

Business & Finance

Investment Registration Scheme



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Legal Notice 256 of 2014 published on July 22 brought into effect the 2014 Investment Registration Scheme which was first announced in the Budget on November 4, 2013. This is the fourth registration scheme launched by the government of Malta following those carried out in 2002, 2003 and 2005.

The Investment Registration Scheme should again provide the opportunity for Maltese residents (whether private individuals or companies) who hold certain eligible assets that have been derived from income which had not been declared to the income tax authorities, to regularise their position under a number of laws by registering such assets. The eligible assets listed in the legal notice include (i) immovable property either held in Malta or overseas; (ii) bank deposits held in Malta or overseas; (iii) financial assets such as shares, bonds (corporate or government), collective investment schemes and long-term insurance policies; (iv) precious metals and (v) shareholder loans or other advances extended to companies registered in Malta or any other reputable jurisdiction (as specified in the Prevention of Money Laundering Act).

Many might ask why another scheme is being launched now following those of nine to 12 years ago and why this year's scheme should attract further individuals to regularise their position. The scheme is being offered within the context of the ever-increasing network of bilateral and multilateral agreements (such as the EU Savings Directive and the US Foreign Account Tax Compliance Act better known as Fatca) regarding exchange of information between tax authorities and greater disclosure obligations.

The financial world is basically becoming a smaller place, and a number of governments across the world have been entering into various agreements with many jurisdictions to tackle tax evasion. Effectively, these agreements mark a change in the way that banking will be conducted in various tax haven jurisdictions, including Switzerland and others.

As an example, several Swiss banks have written to their clients in recent weeks asking them to confirm that they have taken or will be taking steps to become tax compliant in the context of the tax

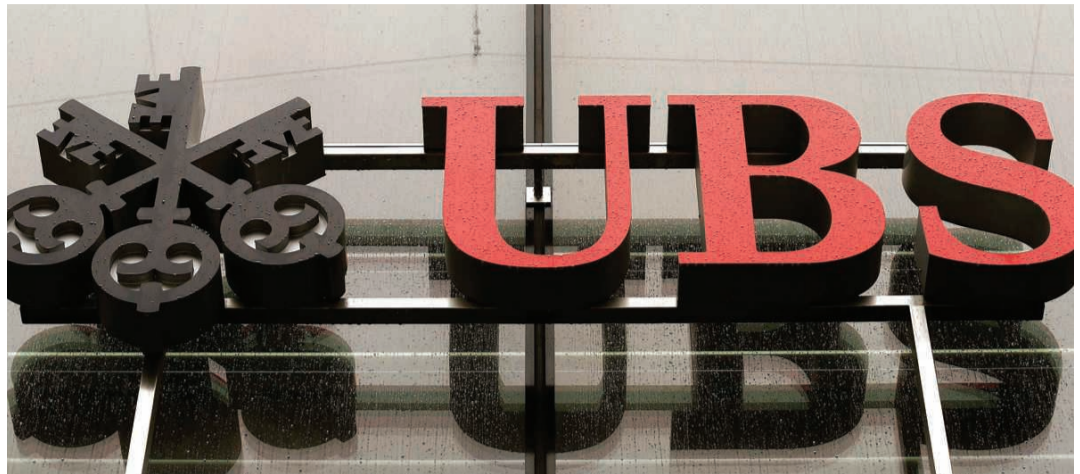
evasion dispute between Switzerland and the US. The crackdown escalated after 2009, when the US charged UBS (the largest Swiss bank) with helping US citizens hide \$20 billion in assets. UBS avoided prosecution by admitting it fostered tax evasion and paid a fine totalling \$780 million. UBS handed over information on 4,700 account holders and the US prosecuted 100 taxpayers, bankers, lawyers and advisers for offshore tax crimes. Foreign media reports indicated that around 38,000 taxpayers in the US avoided prosecution by paying back taxes and penalties and disclosing which offshore banks and advisers helped them hide their assets.

The UK also signed an agreement with the Swiss government over taxation of undeclared Swiss bank accounts. Under the agreement which came into force on January 1, 2013, the UK is now in a position to request bank details of up to 500 named individuals each year from Switzerland which can be used in the context of prosecutions. In order to assist individuals to regularise their positions, the UK government had launched a scheme in 2012 for holders of accounts held by British taxpayers in Switzerland subject to the payment of a very steep one-off levy ranging between 21 per cent and 41 per cent. Britons also had the option of closing their Swiss account and moving their funds to another jurisdiction. However, the Swiss banks had agreed not to assist individuals to avoid the one-off charge and to inform the UK authorities of the top 10 destinations to where funds had been transferred.

Following numerous articles in the international financial press regarding exchange of information, investors may be confused as to whether it is still legal to hold a bank account or an investment portfolio in Switzerland or elsewhere. For various reasons, certain individuals or companies may still prefer to hold an account or investment portfolio in a reputable tax haven. This is still possible provided that any income or gains arising therefrom are declared to the local tax authorities, and the funds in the account have been taxed as necessary.

Back to the Malta registration scheme, the legal notice stipulates that the eligible assets must have been held in Malta or abroad on November 4, 2013 (the date of the announcement by the Minister of Finance in the Budget) and must still be held by the applicant on the registration date. Moreover, any income arising from such eligible assets received after November 4, 2013 and reinvested before registration date is also eligible for registration.

The registration scheme is open until September 30, 2014 and



The logo of Swiss bank UBS at an office building in Zurich.

anyone wishing to register certain assets must contact a registration agent appointed by the Central Bank of Malta. The registration requires evidence of the assets held.

As an example, in the case of immovable property, the individual must provide the agent with an authenticated copy of the original purchase contract and confirmation by a qualified person (such as a notary or lawyer) that the property is still owned by the applicant on the registration date. Meanwhile, the documentation required for the registration of financial assets includes a valuation from the financial intermediary where the assets are held. Original valuations as at November 4, 2013 and an updated one closer to the registration date need to be furnished as confirmation that the assets are still held by the individual.

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As part of the registration certificate, the applicant must sign a declaration confirming that the registered assets do not represent proceeds from a crime of money laundering under the Prevention of Money Laundering Act, or any of the crimes listed in the Second Schedule to the Prevention of Money Laundering Act other than a crime against the relevant Income Tax laws.

The Financial Intelligence Analysis Unit also published guidance notes to assist registration agents to adhere to their obligations under the Prevention of Money Laundering and Funding of Terrorism Reg-

ulations. All applicants must clearly demonstrate the source of funds and/or assets being registered and as such, applicants will be required to provide all of the following: (i) detailed information on the source of funds, i.e. the transaction or economic activity from which the funds and/or assets being registered had been generated/acquired; (ii) sufficient documentary evidence (in original) to confirm the source of funds and/or assets; (iii) information and supporting documentary evidence on the current location of such funds and/or assets. Moreover, applicants must also complete and sign a declaration in relation to the source of funds and/or assets.

The registration of assets under the scheme is covered by confidentiality and all officials (past and present) of the financial intermediaries or agents appointed by the Central Bank including the Central Registration Certificate Depository (within the Central Bank of Malta) are bound by professional secrecy and cannot disclose any information contained in the certificate other than by order of a court.

Applicants must also pay a registration fee to the government via the appointed agents and the Central Bank of Malta upon the issuance of a registration certificate. The registration fee amounts to 7.5 per cent of the valuation amount of all eligible assets either held in Malta on registration date or held abroad and which will be retained overseas after registration. In the case of immovable property, the fee of 7.5 per cent is based on the original cost.

However, a lower fee is applicable in respect of assets which will be repatriated into Malta. The fee is of 5 per cent of the valuation amount for all eligible assets held on registration date where the applicant makes an irrevocable commitment to repatriate the relative proceeds to Malta. The sale of the asset and the transfer of the proceeds to Malta must take place within three weeks from the registration date and the applicant must eventually provide the agent with documentary evidence of

such repatriation and local investment. Individuals who choose to close their overseas bank account or investment portfolio will need to transfer the proceeds to a local bank account and subsequently invest in locally listed securities or other investments (including property) provided the investment will be held locally for at least three years after registration. In this case, the applicant must also retain the relative documents as evidence that the 3-year condition has been honoured.

The repatriation of such funds to incur a lower registration fee could create a significant inflow of new funds into the local financial system which is already flushed with excess liquidity and limited investment opportunities. This could filter through to the property market and also into locally listed securities (equities, corporate bonds as well as Malta Government Stocks).

In the property market, a number of new extensions to existing developments are in the pipeline including Portomaso, Pendergards and Tigné Point among others. Meanwhile, other completely new developments are likely at a later stage, some of which have been on the drawing board for a long number of years, such as the recently publicised White Rocks development. These new developments could be well received by the market given the likely inflow of funds from sale proceeds of registered assets.

Meanwhile, across the local financial market, the demand for fixed interest securities (both corporate bonds as well as Malta Government stocks) has intensified in recent months given the ongoing low interest rate scenario with all new issues being significantly oversubscribed. The indications are that other new bond issues will come to the market in the months ahead. This is positive for the market since it will help absorb some of the new inflow of funds.

However, the financial market also needs new equity offerings to provide investors with wider options for their local investment portfolios.

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