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## GES NewsFlash

# Malta — Residence Scheme for High Net Worth Individuals (HNWIs) from the EU / EEA / Swiss Nationals – removal of minimum stay period in Malta requirement

February 1, 2012

### Background

Malta tax law provides for an HNWI Malta Residence Scheme (the “Scheme”) for individuals from the EU / EEA / Swiss nationals, which has been in effect since 1 January 2011. The said Scheme confers a special tax status to the successful applicant.

Following recent amendments to the Scheme, the requirement for the holder of the special tax status to reside physically in Malta for not less than 90 days in a calendar year has been removed, and this removal has been made retrospectively from the introduction of the Scheme on 1 January 2011. The requirement remains, however, for the holder of the special tax status to reside for not more than 183 days in any other jurisdiction.

The above amendment has rendered the Scheme all the more attractive to prospective applicants in view of the fact that the Scheme does not incorporate, in the applicable conditions, the minimum period of physical stay in Malta requirement.

The following are the salient features of the Scheme as amended.

### Conditions for Application

An individual who is eligible to apply under the Scheme must prove to the satisfaction of the Commissioner of Inland Revenue (the “Commissioner”) that such individual satisfies all of the conditions set out below:

1. The applicant holds a “Qualifying Property Holding,” which is defined as immovable property situated in Malta that was either (i) purchased after 1 January 2011 for a consideration of not less than €400,000 or (ii) rented for not less than €20,000 per annum, and, in all cases, the applicant and his/her family members have their habitual residence in such property as their principal place of residence.
2. The applicant is not a person who benefits under the Residence Scheme Regulations or the Highly Qualified Persons Rules.
3. The applicant is not a Maltese national and is a citizen of an EU Member State (other than Malta), Iceland, Norway, Liechtenstein, or Switzerland.
4. The applicant is in receipt of stable and regular resources that are sufficient to maintain himself/herself and his/her dependents without recourse to the social assistance system in Malta.
5. The applicant is in possession of a valid travel document.

6. The applicant is in possession of sickness insurance that covers himself/herself and his/her dependents with respect to all risks across the entire EU normally covered for Maltese nationals.
7. The applicant is not domiciled in Malta and does not intend to establish his/her domicile in Malta within five years from the date of the application.
8. The applicant is a fit and proper person.

The application by the individual may also cover the dependents of the said individual.

## Procedure for Application

An application for special tax status in terms of the Scheme, together with a “fit and proper person” questionnaire, may only be submitted to the Commissioner through the services of a person that qualifies as an *Authorised Registered Mandatory* (Deloitte Malta is an Authorised Registered Mandatory in terms of the Scheme) and on the prescribed application form. A nonrefundable fee of €6,000 is payable to the Commissioner for the application or by bank draft payable to the “Commissioner of Inland Revenue” attached to the application form.

If the Commissioner agrees that the individual qualifies for special tax status in terms of the Scheme, the Commissioner will notify the Authorised Registered Mandatory in writing. In the event that the applicant has not, at the time of application, acquired a “Qualifying Property Holding” as referred to above, the Commissioner shall provide the applicant with a letter of intent and will issue a certificate of special tax status upon receipt of evidence that the applicant holds a “Qualifying Property Holding.”

## Minimum residence period

There is no requirement for a minimum period of residence in Malta. The individual should ensure that he/she is not a resident in any other jurisdiction for more than 183 days in any calendar year.

## Tax Treatment

An individual in possession of the relevant special tax status certificate would be subject to the following tax treatment in Malta:

1. Income remitted to Malta from foreign sources would be chargeable to Malta income tax at a flat rate of 15%. Relief for double taxation in terms of double tax treaty relief and unilateral relief is available. No Malta income tax liability arises to the extent that such foreign source income is not remitted to Malta in view of the non-Malta domicile status of the individual.
2. Any other realised income that is not charged at the 15% income tax rate above, including realised capital gains arising in Malta on the transfer of a capital asset (other than immovable property situated in Malta), would be chargeable to Malta income tax at the rate of 35%.
3. Any realised capital gain arising in Malta on the transfer of immovable property situated in Malta would be subject to a final withholding tax of 12% of the transfer value (an exemption applies in special circumstances, including the disposal of immovable property occupied as an individual’s “own residence” for a period of three years). An individual may opt for the 35% tax rate on the capital gain, subject to the Capital Gains Rules of the (Malta) Income Tax Act, if the property being transferred was acquired less than seven years prior to the sale.
4. Any realised capital gain arising outside of Malta would be exempt from Malta tax in view of the non-Malta domicile of the individual (a non-Malta domicile is, in fact, a condition for eligibility in terms of the Scheme) irrespective of whether or not such foreign sourced capital gain is remitted to Malta.

A minimum annual Malta income tax payment payable by the individual amounting to €20,000 with an additional €2,500 for every dependent of the individual applies in terms of the Scheme.

It is important to note that under the Scheme, the individual and his spouse cannot opt for separate tax computation.

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## People to contact

If you have any questions concerning the issues in this GES NewsFlash, please contact one of the tax professionals at our Deloitte offices as follows:

Chris Curmi  
Director, Tax  
[ccurmi@deloitte.com.mt](mailto:ccurmi@deloitte.com.mt)

James Bonavia  
Manager, Tax  
[jbonavia@deloitte.com.mt](mailto:jbonavia@deloitte.com.mt)

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