scheme Regulations as amended.

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 a person that qualifies as an Authorised Registered Mandatory. The applicant needs to authorise such services by completing Part 5 of the Application form. 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.

The following are detailed guidance notes on these new provisions:

HIGH NET WORTH INDIVIDUALS

1. INTRODUCTION

These Guidance Notes outline 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 Residents Scheme Regulations as amended. Holders of a valid permanent residence certificate in terms of the Residence Scheme Regulations will continue to be regulated by the same Regulations.

Individuals wishing to benefit from the High Net Worth Individuals Rules will need to submit an application for a special tax status. An individual who is currently regulated by the Residence Scheme Regulations may relinquish the benefits under such Regulations and apply for the special tax status.

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.

The High Net Worth Individuals – EU/EEA/Swiss Nationals Rules apply to EU nationals, nationals of Iceland, Norway, Liechtenstein and Switzerland.

The High Net Worth Individuals – Non-EU/Non-EEA/Non-Swiss Nationals Rules apply to any individuals who are not citizens of the EU.

2. EU / EEA / SWISS NATIONALS
2.1 Eligibility to apply for special tax status in terms of the High Net Worth Individuals Rules:

2.1.1 Who is eligible to apply?

Individuals who are:

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

2.1.2 Conditions that must be satisfied

An individual who is eligible to apply for 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. on the date of application, the said applicant owns an immovable property in Malta purchased after 14th September 2011 for a value of not less than €400,000; or

b. on date of application the said applicant, having already filed an application under the Residents Scheme Regulations, which application has been duly received and acknowledged by the Commissioner of Inland Revenue, owns an immovable property in Malta which was purchased before the 14th of September 2011 for a value of not less than €116,000; or

c. rents an immovable property in Malta for not less than €20,000 annually as lessee, and in either case, the applicant and his family members have their habitual residence in such property as their principal place of residence.

It is important to note that:

- no person other than the beneficiary and his / her family members reside in the Qualifying Property Holding, and

- the beneficiary already resides in the Qualifying Property Holding at the time that the application is made. This address of such Qualifying Property Holding must be indicated in Part 3 of the Application form, and

- such property may not be leased or sub-leased. An authenticated copy of the contract providing evidence of such ownership or lease needs to be attached to the application.

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, spouse/s, or
- persons with whom the beneficiary is in a stable and durable relationship.
(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 in Part 6 of the Application form.

(c) the applicant needs to be:

- an EU citizen but not a citizen of Malta; or
- a citizen of Iceland, Norway or Liechtenstein; or
- 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 in Part 6 of the Application form.

The applicant needs to provide a 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.

An Authorised Registry Mandatory would need to make a declaration on the applicant’s behalf 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 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 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 applicant needs to provide a declaration wherein it is declared that he/she is not domiciled in Malta and has no intention to establish his/her domicile in Malta so as to prove this condition in Part 6 of the Application form.

(h) the applicant is not a long-term resident.

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 afore said five year period

The individual therefore needs to provide a declaration stating that he / she is not a long-term resident of Malta in Part 6 of the Application form.

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

Where the applicant is aware of any circumstance that affects this condition, the applicant 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 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.

A non-refundable fee as prescribed by the Minister responsible for Finance applies for every application submitted. The said fee needs to be paid by bank draft payable to the ‘Commissioner of Inland Revenue’ and attached to the Application form. The applicable fee is €6,000.

Where the Commissioner of Inland Revenue agrees that the individual qualifies for special tax status, the Commissioner will notify the Authorised Registered Mandatory in writing.

2.2 Tax Treatment

Once the special tax status has been acquired: the income of an individual who has been granted a special tax status, hereinafter referred to as a ‘beneficiary’ that is received in Malta from foreign sources, is taxed at the rate of fifteen cents (0.15) on every euro thereof.
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 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.

The above minimum amounts of tax payable are not refundable.

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.

2.2.1 Changes in Circumstances that has an effect on the minimum tax payable may be different:

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 must be notified to the Commissioner within four weeks from when such change took place.

2.2.2 Annual Tax Return

An individual who benefits from special tax status must submit the Annual Tax Return. Any material changes that affect the beneficiary’s special tax status must also be indicated in the said Return.

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 time specified by the Commissioner in the request itself.

2.2.3 Cessation of Special Tax Status
- **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. 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.

- **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.

- **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;

g) resides in Malta for less than 90 days in a calendar year; or
h) 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; or

i) stays in any one 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 an Authorised Registry 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 anyone 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.

2.3 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.

2.4 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.

3. NON-EU / NON-EEA / NON-SWISS NATIONALS

3.1 Eligibility to apply for special tax status in terms of the High Net Worth Individuals Rules:

3.1.1. 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.

3.1.2. *Conditions that must be satisfied*

An individual who is eligible to apply for 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:

i. on the date of application, the said applicant owns an immovable property in Malta purchased after 14th September 2011 for a value of not less than €400,000; or

ii. on date of application the said applicant, having already filed an application under the Residents Scheme Regulations, which application has been duly received and acknowledged by the Commissioner of Inland Revenue, owns an immovable property in Malta which was purchased before the 14th of September 2011 for a value of not less than €116,000, or

iii. rents an immovable property in Malta for not less than €20,000 annually as lessee, and in either case, the applicant or his family members have their habitual residence in such property as their principal place of residence.

It is important to note that:

- no person other than the beneficiary and his / her family members reside in the Qualifying Property Holding, and

- the beneficiary already resides in the Qualifying Property Holding at the time that the application is made. This address of such Qualifying Property Holding must be indicated in Part 3 of the Application form, and

- such property may not be leased or sub-leased.

An authenticated copy of the contract providing evidence of such ownership or lease needs to be attached to the application.

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, spouse/s, or
- persons with whom the beneficiary is in a stable and durable relationship.

(b) where the applicant intends to become a long-term resident, or he /she is already a long term resident, he / she needs to be a party to a qualifying contract (see below for details on such contract);
It is important to note that individuals who are not nationals of the EU, Iceland, Norway, Liechtenstein or Switzerland have two options with regard to their entry requirements and stay in Malta:

(i) Option 1

The applicant may apply and benefit under the High Net Worth Individuals Rules without acquiring any special rights to enter and reside freely in Malta. Such individual would need to apply for a visa to enter and stay in Malta (in accordance with the Immigration Act) since a special tax status granted by the High Net Worth Individuals Rules do not grant the individual a right to stay and reside in Malta.

Therefore for a beneficiary to be able to prolong his stay in Malta he / she would need to regularly renew his / her visa. In such cases the applicant need not enter into a qualifying contract to benefit from the High Net Worth Individuals Rules; or

(ii) Option 2

The applicant may apply and benefit under the High Net Worth Individuals Rules and apply for special rights of residence and stay by entering into a qualifying contract.

The option taken needs to be indicated in Part 6 of the Application Form.

The Qualifying Contract:

A qualifying contract is an agreement that is entered into between the Government of Malta and the applicant wherein the applicant delivers to the Government of Malta a sum of €500,000 and €150,000 for every dependent (“the Bond”) which the Government of Malta holds by title of gratuitous voluntary deposit.

The Bond will be restored to the applicant if such applicant declares and proves to the Government of Malta that he / she has renounced to the special tax status granted under High Net Worth Individuals Rules, prior to the expiration of four years from the date of the qualifying contract.

If the applicant either:

- intends to become a long-term resident (see below) prior to the expiration of four years from the date on which he has applied for special tax status in terms of the High Net Worth Individuals Rules, or

- becomes a long-term resident (see below) prior to the expiration of four years from the date on which he has applied for special tax status in terms of the High Net Worth Individuals Rules

he / she will forfeit all the rights over the Bond. In the case where an applicant is already a long-term resident, the qualifying contract will specify that the Bond amounting to the whole €500,000 (and €150,000 for every dependent who is also a long-term resident) is immediately forfeited upon the applicant becoming a party to such qualifying contract.

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.

Under a qualifying contract, the Bond is also forfeited in the event of any one of the following cases i.e. where:

- the special tax status was obtained on the basis of fraud or omission on part of the applicant, to the extent that had such fact been known to the Government of Malta at the time of application, such application would have been refused; or

- where the beneficiary commits a serious crime in or outside Malta following the grant of the special tax status under the High Net Worth Individuals Rules, to the extent that had such crime been committed prior to the granting of the special tax status, the application for such would have been refused.

A copy of such contract needs to be delivered to the Commissioner of Inland Revenue not later than four weeks from the date on which the qualifying contract was signed.

(c) 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 in Part 7 of 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 on the applicant’s behalf 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 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 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 applicant needs to provide a declaration wherein it is declared that he / she is not domiciled in Malta and has no intention to establish his / her domicile in Malta so as to prove this condition in Part 7 of the Application form.

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

Where the applicant is aware of any circumstance that affects this condition, the applicant 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 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.

(i) 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, any certifications proving this requirement should be attached to the Application form; and

(j) 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 that are EU, EEA or Swiss nationals.

A non-refundable fee as prescribed by the Minister responsible for Finance applies for every application submitted. The said fee needs to be paid by bank draft payable to the ‘Commissioner of Inland Revenue’ and attached to the Application form. Where the Commissioner of Inland Revenue agrees that the individual qualifies for special tax status,
the Commissioner will notify the Authorised Registered Mandatory in writing. Guidance Notes to the High Net Worth Individuals Rules The applicable fee is €6,000.

In the case of those applicants that intend to become long-term residents or are already long-term residents, the Commissioner will issue a provisional special tax status where he is of the opinion that the individual qualifies for such status. A final confirmation of the special tax status will be issued to the Authorised Registered Mandatory upon receipt of an authenticated copy of the relevant qualifying contract. This copy is to be received by the Commissioner not later than four weeks from the Commissioner’s notification of the abovementioned provisional special tax status. Where the relevant qualifying contract is not received within this timeframe, the Application will be considered invalid.

3.2 Tax Treatment

Once the special tax status has been acquired:

- the income of an individual who has been granted a special tax status, hereinafter referred to as a ‘beneficiary’, that is received in Malta from foreign sources, is taxed at the rate of fifteen cents (0.15) on every euro thereof.

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.

Dependants 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.

The above minimum amounts of tax payable are not refundable. 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.
3.2.1 Changes in Circumstances that has an effect on the minimum tax payable may be different:

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 must be notified to the Commissioner within four weeks from when such change took place.

3.2.2 Annual Tax Return

An individual who benefits from special tax status must submit the Annual Tax Return. Any material changes that affect the beneficiary’s special tax status must also be indicated in the said Return.

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.

3.2.3 Cessation of Special Tax Status

- 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 in the form as the Commissioner may require. 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.

- 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.

- 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) is a long-term resident without being a party to a qualifying contract; or

f) becomes a national of Malta; or Guidance Notes to the High Net Worth Individuals Rules

g) becomes a national of another EU Member State, Iceland, Norway, Liechtenstein or Switzerland;

h) resides in Malta for less than 90 days in a calendar year; 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 one 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 anyone 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.
3.3 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.

3.4 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.

AMENDMENTS TO THE RESIDENTS SCHEME REGULATIONS

The schemes available in terms of the High Net Worth Individuals – EU/EEA/Swiss Nationals Rules, 2011 and the High Net Worth Individuals – Non-EU/Non-EEA/Non-Swiss Nationals Rules, 2011 (hereinafter collectively referred to as “the HNWI Rules”) are replacing the Permanent Resident Scheme (hereinafter referred to as “the PR Scheme”) under the Residents Scheme Regulations (hereinafter referred to as “the PRS Regulations”). Consequently the PRS Regulations have been amended and certain provisions have been repealed.

One of the results of these amendments is that no certificates in terms of the PRS Regulations will be issued with a date subsequent to 31 December 2010. Current Holders of a PR Scheme Certificate

An individual who had acquired rights under the Regulations before 1 January 2011 shall continue to benefit from such rights as long as the conditions of the scheme are adhered to.

The following conditions for eligibility have been added by the amendments to the PRS Regulations:

· the holder of the certificate must be 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;

· the holder of the certificate must be in possession of sickness insurance in respect of all risks normally covered for Maltese nationals for himself and the members of his family;

· the property being declared as the holder’s place of residence cannot be occupied by any person other than the holder of the certificate and his family members.

If such individual sells his house or his flat he must acquire a Qualifying Property Holding in order to maintain his eligibility for the Scheme. “Qualifying Property Holding” is adequately defined in the amended PRS Regulations. Such definition is in line with that found in the
**HNWI RULES**

The holder of the certificate is required to submit an annual declaration accompanied by documentary evidence and/or professional attestation as proof that he has satisfied all the conditions required by the PRS Regulations.

**PENDING APPLICATIONS**

Any individuals who applied for the PR Scheme before 14 September 2011 but were not issued with a certificate in terms of the PRS Regulations before 1 January 2011 may now apply for the scheme available under the HNWI Rules if such individuals satisfy the eligibility criteria of such rules. Property purchased before 14 September 2011 for a consideration of not less than €116,000 shall still be considered as a “Qualifying Owned Property” for the purposes of the HNWI Rules.


*Disclaimer - No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity.*