

## The Investment Registration Scheme, 2003

### **Background to the extension of the Investment Registration Scheme**

In September 2001, the Government had launched an Investment Registration Scheme. The purpose of that Scheme was to provide residents of Malta who held foreign eligible assets without the necessary exchange control permits as required by the Exchange Control Act and/or without declaring the relevant income under the Income Tax, with the **opportunity to regularise their position** under both Acts. That Scheme expired at the end of 2002.

When launching that Scheme, the Government had amply emphasised that consultations were actively being conducted between the governments of the major industrialised economies to introduce multilateral and bilateral agreements regarding exchange of information between tax authorities on non-resident investments in their respective countries. This international collaborative framework was intended to combat money laundering, terrorism and tax evasion generally.

Since then, a number of very significant developments have taken place towards this common international objective. In particular, **in June 2003, the Council of the EU adopted the Directive on Taxation of Savings Income** which came into force in July 2003. EU Member States have to adopt legislation to comply with this Directive before 1 January 2004 and have to apply this Directive as from 1 January 2005. This Directive requires an institution (such as a bank, an issuer of bonds and similar securities, etc) in a Member State who makes a payment of investment income to individuals resident in another Member State, to provide information concerning such a payment to the competent tax authority of the its Member State. This tax authority, in turn, is obliged to communicate this information automatically to the tax authority of the Member State of the recipient of the overseas investment income.

This obviously implies that once Malta passes appropriate legislation to adopt this Directive, the Inland Revenue Department in Malta will start to receive information from the tax authorities of other EU members on the financial investments held by Maltese residents in such member states.

Against this background, the Government has decided to make a one-time extension of the Investment Registration Scheme for a very limited period until 15 November 2003. The Scheme is governed by **regulations** which are broadly the same as those of the previous IRS. These regulations have been published in the Government Gazette on Friday 22 August 2003 through **Legal Notice No 209 of 2003** which has been issued by virtue of powers granted to the Minister of Finance and Economic Affairs under the Exchange Control Act. This Legal Notice can be viewed in this website.

### **Main Features of the Scheme**

The Scheme will be **operational from 1 September 2003 till 15 November 2003**.

A resident of Malta may register under this Scheme any eligible asset which was held outside Malta on the applicable date and which should have been declared in terms of

the Exchange Control Act (as in force on 1 July 2003). The income from such assets which should have been declared under the Income Tax Act may also be registered under the Scheme by the person who owns such assets on the applicable date.

The “**applicable date**” for the purposes of what can be registered under this Scheme means eligible assets that were held outside Malta:

- a) on or after 1 January 2000 and which were repatriated to Malta before 1 September 2001, or
- b) on 1 September 2001 but which are repatriated to Malta before 16 November 2003, or
- c) on 1 September 2001 and which are still retained abroad.

Registration is open both to eligible foreign assets that are repatriated to Malta (as explained above) and assets that continue to be retained abroad.

**Eligible assets** which may be registered under the Scheme constitute:

- i) financial assets held abroad, including bank deposits, shares, bonds, collective investment schemes, derivatives, and other investment instruments;
- ii) life and annuity long term insurance policies issued abroad;
- iii) loans extended by the applicant to companies which he has established abroad for the sole purpose of investing funds for portfolio purposes;
- iv) immovable property held abroad.

Registration of eligible assets will be executed through the **Appointed Registration Agents**, namely credit institutions, stockbrokers and other Investment Services Providers holding a category 2 or category 3 licence. Special forms are available at the Appointed Registration Agents for this purpose.

The Appointed Registration Agent will only register such assets against the submission by the applicant of **original documentary evidence** confirming that the applicant was the beneficial owner of the assets to be registered on the applicable date. Persons registering their overseas portfolio investments will be asked by the Appointed Registration Agent to sign a **declaration** to confirm that they are the beneficial owners of the registered assets, that all the information and documentation submitted are authentic, and that the assets do not represent proceeds from criminal activities. Once such a declaration is provided, the Appointed Registration Agent will issue a Registration Certificate.

The Registration certificate will be issued to the applicant against the payment of a **registration fee** equivalent to 5% of the current market value of the registered eligible assets. The applicant is not to be charged any **fee for registration services** rendered by the Appointed Registration Agent. This fee is paid directly by the Government to the Agent (recoverable from the registration fee). However, if the applicant requests additional services (such as valuation of assets), the Agent is entitled to charge a fee for such extra services.

The Agent issues three copies of the **certificate**. The original will be given to the applicant, the duplicate copy is retained by the Registration Agent for his records and the triplicate copy is sent to the Central Bank of Malta for custody in the Central

Registration Certificate Depository. The Certificate will be sequentially and uniquely numbered and in controlled stationery. It is strictly non-transferable.

Upon registration, the beneficial owner of the registered assets under this Scheme is **exempted from retrospective action by Government in respect of such registered assets in terms of the Income Tax Act and the Exchange Control Act**. Once a person registers eligible assets, he is exempted from all tax that would have been chargeable on all income received up to date of registration. The only exception is income that had been declared in the income tax returns up to the year of assessment 2001 and that had already been submitted to the Commissioner of Inland Revenue by 1 September 2001.

Moreover, upon registration, a person is considered as never having contravened any exchange control restrictions or requirements with regard to the registered assets.

The submission by the applicant of **false statements and documents** will nullify the Certificate and render the applicant liable to criminal action being taken against him.

Registration is covered by **confidentiality** and the Appointed Registration Agents and the Central Bank are prohibited by law from disclosing information obtained in the process of registration. In order to protect this confidentiality, stringent measures and procedures have been put into place at the Central Bank to ensure the utmost confidentiality of information contained in the Registration Certificate filed in the Central Registration Certificate Depository.

Neither the Inland Revenue Department nor any other entity can have access to the information held by the Registration Agents and the Central Bank in respect of Registration Certificates. The only way the Inland Revenue Department can come to know about the information contained in the Certificate is when the owner of the registered assets, at his discretion, reveals the Certificate to the tax authorities in order to prove that he has regularised his position. This might occur, for instance, in the event that such a person is undergoing an investigation by the Tax Compliance Unit in respect of information that was obtained from an overseas tax authority in the context of the EU Directive on Taxation of Savings Income or under any other bilateral agreement with the tax authorities of other countries.

Further information on the Scheme can be obtained from the Appointed Registration Agents or from the Central Bank of Malta (Mr Edmund Calleja and Mr Frank Caruana) Freephone 8007 2308.

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