Retirement schemes and funds

The Maltese tax authorities issued a guideline document with respect to the taxation of Maltese retirement funds and schemes, as well as the taxation of beneficiaries of retirement income from such schemes. The guidance is aimed at making Malta an attractive jurisdiction for locating pension schemes, such as a UK QROPS.

TAXATION OF MALTESE RETIREMENT SCHEMES AND FUNDS

An (occupational) retirement scheme is a vehicle to which contributions are made either solely by the employer, or by the employer and employees combined, for the benefit of the employees. The principal purpose of the retirement scheme is to provide benefits payable after retirement, or upon permanent invalidity or death of the beneficiary of the scheme. The scheme may be established as a trust, by way of contract, or in any other form as may be specified by the Malta Financial Services Authority (MFSA).

A retirement fund is defined as a company established for the principal purpose of holding and investing the contributions made to one or more schemes, or to one or more overseas retirement plans and must have its principal purpose of providing retirement benefits. A retirement fund must, amongst other conditions, take the form of an investment company with fixed or variable share capital. The retirement scheme is administered by the Scheme Administrator with the contributions towards such a scheme being invested exclusively in one or more retirement funds.

In terms of Article 12(1)(d) of the Income Tax Act (Cap 123 of the Laws of Malta), the income of any retirement fund or retirement scheme that is licensed, registered or otherwise authorised under the Special Funds (Regulation) Act or any Act replacing the said Act is exempt from income tax provided that this income is not derived from immovable property situated in Malta.

TAXATION OF THE BENEFITS DERIVED FROM A RETIREMENT SCHEME OR FUND

The benefits provided by a Malta-based retirement scheme are characterised as pension income having a Malta source. As a result, such benefits are taxable in Malta in the hands of the beneficiary, whether resident in Malta or not, at progressive rates up to 35%, and such beneficiary must register in Malta for

income tax purposes and file annual income tax returns. Capital sums received by way of commutation of a pension are exempt from tax in Malta at the level of the beneficiary.

When the beneficiary is not resident in Malta for income tax purposes, the same pension income may also be subject to tax in the country of residence of the recipient in terms of the tax laws of that jurisdiction. Reference is then to be made to the double taxation treaty which Malta has in place with that particular State of residence. Should treaty benefits be claimed, evidence of the recipient's residence, ideally in the form of a tax residence certificate issued by the relevant tax authorities, should be provided to the Malta tax authorities.

ANALYSIS OF MALTA'S DOUBLE TAXATION TREATIES

While some of Malta's double tax treaties include, within the scope of the Pension Income article, the receipt of 'annuities' (as defined) or pension or other similar remuneration not necessarily linked to past employment, the vast majority of Malta's treaties restrict applicability of such article to remuneration received in consideration of, or in connection with, past employment.

In the latter treaties, the taxation of pension income that is not linked to past employment appears to be governed by the 'Other Income' article which typically covers all items of income, wherever arising, that are not dealt with in the other articles of the treaty.

ALLOCATION OF EXCLUSIVE TAXING RIGHTS TO RESIDENCE STATE

While some of Malta's double tax treaties include, within the scope of the Pension Income article, the receipt of 'annuities' (as defined) or pension or other similar remuneration not necessarily linked to past employment, the vast majority of Malta's treaties restrict applicability of such article to remuneration received in consideration of, or in connection with, past employment. In the latter treaties, the taxation of pension income that is not linked to past employment appears to be governed by the Other Income article which typically covers all items of income, wherever arising, that are not dealt with in the other articles of the treaty.

Some of the treaties restrict the applicability of the exemption in Malta (as the state in which the pension arises) if under the law in force in the state of residence of the recipient the income is subject to tax only by reference to the amount remitted to or received therein. In such case, in terms of the treaty, relief from Malta tax only applies on the income that is received in, remitted to (and hence taxed in) the residence state.

EXCLUSIVE TAXING RIGHT TO SOURCE STATE

The treaties which Malta has with Bulgaria, Egypt and Finland allocate exclusive jurisdiction to tax in respect of pension income to the country of source, i.e. Malta. However, the applicability or otherwise of this exclusive jurisdiction would depend on whether the particular income is classified as "pension income" in terms of the particular treaty.

Out of the fifty-eight double taxation agreements that Malta has in force, forty-five of them allocate exclusive jurisdiction to tax to the residence state of the recipient, meaning that no Malta tax will apply at the level of the beneficiary of the retirement benefit.

Furthermore, the treaty with Netherlands provides that when the payment is made in the form of a lump sum, it may also be taxed in Malta subject to relief being then granted in the Netherlands in respect of the Malta tax suffered.

SHARED TAXING RIGHTS

Other treaties provide for the taxation of pension income in the residence state while still allowing the source state to tax the income in terms of its domestic law. In such cases, if the income is subject to tax in Malta, the residence state is required to grant relief in respect of the Maltese tax suffered thereon.

CONCLUSION

The obligation for beneficiaries to file a tax return in Malta enhances transparency and may contribute to minimising abusive practices and tax avoidance. This will strengthen Malta's position for non-Maltese residents to establish Malta based pension structures.

Malta has generally been recognized by the UK HM Revenue & Customs as a jurisdiction to set-up pension schemes that are eligible for the status of QROPS under UK Law. The conclusion of such an agreement, the favourable conditions available to Retirement Scheme Administrators and the already thriving funds industry, is expected to continue to generate interest among international practitioners to choose Malta as a jurisdiction of choice for pension schemes and their funds.

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Nexia BT offers additional advice and services related to pension, including tentative assessments, processing of pension applications and reviewing of pension assessments. In addition we can also make recommendations that are best suited for your specific retirement plan, especially when the person is in his/her late forties. As always good planning will yield results in achieving the best possible pension rate.

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