

**SUBSIDIARY LEGISLATION 123.168**

**QUALIFYING EMPLOYMENT IN AVIATION  
(PERSONAL TAX) RULES**

24th May, 2016

*LEGAL NOTICE 177 of 2016, as amended by Legal Notice 1 of 2017.*

- 1.** The title of these rules is the Qualifying Employment in Aviation (Personal Tax) Rules. Citation.
- 2.** (1) In these rules, unless the context otherwise requires: Interpretation.
- "the Act" means the Income Tax Act; Cap. 123.
- "artificial arrangement" shall include an arrangement in terms of which a beneficiary receives any benefit or payment, in whatever form, from a person who is related to his employer and such beneficiary does not declare for tax purposes such benefit or payment in Malta or is not liable to tax on such income in Malta;
- "business incentive laws" includes the Malta Enterprise Act and the Business Promotion Act; Cap. 463.  
Cap. 325.
- "Commissioner" means the Commissioner of Inland Revenue;
- "competent authority" means the Authority for Transport in Malta established in terms of article 5 of the Authority for Transport in Malta Act; Cap. 499.
- "eligible office" is an employment defined as key for the operations of the company and whose function is confirmed by the competent authority, based on an administrative assessment procedure, and which is listed in the Schedule;
- "education qualification" means any diploma, certificate or other evidence of formal qualifications issued by an educational establishment attesting the successful completion of a post secondary education programme, namely a set of courses provided by an educational establishment recognised as an education institution by the State in which it is situated;
- "professional experience" means the actual and lawful pursuit of the profession concerned;
- "professional qualifications" means qualifications attested by evidence of education qualifications or, by way of derogation, when provided for by national law, attested by professional experience of a level comparable to education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer;
- "public interest" includes the interests of public safety, the protection of public order, national security, territorial integrity, public health or morals;
- "rights acquired under this law" means the right to elect to pay tax at the reduced rate of tax contemplated in article 56(21) of the

Act and these rules;

"these rules" shall include the provisions of article 56(21) of the Act and the rules contained in these Rules;

"third-country national" means any person who is not a citizen of the European Union within the meaning of Article 20 of the Treaty on the European Union and the Treaty on the Functioning of the European Union.

(2) A person shall be deemed to be related to a body of persons if:

- (a) that person and the body of persons are, directly or indirectly, controlled or beneficially owned to the extent of more than twenty-five percent (25%) by the same persons; or
- (b) that person owns, directly or indirectly, more than twenty-five percent (25%) of the ordinary share capital or voting rights of the body of persons.

Qualifying contract.

3. (1) Income from a qualifying contract of employment qualifies under these rules when it is received by a beneficiary and consists in income subject to tax under article 4(1)(b) of the Act (exclusive of the annual value of any fringe benefits) of a minimum of forty-five thousand euro (€45,000) and consists of emoluments from an eligible office.

(2) A qualifying contract of employment shall be considered to be such if the employment activity contemplated in the contract of employment is an eligible office.

(3) Income shall not be construed to be income from a qualifying contract of employment if it is paid by the employer who has received a benefit or benefits under business incentive laws or arrangement in terms of the business incentive laws or is paid by a person who is related to the employer who has received a benefit or benefits under any business incentive laws or arrangement in terms of business incentive laws.

Beneficiary.

4. A beneficiary is an individual who meets the following conditions:

- (a) he is an individual who derives income subject to tax under article 4(1)(b) of the Act, being emoluments payable under a qualifying contract of employment, and received in respect of work or duties carried out in Malta, or in respect of any period spent outside Malta in connection with such work or duties, or on leave during the carrying out of such work or duties;
- (b) he is protected as an employee under Maltese law, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else, is paid, and has the required adequate and specific competence, as proven to the satisfaction of the competent authority;
- (c) he proves to the satisfaction of the competent authority

that he is in possession of professional qualifications or experience;

- (d) he fully discloses for tax purposes and declares emoluments received in respect of income from a qualifying contract of employment and all income received from a person related to his employer paying out income from a qualifying contract as chargeable to tax in Malta;
- (e) he proves to the satisfaction of the competent authority that he performs activities of an eligible office; and
- (f) he proves to the satisfaction of the competent authority that:
  - (i) he is in receipt of stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system 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 the members of his family; and
  - (v) he is not domiciled in Malta.

5. (1) When an individual exercises the option available under article 56(21) of the Act in respect of a year of assessment, the minimum amount of income which shall be chargeable to tax at the reduced rate provided for in that sub-article in respect of that year of assessment shall be deemed to be forty-five thousand euro (€45,000), basis year 2015:

Minimum amount chargeable to tax.

Provided that the rate of 15% shall apply without possibility to claim any relief, deduction, reduction, credit or set off of any kind. Notwithstanding the generality of the foregoing, a beneficiary shall be allowed deductions of tax under article 23 of the Income Tax Management Act.

Cap. 472.

(2) The option available under article 56(21) of the Act may not be exercised in respect of any year of assessment preceding the year of assessment 2017.

6. (1) The option available under article 56(21) of the Act shall, with respect to EEA and Swiss nationals, apply for a consecutive period of five years commencing from the first year of assessment in which that person is first liable to tax under the provisions of the Act.

Claw back of benefits.  
Amended by:  
L.N. 1 of 2017.

(2) The option available under article 56(21) of the Act shall, with respect to third-country nationals, apply for a consecutive period of four years commencing from the first year of assessment in which that person is first liable to tax under the provisions of the

Act.

(3) Rights acquired under this law shall be deemed to have been withdrawn with immediate effect if the grant of benefits under these rules and the beneficiary's stay in Malta are not in the public interest.

(4) Notwithstanding anything to the contrary contained in these rules any person who falls under the provisions of sub-rule (1) or sub-rule (2), irrespective of whether he has availed himself of the benefit provided by these rules or not, shall be eligible, upon application, for a one-time extension of five years or four years respectively to his qualifying period, subject to the continued adherence to the other provisions of these rules:

Provided that the eligibility under the said rules shall not exceed a consecutive period of ten years commencing from the year preceding the first year of assessment in which that person is first liable to tax under the provisions of the Act.

Anti-abuse provisions.

7. (1) Where any person, in order to obtain benefits under these rules, makes use of artificial arrangements, the Commissioner shall, by order in writing, determine the liability to tax of the said person, for any year of assessment, in such manner and in such amount as may be necessary in the circumstances of the case, to nullify benefits obtained under these rules. A person who disagrees with an order served upon him as aforesaid shall have the same rights to object to that order and to appeal from a decision of the Commissioner refusing that objection as if that order were an assessment issued under the Income Tax Management Act and the relevant provisions of that Act relating to objections and appeals shall apply *mutatis mutandis*:

Cap. 372.

Provided that if any person claims a benefit under these rules when that person was not entitled to the said benefit, such person shall be liable to pay a penalty equal to the amount of benefit claimed and if the benefit was in fact paid to him that person shall in addition be liable to repay the benefit received and to additional tax of seven per cent per month or part thereof commencing from the month in which the said benefit was paid to him up to the month in which he repaid the benefit and any payment made by the said person in respect of the tax repayable by him in terms of this proviso shall first be applied against any additional tax due thereon:

Provided further that liability to pay additional tax in terms of the preceding proviso shall not be applicable when the person referred to therein proves that he has acted in good faith.

(2) For the purposes of this rule, 'benefit' shall mean the total tax saved by an individual who elects to apply these rules.

Request for information.

8. (1) For the purpose of ascertaining an individual's right to exercise the option referred to in these rules and ensuring the proper application of these rules, the Commissioner and the competent authority may require that individual to produce, within the time indicated by the Commissioner and the competent

authority in that request, such further information and documents as the Commissioner and the competent authority may consider necessary, including certifications and declarations of the employer of that individual.

(2) If an individual fails, without any valid reason, to comply with any request relating to his income made to him by the Commissioner and the competent authority in accordance with this rule, the Commissioner and the competent authority may order that article 56(21) of the Act shall not apply to that income. In such a case, the Commissioner may make an assessment and the tax on that income shall be calculated at the rates provided for in the Act without any reference to the said sub-rule.

9. The option available under article 56(21) of the Act shall be exercised by means of a declaration signed by the beneficiary and endorsed by the competent authority made on such form or in such manner as the Commissioner may require and attached to or included in the tax return for the relative year of assessment. It shall not be deemed to have been validly exercised unless the income to which it applies has been fully and correctly declared in the said tax return and unless the said declaration and tax return are filed by not later than the relative tax return date:

Manner in which option is exercised.

Provided that when the said declaration or the relative tax return is filed later than the tax return date, the Commissioner may treat the option as having been validly exercised if he is satisfied that the delay was due to a reasonable excuse.

10. (1) For the purposes of rule 4, the competent authority shall issue a formal determination relating to anything which needs to be proven to its satisfaction in terms of these rules.

Determinations and attestations.

(2) An application for a formal determination relating to eligibility under these rules shall be made on such form or in such manner as the competent authority may require and shall contain the information and documents therein requested.

(3) After consultation with the competent authority, the Minister responsible for justice shall determine whether a beneficiary's stay in Malta is not in the public interest.

11. For the purposes of rule 9, the competent authority shall, following an application, filed by a beneficiary, endorse the form required by the Commissioner.

Exercise of benefit.

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SCHEDULE

(Rule 2(1))

Eligible Employment and Offices

Chief Executive Officer

Chief Operations Officer

Chief Financial Officer

Chief Risk Officer  
Chief Financial Officer  
Chief Technology Officer  
Chief Commercial Officer  
Chief Investment Officer  
Chief Insurance Officer  
Accountable Manager  
Deputy Accountable Manager  
General Manager  
Flight Operations Manager  
Nominated Person Flight Operations  
Training Manager  
Nominated Person Training  
Ground Operations  
Nominated Person Ground Operations  
Continuing Airworthiness Manager  
Nominated Person Continuing Airworthiness  
Compliance Manager  
Quality Systems Manager  
Safety Manager  
Flight Dispatch Manager  
Instructor Manager  
Head of Marketing  
Head of Public Relations  
Actuary  
Underwriting Manager  
Risk Management Officer  
Key account manager  
Product coordinator  
Material coordinator  
Engineering reporter  
Aeronautical engineer  
Head of Maintenance Operations  
Aviation Systems Developer  
Key Aviation Specialist

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