



MINISTRY FOR FINANCE



BANK ĊENTRALI TA' MALTA
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CENTRAL BANK OF MALTA

Investment Registration Scheme 2014

Frequently Asked Questions

*A guide for a better understanding of
the Investment Registration Scheme, 2014*

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Foreword

In line with one of the Budgetary measures announced on 4 November 2013 the Minister of Finance on 11 June 2014 during a Press Conference launched a Scheme designed to provide individuals and companies resident in Malta with the opportunity to regularise their position in respect of their holdings of eligible assets which have been derived from income that has not been declared for the purposes of the Income Tax Act.

The Scheme is governed by the Investment Registration Scheme Regulations, 2014 which have been issued by virtue of powers granted to the Prime Minister and Minister of Finance under Article 11 of the External Transactions Act. These regulations were published in the Government Gazette of 22 July 2014 through Legal Notice No. 256 of 2014.

Pursuant to these regulations, persons who register under the Investment Registration Scheme 2014 are given a Registration certificate which will certify that they are deemed not to have committed any offences against the Income Tax Act and other relevant tax laws in relation to the assets that have been duly registered. Accordingly, such persons, upon registration, are exempted from all tax that would have been chargeable on the accumulated undeclared income generating the qualifying assets held by the applicant up to 31 December 2012 as well as on all the income and gains deriving from such assets throughout the period prior to registration of such assets.

Registration is executed through appointed registration agents appointed by the Central Bank of Malta. Applicants must sign a declaration stating that the registered eligible assets do not represent proceeds from money laundering activities or from other crime, other than breaches of the Income Tax Act. The submission of false information will nullify the registration and render the applicant liable to prosecution. The Scheme does not exempt any person from complying with the requirements of the Prevention of Money Laundering Act or any regulations issued under this Act.

This *Frequently Asked Questions* dossier is intended to set out some basic guidelines regarding the general features of the Investment Registration Scheme 2014 and to provide general information relating to enquiries on the Scheme. This website dossier is supplemented by a brochure on the Scheme published by the Central Bank of Malta which may also be viewed on the Bank's website (www.centralbankmalta.org). Copies of this brochure may also be obtained from the appointed registration agents, Local Councils or from the Central Bank of Malta.

The Central Bank of Malta has endeavoured to ensure that all information in this guide is correct. However, no warranty, express or implied is given to its accuracy, and the Central Bank of Malta does not accept any liability for any errors or omissions.

Investment Registration Scheme Regulations 2014

Frequently Asked Questions¹

1. Objective of the Investment Registration Scheme

1. What is the Investment Registration Scheme 2014?

The Investment Registration Scheme 2014 provides individuals and companies who are residing and are subject to tax in Malta with an opportunity to regularise their position under the Income Tax Act in respect of their holdings of eligible assets which were derived from income (including realized capital gains) that has not been declared to the tax authorities for the purposes of the Income Tax Act.

2. To whom does the Scheme apply?

The Scheme applies to individuals and companies who are residing and are subject to tax in Malta and who hold eligible assets that have been derived from income and gains that had not been declared to the income tax authorities. The Scheme also applies to those persons from whom eligible assets have originated when such assets are held by a fiduciary provided that these assets were held on the applicable date.

Any holdings of eligible assets representing income that was duly declared for the purposes of the Income Tax Act need not and should not be registered under the Scheme.

3. Why was the need felt for such a scheme?

Recent years have witnessed greater efforts at a multilateral level to combat tax evasion through concrete measures that will ensure fuller disclosure on investment earnings. This is evidenced by the ever-increasing network of bilateral and multilateral agreements regarding exchange of information between tax authorities and greater disclosure obligations, such as under the EU Savings Directive, the US Foreign Account Tax Compliance Act (FATCA) and other tax information exchange agreements with offshore centres. The Scheme is being offered as an opportunity for full disclosure prior to the Maltese tax authorities with whom Malta has agreements.

¹ This guide should be read in conjunction with Legal Notice No. 256 of 2014, article 11 of the External Transactions Act as well as article 9B of the Income Tax Act. (see Appendices I, II and III)

II. Operational Period of the Scheme

4. When did the Scheme commence?

The Scheme came into force on the publication of the Legal Notice No. 256 of 2014 regarding Investment Registration Scheme Regulations in the Government Gazette of 22 July 2014.

5. Will the Scheme run indefinitely?

No, the Scheme shall run until 30 September 2014.

III. Scheme Regulations

6. What type of regulations govern the Scheme?

The Scheme is governed by the Investment Registration Scheme Regulations, 2014, as published in Legal Notice No. 256 of 2014 (see Appendix I to this Guide).

These regulations were issued by the Ministry of Finance in exercise of the powers conferred by Article 11 (2) of the External Transactions Act (see Appendix II to this Guide).

The exemptions granted under the scheme are also governed by Article 9B of the Income Tax Act (see Appendix III to this Guide)

IV. Benefits of Registering under the Scheme

7. What is the benefit of registering assets under the Scheme?

A person who registers eligible assets under the Scheme shall be deemed not to have committed any offence under all the relevant laws covered by the Scheme in relation to such registered assets. Thus, upon registration, all individuals and companies are exempted from any action which may be taken against them for past breaches under all relevant laws which include the Income Tax Act, the Duty on Documents Act, Duty on Documents and Transfers Act, the Succession and Donation Duties Ordinance and the Death and Donation Duty Act. This exemption is given only in relation to those assets which have been registered under the Scheme.

8. What type of income tax exemption is given to persons who register under the Scheme?

Once a person registers eligible assets, that individual or company shall be entitled to the exemptions granted in terms of Article 9B of the Income Tax Act, namely:

- a) Tax exemption on any income, including capital gains, derived from qualifying eligible assets at any time before registration date [see Article 9B (2)(a)];
- b) Tax exemption on a qualifying asset which represents an accumulation of undeclared income derived by the applicant during the year immediately preceding any year of assessment in respect of which that applicant furnished a return of his income to the Commissioner before 4 November 2013 or during the year immediately preceding any year of assessment commencing on or before 1 January 2013 [see Article 9B (2)(b)].

This implies that upon registration, the tax exemption applies on the accumulated undeclared income and earnings generating the qualifying assets held by the applicant up to 31 December 2012, as well as on any income, including capital gains, derived from such qualifying assets earned up to registration date.

The tax exemptions shall apply to the extent that the registered income has not been already declared in any tax return furnished to the Commissioner and no tax has been already assessed in respect of such declaration in any assessment raised and notified to the applicant before 31 May 2014 [see Article 9B (3) of the Income Tax Act].

9. Are persons who register under the Scheme obliged to provide any documents to the Inland Revenue Department?

Upon registration, applicants will not be bound or be considered to have ever been bound to furnish any return or declaration to the Commissioner relating to the undeclared income represented by the qualifying assets that have been registered [see Article 9B (4) of the Income Tax Act].

10. Are the exemptions arising from the Scheme backed by law?

All the exemptions granted to persons who register eligible assets under the Scheme are stipulated in Article 9B of the Income Tax Act. This section of the law is reproduced in Appendix III to this Guide.

11. What are the consequences if assets are not registered under the Scheme?

Persons who do not register any eligible assets derived from activities that have not been declared to the income tax authorities would not qualify for the exemptions granted under the Scheme. If investigated by the income tax authorities and found to have breached the Income Tax Act, such

persons would therefore render themselves liable to the penalties contemplated in terms of this Act, which include heavy fines or imprisonment or both. In addition, all tax due on the undeclared income would have to be paid.

12. What is the position of individuals who were benefiting from some form of social benefit or subsidy because they were not fully declaring their income?

In the event that by virtue of not declaring his full income, the applicant had been benefitting from any national assistance, or subsidies or other social security benefits under any Government scheme, that person upon registration under the Scheme shall not be considered as having committed an offence and shall not be required to refund such benefits [see Article 9B(4) of Income Tax Act].

13. What will be the consequence if a person, after having registered, continues to claim social security benefits or other Government benefits to which he is not entitled?

In such a case, such person would lose the right to be considered exempted from liability for the offence committed for abusively continuing to claim social security benefits or other Government benefits to which he is not entitled. Furthermore, he would forfeit the right not to refund past benefits received and to which he was not entitled [see Article 9B (4) of Income Tax Act].

V. Eligible Assets

14. What type of assets are eligible for registration under the Scheme?

Registration of eligible assets under the Scheme shall be open to:

- Deposits held with credit institutions licensed in Malta or abroad irrespective of the currency of denomination;
- Malta Government securities (bonds and Treasury bills)
- Securities issued by foreign governments, states or sub-divisions of any state or any supra-national organisation;
- Corporate bonds and equities of a company registered or incorporated in Malta or in any other reputable jurisdiction or other instruments creating or acknowledging an ownership interest in such company;
- Debentures, certificates of deposit, bonds, notes and any other similar instrument creating or

acknowledging indebtedness issued by a company registered in Malta or in any other reputable jurisdiction;

- Units in a collective investment scheme issued by a scheme duly licensed in Malta or abroad;
- Life and annuity long term insurance policies, whether index-linked or not issued by a scheme or insurer licensed in Malta or abroad;
- Precious metal bullion;
- Warrants, options, futures and other derivatives as well as any other financial instrument entered into locally or abroad for investment purposes;
- Shareholder loans or other advances extended to a company registered in Malta or in any other reputable jurisdiction;
- Immovable property situated in or outside Malta.

15. What does precious metal consist of?

Precious metal consists of gold, platinum and silver bullion.

16. What sort of insurance policies are eligible for registration under the Scheme?

Eligible insurance policies include the nine types of insurance classes specified in the Second Schedule of the Insurance Business Act, 1998, namely:

- i) Class I, life and annuity;
- ii) Class II, marriage and birth;
- iii) Class III, linked long term;
- iv) Class IV, permanent health;
- v) Class V, tontines;
- vi) Class VI capital redemption
- vii) Class VII, pension fund management;
- viii) Class VIII Collective insurance and
- ix) Class IX Social insurance

17. Are non-life or general insurance policies eligible for registration?

No, these are not eligible for registration under the Scheme.

18. If an applicant who is a shareholder in company X registers under the Scheme a loan which was extended to company X, will the registration certificate also cover any undeclared income on the part of company X?

Since the registration certificate is issued in the applicant's name as a shareholder, then the same certificate cannot be used to cover any of the company's undeclared income. It will be in the interest of Company X to register its undeclared income under a separate registration in its own name.

19. In order for financial instruments such as corporate bonds, equities, shareholder loans or other advances made to a company to be eligible under the Scheme, such company must be registered or incorporated in a reputable jurisdiction. What is understood by 'reputable jurisdiction'?

Reputable jurisdiction has the same meaning assigned to it under Regulation 2 of the Prevention of Money Laundering and Funding of Terrorism Regulations. These Regulations require that a country must have appropriate legislative measures for the prevention of money laundering and the funding of terrorism. Reference should also be made to the Guidance Note issued by the FIAU on 4th April 2012 on "High-Risk and Non-Cooperative Jurisdictions" incorporated within Appendix IV of Part I of the FIAU Implementing Procedures as well as to Appendix III on the "Common Understanding of June 2012 between EU Member States on third country equivalence under the Anti-Money Laundering Directive" (link: <http://www.fiumalta.org/implementing-procedures/part1>).

VI. Applicable date

20. Is there any date determining which eligible assets may be registered under the 2014 Scheme?

The applicable date under the Scheme is any date between 4 November 2013 (the date when the 2014 Scheme was announced in the 2014 Budget Speech) and 30 September 2014 (the expiry date of the Scheme).

Registration is open to eligible assets which were held by the applicant on 4 November 2013 and are still held by such applicant on the date of registration.

21. Is income arising from eligible assets which is received after 4 November 2013 but is reinvested before date of registration, eligible for registration?

Yes such income will be considered as existing on the applicable date and shall be eligible for registration. Such income, once registered under the Scheme, will also benefit from the tax exemption granted under Act 9B of the Income Tax Act.

22. If an individual who held eligible assets in or outside Malta on 4 November 2013 has switched into other types of eligible assets after that date, can he still register these assets under the Scheme?

Yes, a person can still register eligible assets which have been switched into other eligible assets after 4 November 2013, provided that such person can produce documentary evidence of the assets held on 4 November 2013 and of the switch effected after that date.

VII. Applicants under the Scheme

23. Who may register eligible assets under the Scheme?

Registration is open to any private individuals, residing and subject to tax in Malta irrespective of nationality. Thus individuals who may register assets under the Scheme include both Maltese nationals and also foreign nationals who are residing and are subject to tax in Malta. Companies are also eligible to register under the Scheme provided they are resident and subject to tax in Malta.

24. Must registration under the Scheme always be executed by the beneficial owner?

In most cases, eligible assets derived from undeclared income must be registered by the individual or company who owned such assets on the applicable date irrespective of whether such assets were held in their own name or in the name of a third party acting as fiduciary on their behalf.

However, in the case of eligible assets derived from undeclared income which are held in a trust, the registration must be made not by the trustee (notwithstanding that the trustee holds the legal title to such assets) but by the originator or settlor of such eligible assets.

25. What is the position of heirs or legatees of an individual who owned eligible assets during the applicable period under the Scheme?

The heirs or legatees of the individual who was the owner of undeclared eligible assets on the applicable date shall have the right to register such assets under the Scheme.

26. What is the position of an individual whose eligible assets are held in the name of third party in a fiduciary capacity?

An individual whose eligible assets are held in the name of a third party in a fiduciary capacity can still register such assets provided that he has documentary evidence, to the satisfaction of the appointed registration agent, that such assets were held by the fiduciary on his behalf or at his request (in case of a trust).

27. If a person registers foreign assets, can he retain such registered assets abroad?

When a person registers foreign assets under the Scheme, he may choose at his discretion, either to bring those assets back to Malta or else retain them abroad. However a different registration fee is applicable under the two options. (see Section XIV of this Guide).

VIII. Joint Beneficial Owners/ Joint Originators

28. Where the eligible assets to be registered are owned by more than one beneficial owner or by more than one originator of a trust, which of the joint owners or originators should appear on the declaration form?

In the case of more than one joint beneficial owner or originator, all of the owners or originators have a right to appear on the declaration form in respect of their respective share of the assets being registered.

29. What happens if one of the joint beneficial owners or originators refuses to appear on the declaration form whereas the others wish to register their undeclared eligible assets?

In such a case, those who wish to register have a right to appear on the declaration form on their own and register their share of the assets to be registered.

30. In the case of a married couple, is it compulsory for both husband and wife to appear on and sign the declaration form?

If the eligible assets to be registered are held jointly in the names of both husband and wife, it would be appropriate that both will appear on and sign the declaration form. On the other hand, if the assets are in the name of only one member of the married couple, that person alone will suffice for the purposes of the Scheme. If the assets are held in the name of the husband "and/or" the wife, the signature of any one of the two will be sufficient. Of course, both of them may sign the declaration form if they so desire.

31. If the joint beneficial owners or originators wish to register separately, can they do so?

Preferably, joint owners or originators should register jointly. This would normally entail a simpler administrative procedure and could possibly also be more cost effective. However, if the joint owners or originators so decide, they can opt to register their share of the assets separately provided that each of them presents the appropriate documentary evidence to the appointed registration agent and provided also that the assets in question are only registered once.

IX. Assets Held in the Name of Fiduciaries

32. How is a fiduciary defined for the purposes of the 2014 Scheme?

A fiduciary is any private foundation or any person who is engaged to hold in his name or owns any eligible assets for another person under a mandate or a trust.

33. A person owns eligible assets which are held on his behalf in the name of a third party acting in a fiduciary capacity. The beneficial owner or originator would not like his name to be disclosed on the declaration form. Can the fiduciary apply on behalf of the beneficial owner?

No. The application must be made by the beneficial owner or originator in the case of assets held in a trust. The identity of the beneficial owner or originator must always be disclosed on the declaration form, as well as his personal details, including address and Identity Card number. Moreover, such beneficial owner or originator must also sign the declaration form.

Such declaration is covered by full confidentiality. In fact, appointed registration agents and the Central Bank of Malta are strictly prohibited from disclosing any information which is provided to them under the Scheme in respect of such fiduciary arrangements.

34. Why is it compulsory for the identity of the beneficial owner or of the originator in case of a trust to be disclosed on the declaration form?

The purpose of the Investment Registration Scheme is to enable owners of undeclared eligible assets to regularise their position. Unless the identity of the beneficial owner or originator is disclosed on the declaration form, it will not be possible to establish a clear link between the assets being registered and the beneficial owner or originator of such assets.

In the event that an individual or company is investigated for tax purposes in respect of undeclared income arising from eligible assets that have been registered under the Investment Registration Scheme, that person will be in a position to present the registration certificate carrying his name as proof that he has regularised his position in respect of the registered assets appearing in the certificate.

35. Given that in certain cases, it may not be possible to procure the signature of the fiduciary on the declaration form, can a declaration form be accepted without the fiduciary's signature for the purpose of the Scheme?

It is not compulsory to have the signature of the fiduciary on the declaration form provided that the fiduciary's details (such as name, address) are disclosed in the form and that the appropriate documentary evidence regarding such fiduciary has been presented to the appointed registration agent.

X. Appointed Registration Agents

36. How can registration be effected?

Eligible assets may be registered under the Scheme through appointed registration agents. These are banks licensed under the Banking Act, financial institutions licensed under the Financial Institutions Act, stockbrokers licensed under the Investment Services Act, and other Category 2 or 3 Investment Services licence holders licensed under the Investment Services Act. Appointed registration agents are appointed by the Central Bank of Malta.

37. Where can one find a list of all the appointed registration agents?

The full list of appointed registration agents is published on the Central Bank of Malta's website (see Appendix IV of this Guide). Moreover, it can be obtained from the Central Bank of Malta Annexe at Saint James Counter-Guard, Valletta.

XI. Documentary Evidence

38. What documentation must a person produce to the appointed registration agent to register eligible assets?

When a person wishes to register eligible assets under the Scheme, that person must produce to the appointed registration agent original documentary evidence confirming that the assets to be registered were held by such person or else have originated from that person if held by a fiduciary in a trust on the applicable date, namely 4 November 2013. The following special rules apply:

In the case of **precious metal bullion**, a confirmation from the institution with which the precious metal bullion is held.

In the case of **immovable property**, a duly authenticated copy of the original contract by virtue of which the property was acquired and a confirmation from a duly qualified person that the said property was owned by the applicant on the applicable date.

In the case of **shareholder loans or advances to a company** in a reputable jurisdiction, a duly authenticated copy of the agreement by virtue of which funds were advanced by the applicant to such company together with such other documentary evidence that such loans or advances were duly received by the borrower as well as an auditor's certificate confirming title and existence of such loans or advances. Such loans must be evidenced in the audited financial statements submitted to the Registry of Companies in Malta (or equivalent counterparts in the case of other jurisdictions) by 4 November, 2013.

In the case of all other eligible **securities, deposits, insurance policies or units in collective investment schemes**, a contract note or other written confirmation from the relevant licensed financial intermediary.

The Central Bank of Malta may request other documentary evidence as it may deem sufficient in writing on a case by case basis.

39. What documentation must be produced to register assets which are held by a third party in a fiduciary capacity?

If an eligible asset is held by a third party in a fiduciary capacity who is regulated and licensed in Malta or in a foreign jurisdiction, the applicant must submit evidence that such fiduciary is so regulated and licensed. The applicant would also be required to submit a confirmation evidencing that such fiduciary held the eligible assets on behalf of or at the request of the applicant.

Where the fiduciary is not licensed or regulated by the respective laws and regulations, the applicant must submit a confirmation, bearing the fiduciary's original signature and witnessed by either a

Notary Public, a Commissioner of Oaths or an Advocate, evidencing that the fiduciary held the eligible assets on behalf of or at the request of the applicant.

40. A Maltese national would like to register his immovable property abroad which is held by a foreign trust where he is the settlor and beneficiary. What documentation would be required in order to register this property?

The applicant may register the property at the original price as per acquisition contract. The rest of the necessary supporting documentation is the same as outlined in the previous question.

41. An applicant has a deposit account with an internet banking facility. Are electronic statements acceptable as documentary evidence for the purposes of the scheme?

Yes. Such electronic statements are acceptable.

42. What are the implications if false documentation is submitted?

The submission by the applicant of false statements and/or documentation shall nullify the registration certificate and render the applicant ineligible for the benefits and exemptions granted under the Scheme.

XII. Registration certificate

43. What documentation is to be completed in order to effect registration?

A person who intends to register eligible assets derived from undeclared income must fill in and sign a declaration form which is to be provided to him or her by the appointed registration agent. This declaration form is not simply an application form but constitutes the actual registration certificate. Therefore, this document is sequentially and uniquely numbered and printed on controlled stationery in order to ensure that no forged copies of the registration certificate are fraudulently issued. The registration certificate is reproduced in the Schedule to the Investment Registration Scheme Regulations and may be viewed in Appendix I to this Guide.

44. What information has to be disclosed in the Declaration Form?

The declaration form (or registration certificate) is subdivided into six sections:

- Section 1 of the form is to include details on each type of the eligible assets to be registered;
- Section 2 is to include details on the applicant who must be the beneficial owner or the originator in the case of assets held in a trust. Such details include his name, address, signature and Identity Card number or the Company Registration number if the beneficial owner, originator or fiduciary is a body corporate. Section 2 is also to include details on the joint owners or joint originators, if any, as well as on the fiduciary in case the registered assets are held by third party in a fiduciary capacity. Section 2 must be signed by the applicant as beneficial owner or originator who should first read the applicant's undertaking as listed in Section 4 before signing the declaration form. In this section the applicant is also required to indicate whether he is the owner or originator of the eligible assets or the heir/legatee of such person on the applicable date;
- Section 3 is to be completed by the appointed registration agent and shall include details relating to the value of the registered assets, the registration fee and the commission withheld by the appointed registration agent;
- Section 4 represents the applicant's declaration. It is essential that the applicant reads carefully all the declaration before signing it. It is also essential that the registration agent explains to the applicant the importance of conforming to the conditions set out in the declaration because breach of these conditions can render the registration certificate null and void.
- Section 5 represents the appointed registration agent's declaration.

XIII. Anti-Money Laundering Obligations

45. What is the rationale behind the emphasis in the Investment Registration Scheme Regulations on the requirement to adhere to anti-money laundering and funding of terrorism (AML/CFT) rules and regulations?

Voluntary tax compliance programmes or schemes are legitimate initiatives by governments usually designed to facilitate regularisation of the taxpayer's situation vis-à-vis funds, other assets or gains that were previously unreported or incorrectly reported for tax purposes. The Financial Action Task Force (FATF) however recognises the potential for such schemes to be abused by criminals for the purpose of moving funds, resulting in money laundering and terrorism financing (ML/TF) risks. These risks are greater when the scheme incorporates elements of tax amnesty and/or asset

repatriation. Such schemes may increase the potential ML/FT risks for a number of reasons. First, they encourage taxpayers to disclose funds or other assets that were previously undeclared, resulting in large volumes of funds or assets (previously held outside of the financial system or held in another country) being deposited with financial institutions throughout the duration of the Scheme. This could result in large volumes of transactions that make it difficult for financial institutions to apply AML/CFT measures effectively. Secondly, financial institutions may believe that the legitimacy of assets being deposited under the scheme has in one way or another been officially endorsed by the government. Thirdly, it may be difficult for financial institutions to verify the legitimacy of the assets being repatriated from third countries.

46. Under the Investment Registration Scheme Regulations, registered assets are exempted from tax liability. How then would anti-money laundering provisions still apply?

Regulation 3 of the Investment Registration Scheme Regulations provides that individuals who register assets under the scheme regularise their position under the relevant tax laws. Registration of assets therefore does **not** regularise an individual's position under other laws (which fall outside the scope of the Income Tax Act and relevant laws) nor does it legitimise assets in the event the registered assets represent the proceeds of crime. The Registration Certificate issued in terms of Regulation 9 of the Investment Registration Scheme Regulations is not and should not, in itself, be considered evidence or otherwise construed as a confirmation that the registered eligible assets are of legitimate origin. The regularisation of the assets is only for the purposes of the Income Tax Act and other relevant tax laws and is without prejudice to any criminal or other action that may be warranted should it transpire that the assets registered are of criminal origin.

47. What AML/CFT measures are to be applied by appointed registration agents under the scheme and what level of customer due diligence is necessary?

A “*Guidance Note on the Investment Registration Scheme 2014*” has been issued by the Financial Intelligence Analysis Unit (FIAU) that is binding on all subject persons concerned and enforceable by the FIAU. This Guidance Note is mainly intended to provide assistance to subject persons involved in the implementation of the scheme to adhere to their obligations set out under the Prevention of Money Laundering and Funding of Terrorism Regulations and to raise awareness about the potential abuse of the scheme, the associated ML/TF risks and to establish measures to mitigate the risks identified. The obligations applicable to subject persons when acting as registration agents are clearly outlined in the Guidance Note, which can be seen in Appendix V of this Guide.

48. Regulation 10 of the IRS Regulations provides that when registering any assets under the Scheme, the appointed registration agent shall ensure full compliance with the provisions of the Prevention of Money Laundering Act, the regulations issued thereunder and the implementing procedures issued by the FIAU. Appointed registration agents are specifically required to comply with all the obligations imposed on subject persons, including customer due diligence and the collection of information on the source of funds. What type of information would need to be collected in order for the appointed registration agent to satisfy the requirement related to the source of funds?

The term 'source of funds' is defined in the Implementing Procedures of the FIAU as the activity, event, business, occupation or employment from which the funds used in a particular transaction are generated. The Implementing Procedures specify that the subject person should not be satisfied with a generic description when questioning the customer about the origin of the funds. The example given is that an explanation by the customer stating that the funds are the proceeds generated by a business would not be sufficient, since the subject person would be required to request the customer to provide more detailed information on the business concerned as well as producing documents, such as copies of invoices or contracts, to substantiate such explanation.

In the case where appointed registration agents are approached by existing customers with whom they have a business relationship who intend to register assets, the information collated on the source of wealth when carrying out the customer due diligence at the beginning of the business relationship will be undoubtedly useful in order to ascertain what business, trade or profession may have generated these funds and in order to determine whether the sums involved fit in with the risk profile of the customer. In the case of new customers, this information would need to be collected in the usual manner by the appointed registration agent carrying out customer due diligence on the new customers.

49. What type of documents should be requested by the registration agent as evidence of origin of funds?

Documents that would be collected as evidence on the origin of the funds used in the purchase of the asset being registered would typically include invoices, receipts, bank statements, contracts of employment, pay-slips, wills, contracts, audited financial statements and other documents that could attest to the source of the funds. While a statement by a customer could assist the appointed registration agent in determining what the original source of the funds was, the appointed registration agent is in all cases required to collect adequate documentary evidence that verifies what is being claimed by the customer.

50. If during the registration process, a client fails the appointed registration agent's anti-money laundering tests, is the agent bound to report the client since he or she has disclosed that he or she has undeclared assets?

The obligation to report a suspicious transaction to the FIAU arises where there is knowledge or suspicion of money laundering or the financing of terrorism. If the reason that the customer due diligence process has not been completed gives rise to such a suspicion of ML or TF, then the subject person is in duty bound to report that suspicion to the FIAU since the exemption from liability under the relevant fiscal legislation only applies once the Registration Certificate is actually issued.

51. Is the appointed registration agent responsible to obtain documentary evidence of source of wealth or income or simply base its assessment on the client's declarations if they conform with his or her level of income or savings at the time of the investment?

Appointed registration agents are specifically required to comply with all the obligations imposed on subject persons under the Prevention of Money Laundering and Funding of Terrorism Regulations and the Implementing Procedures issued by the FIAU, including customer due diligence and the collection of information on the source of funds. The term 'source of funds' is defined in the Implementing Procedures of the FIAU as the activity, event, business, occupation or employment from which the funds used in a particular transaction are generated. The Implementing Procedures specify that the subject person should not be satisfied with a generic description when questioning the customer about the origin of the funds. The example given is that an explanation by the customer stating that the funds are the proceeds generated by a business would not be sufficient, since the subject person would be required to request the customer to provide more detailed information on the business concerned as well as producing documents, such as copies of invoices or contracts, to substantiate such explanation. It is therefore clear that a mere declaration will not suffice.

As indicated above, in the case where appointed registration agents are approached by existing customers with whom they have a business relationship who intend to register assets under the scheme, the information collated on the source of wealth when carrying out the customer due diligence at the beginning of the business relationship will be undoubtedly useful in order to ascertain what business, trade or profession may have generated these funds and in order to determine whether the sums involved fit in with the risk profile of the customer.

In the case of new customers, this information would need to be collected in the usual manner by the appointed registration agent carrying out customer due diligence on the new customers.

52. If a client informs the appointed registration agent that he or she would like to register assets representing undeclared income worth €2 million but can only provide documentary evidence for €1.5 million, the agent will only register the €1.5 million component. Is the agent obliged to report the client to the FIAU in respect of the remaining €0.5 million undeclared assets which were not registered?

The obligation to report a suspicious transaction to the FIAU arises where there is knowledge or suspicion of money laundering or the financing of terrorism. If there is suspicion that certain assets (or a portion of the assets) are the proceeds of crime and a Registration Certificate has not been issued in their regard, then the obligation to report would arise. In the circumstances described, the obligation to report to the FIAU would not arise because the failure to provide documentary evidence does not necessarily give rise to a suspicion that such funds represented proceeds from a crime other than a breach of the Income Tax Act. The obligation to report to FIAU will arise on the basis of a suspicion that there has been an attempt to launder the proceeds of crime.

XIV. Registration Fee Payable to the Government

53. Is there a charge for registration under the Scheme? Is the charge a flat rate applicable on all types of registered assets?

The issue of a Registration Certificate is subject to payment of a registration fee which is equivalent to:

- (i) in the case of immovable property, 7.5% of the original cost on date of purchase of such property;
- (ii) in the case of all other eligible assets, 7.5% of the current market value of the registered eligible assets. In the event the applicant can provide documentary evidence that the acquisition cost of such assets exceeded the current market price, the applicant may opt, at his discretion, to register the assets at the acquisition cost instead of the current market price. In such a case, the fee shall be charged on such acquisition cost.

In the case of immovable property or other eligible assets which were held abroad on 4 November 2013 and are still held abroad on date of registration, a rate of 5% shall be charged if the applicant undertakes to adhere to the following conditions:

- the applicant makes an irrevocable commitment to sell such assets and to repatriate the relative proceeds within two weeks after date of registration and to invest such funds in locally listed securities or in deposits with domestic credit institutions;

- the applicant must within three weeks from date of registration provide documentary evidence to the registration agent of such repatriation and local investment;
- the applicant makes an irrevocable commitment that the repatriated assets will be retained locally for at least three years after date of registration.

54. How is the current market value calculated?

The current market value is calculated on the basis of a valuation by a duly qualified person made within three months preceding the date of registration and presented to the appointed registration agent. In the event that the applicant does not possess a valuation procured within the said three months prior to registration, he has the option to request the registration agent to compute the valuation or acquire the valuation from an alternative duly qualified person.

55. If an applicant has a portfolio which is leveraged through borrowing for the purpose of increasing the investment assets of the portfolio, is it possible for the applicant to register the portfolio for a value net of the borrowing or would the applicant have to register and pay the applicable fee on the basis of the gross value of the portfolio assets without taking into consideration the borrowing?

If the borrowing is for the purpose of augmenting the assets of the portfolio through leverage then the applicant will be able to register the net value of the portfolio taking leverage into consideration. For example, if a person had arranged to set up a trust in which he transferred €100,000 derived from undeclared earnings and later the gross value of the trust grows to €180,000 through a loan of €80,000, the amount that needs to be registered for the purpose of regularising his/her position under the Scheme is €100,000 (i.e. the gross value of €180,000 less the loan of €80,000).

56. On 4 November 2013, a person owned €1 million worth of assets derived from undeclared funds. In 2014, he sold these assets, borrowed an additional € 500,000 from a bank and bought a property worth €1.5 million. What value should be registered under the 2014 Scheme?

The objective of the Scheme is to enable holders to regularise their tax position in respect of assets derived from undeclared income. Therefore this person should only register that part of the eligible asset that represented undeclared income, namely €1 million. The rest of the value originated from a legitimate source (a bank loan) and does not need to be registered.

57. How is the registration fee paid to the Government?

The registration fee is to be paid by the applicant to the appointed registration agent once he has provided the agent with all the required documentary evidence and once the declaration form has been duly completed. The appointed registration agent is then obliged to forward to the Government all the registration fees (net of commission) collected during the month in respect of all the registration certificates issued by the Agent during that month. The month's registration fees are to be remitted to the Government's special designated account at the Central Bank of Malta in one lump sum by not later than seven days after the end of the calendar month.

58. In 2008 a person had registered a company abroad with a paid up capital of €1 million, all funded from undeclared income. In 2010 the company purchased immovable property abroad assets worth €700,000. The company's other assets consist of marketable securities. What is the amount that should be registered under the Scheme, the original value of the property on acquisition or the current value of the shares of the company?

In view that all the assets of this company represent undeclared earnings, the applicant is entitled to register the current value of the shares of the company on the basis of the net asset value of the company.

59. A person owned foreign assets on 4 November 2013 which he sold in March 2014 and repatriated the funds to Malta. What registration fee is payable under the Scheme?

The applicable registration fee is 7.5%.

XV. Service fee payable to the appointed registration agent

60. Is the appointed registration agent also entitled to charge a fee for registration services?

Yes, the appointed registration agent may charge a service fee in respect of registration services which shall be equal to 5% of the registration fee paid by the applicant subject that the agent's fee shall not be less than EUR 30 or greater than EUR 380 per registration certificate issued.

In case the applicant requests the appointed registration agent to provide him or her with additional services, the agent may charge additional fees for extra services rendered to applicants over and above the normal registration services, such as valuation services, arrangement of repatriation of foreign assets and local investment of the proceeds.

61. Who pays the service fee for registration services?

The appointed registration agent is authorized to deduct the service fee in respect of registration services from the registration fee payable to Government. Thus, in effect, the service fee for registration services is paid by the Government and not by the applicant.

XVI. Certification

62. What evidence is provided to the applicant to show that registration has been effected?

Once all the formalities leading to registration are completed, the appointed registration agent shall provide the applicant with the original declaration form, duly filled in and stamped, and which constitutes the original registration certificate.

63. In the case of joint beneficial owners or originators, can each owner or originator acquire a registration certificate?

Where the registered assets are held by more than one beneficial owner or originator, the original registration certificate is to be provided to the person whose name is listed first among the joint owners or originators; that is, the person whose name appears in the first row of Section 2 of the declaration form (see copy of registration certificate in the Schedule to the Investment Registration Scheme Regulations on the Central Bank of Malta's website). The persons appearing as joint owners or originators in the second row of Section 2 of the declaration form are to be provided with a copy of the original registration certificate, duly stamped and signed by the appointed registration agent.

64. Who else has a copy of the registration certificate?

Besides the original registration certificate which is given to the applicant, the duplicate copy of the certificate is retained by the appointed registration agent for his records and the third copy is sent by the agent to the Central Bank of Malta as Central Registration certificate Depository. This latter copy is sent to the Central Bank of Malta to enable the Central Bank of Malta carry out its role of administering the Scheme and to act as custodian of all the certificates issued under the Scheme in its role of Central Registration Certificates Depository.

65. What happens if an individual loses, defaces or destroys the registration certificate which was issued to him evidencing registration?

Where an individual loses his registration certificate, he or she may request the Central Bank of Malta to provide him or her with a copy of the lost certificate.

66. If a person, after registering eligible assets, recollects that he or she has further undeclared eligible assets, can he or she register once again?

Yes, until 30 September 2014, a person can register any remaining assets derived from undeclared income that have not yet been registered provided that he or she makes sure that the same asset is not being registered more than once.

67. If a person is not sure whether he or she has registered certain assets under the previous Schemes can he or she register those assets under the 2014 Scheme to be on the safe side?

An asset can only be registered once under the 2014 Scheme or under any of the previous Investment Registration schemes. Therefore, in the event that a person is in doubt regarding whether or not he or she has already registered a specific asset, he or she should consult the appointed registration agent whom he or she had utilized under the previous schemes. Otherwise there could be a risk of breaching the conditions and regulations of the Scheme. In fact, when signing the registration certificate under the 2014 Scheme, the applicant is making a declaration that the assets have not already been registered in any form under the present Scheme or under the previous schemes.

XVII. Confidentiality of Information in Registration Certificate

68. Will the Appointed Registration Agent or the Central Bank of Malta disclose any information to the Inland Revenue Department?

No, neither the Inland Revenue Department nor anyone else for that matter, can have any access to the information held by the Registration Agents and the Central Bank of Malta in respect of the Registration Certificates.

69. For what purpose will Registration Agents be using the information provided by applicants during the registration process?

The information provided by an individual or company to the Registration Agents in order to effect registration is intended solely to enable the registration agent to ensure that the Scheme is being administered appropriately and in conformity with the Scheme regulations. In particular the agents need to acquire documentary evidence to ensure the authenticity of title to their registered assets, conformity to the applicable date and abidance to the AML regulations. Registration agents are obliged to retain the documentary evidence collected from the applicant during the course of registration and the Duplicate copy of the Registration Certificate for a period of at least ten years.

70. Why are registration agents obliged to retain copies of the original documentary evidence provided by the applicant for ten years?

Such documentation has to be retained by Registration Agents for record purposes in case they are needed, for instance, due to a Court Order. The ten year period was set in the light of local legislation regarding prescriptive periods. The applicability of the prescriptive period depends on the nature of the case. For example, by Article 2153 of the Civil Code, actions for damages not arising from a criminal offence (i.e. civil action for damages) are barred by the lapse of two years. A five-year prescriptive period applies to an action for payment of interest on sums taken on loans (by Article 2156(d) of the Civil Code) as well as to an action for the payment of any other debt arising from commercial transactions (by Article 2156(f) of the Civil Code). Furthermore by Article 688 of the Criminal Code, criminal action is barred by the lapse of ten years in respect of crimes liable to imprisonment for a term of less than nine but not less than four years.

71. For what purpose will the Central Bank of Malta be using the triplicate copy of the Registration Certificate?

The triplicate copy of the Registration Certificate enables the Central Bank of Malta:

- To act as central certificate depository thereby acting as custodian of the triplicate copies of all Registration Certificates;
- To provide a copy on request to applicants in case the latter have their original certificate lost/destroyed;
- In the event that Inland Revenue Department, after obtaining a Registration Certificate from an individual or company following a tax audit, requests the Central Bank of Malta to confirm the authenticity of such certificate. In case such a request, the Central Bank of Malta will reconcile the certificate provided by Inland Revenue Department with the triplicate copy retained at the Central Bank of Malta depository to confirm or otherwise such authenticity.

72. In case a Registration Certificate is lost and the applicant requests the Central Bank of Malta to provide him with a copy of the Triplicate of the Certificate, is there a charge to be paid?

No, the Central Bank of Malta does not charge any fee for the issue of a copy in such a case.

73. How can one ensure that full secrecy will be maintained on the information contained in the registration certificate?

The appointed registration agents and the Central Bank of Malta are strictly prohibited by law from disclosing any information which is provided to them under the Scheme.

Persons employed including past and present officers or agents of the Central Bank of Malta and the appointed registration agents are bound by law by the duty of professional secrecy in the exercise of their functions under the Scheme and are prohibited by law to divulge any information obtained in the process of registration, except in the case of a Court order. Moreover, stringent measures and procedures have been put into place at the Central Bank of Malta to ensure the utmost confidentiality of information contained in the registration certificates filed at the Central Bank of Malta. Only a very small number of Bank Officials who are directly responsible for collecting and safekeeping the certificates have access to the information contained in the certificates.

XVIII. Conditions regarding Repatriated Funds registered at 5% fee

74. What happens if after providing evidence of repatriation to the appointed registration agent, the applicant does not honour the three year condition for repatriation?

It is the applicant's responsibility to ensure that all conditions of the Scheme are honoured including the condition of repatriation for a minimum of three years. The appointed registration agent's responsibility is only to receive evidence of repatriation and relative re-investment in locally listed securities or local bank deposit within three weeks from registration and the appointed registration agent will have no role or responsibility to ensure that the applicants continue to honour their commitment beyond this period. If any applicant infringes this condition, the registration of assets would be rendered invalid and ineffective.

75. Will the repatriated assets be frozen for the mandatory three years? Can the holder of the Registration Certificate re-invest the repatriated funds in other local eligible assets during the three years?

Having satisfied the appointed registration agent about the condition of repatriation and re-investment, the applicant would still have the liberty to switch the repatriated funds in a way which fundamentally continues to honour the repatriation condition. The repatriated funds have to be applied in Malta and not re-invested outside Malta, and this for a minimum period of three years. For this purpose, applicants can re-use the funds to buy property in Malta or to finance direct investments in their own name in economic activities of trade, manufacturing, tourism or similar activities that are promoted by Malta Enterprise or Malta Tourism Authority or similar organisations responsible for other economic sectors.

Alternatively the applicant can switch deposits across licensed credit institutions, and can invest in bonds or similar obligations as well as in local equities irrespectively of whether or not these are listed on the Malta Stock Exchange.

76. What should the applicant do if he/she decides to switch the repatriated funds into other eligible local assets?

It is the applicant's responsibility to keep documentary evidence to prove that the repatriation condition has been honoured and that the investment has been switched within the permitted parameters.

77. Can the holder of the registration certificate utilise part or all of the repatriated funds to repay a local loan during the three year period?

Yes, the applicant may utilise repatriated funds to repay a local loan provided that he/she maintains documentary evidence of such repayment and that the local loan was already in existence on 4 November 2013.

78. Can an applicant who benefitted from the 5% registration fee apply part of the repatriated funds to spend money on consumption items within the three-year period from date of registration?

No, such repatriated funds can only be switched into other eligible assets or used to repay a local loan that had already been in existence on 4 November 2013.

79. Can repatriated funds be switched into a collective investment scheme during the three year period?

Yes. However, it should be stressed that in case of investments in Collective Investment Schemes, the repatriation condition would only be honoured if invested in Prescribed Funds investing primarily in local securities and not in non-Prescribed Funds that invest primarily in overseas securities.

80. Should gold bullion held by an international institution qualify as an eligible asset under the Scheme if it is transferred for custody purposes to a local institution?

Gold bullion whose custody is transferred from an international institution to a local institution does not qualify for the 5% fee. In order for the repatriation condition to be met, the foreign asset has to be sold and the relative proceeds have to be remitted to Malta to be invested in local securities or placed in a deposit with a local bank.

81. A person had invested a sum of undeclared income in a portfolio of foreign investments which are managed by an international fund manager. If he/she decides to register these assets and appoint a local fund manager to replace the foreign fund manager, would such person be eligible to register the portfolio of foreign investments at 5% registration fee?

No, in order to qualify for the 5% registration fee, the foreign assets must be sold and the proceeds repatriated and invested in local securities or deposits with local banks. The deciding factor to determine whether or not a 5% fee is applicable is the nature/residency of the assets and not the residency of the custodian or fund manager of such assets.

82. On 3 November 2013, a person owned €1 million worth of foreign assets which were derived from undeclared income. In February 2014, he/she repatriated these funds in order to purchase immovable property in Malta. If he/she registers this immovable property, would he/she qualify for a registration fee of 5%?

No. Whereas the immovable property (being funded from eligible assets that were owned by the applicant on 3 November 2013) is eligible for registration under the 2014 Scheme, but since the funds were repatriated a few months before registration date, the applicant is not entitled to a 5% registration fee. A fee of 7.5% is applicable.

83. A person holds a sterling denominated account with a foreign bank, all derived from undeclared earnings. He would like to register this asset and repatriate it, but he would like to place it in a local bank account denominated in sterling. Which registration fee is applicable?

The Scheme regulations regarding the 5% registration fee provide that the foreign asset must be owned by the applicant on 4 November 2013, was still held abroad on date of registration and has to be repatriated to Malta to be invested in local securities or placed in a deposit account with a local bank. The regulations do not specify that the local deposit must be necessarily denominated in euro. Therefore, if on registration, the repatriated funds are placed in a sterling account with a local bank, the applicant is entitled to pay a registration fee of 5% of the euro equivalent of the deposit.

XIX. Position of Investment Registration Scheme Registrants in Relation to the Income Tax Act

84. Is there a risk that an individual who duly registers eligible assets derived from undeclared income would have to pay to the Inland Revenue Department all past tax due on undeclared income?

Absolutely not. As already indicated, once a person registers eligible assets, he or she is exempted from all tax that would have been chargeable on all the income and gains deriving from such assets throughout the applicable period prior to registration and on the relevant income represented by such assets.

85. In 2002 the applicant inherited some investments abroad, the income from which he/she never declared in the Maltese tax returns. All the tax returns were filed before 4 November 2013, except that for the year 2012 (year of assessment 2013) which was filed on the 15 December 2013. If the applicant registers these investments under the 2014 scheme, would the undeclared income for the years 2002 to 2012 be exempt from tax?

As already indicated, in terms of Article 9B (2)(b) of the Income Tax Act, upon registration, the applicant benefits from a tax exemption on a qualifying asset which represents an accumulation of undeclared income derived by the applicant during the year immediately preceding any year of assessment in respect of which that applicant furnished a return of his income to the Commissioner before 4 November 2013 or during the year immediately preceding any year of assessment commencing on or before 1 January 2013. Therefore if the inherited foreign investments are registered under the 2014 Scheme, the undeclared income for the years 2002 to 2011 will be exempt

from tax. On the other hand, the income for the year 2012 will not be exempt from tax, since the relative tax return was filed after 4 November 2013.

86. In 2004 the applicant purchased an apartment, which he/she rented out as a holiday apartment on short lets. He/she never declared any income from this apartment in the tax returns sent to the Inland Revenue Department. All his/her tax returns were filed before 4 November 2013. If the applicant registers the apartment in terms of the Scheme, what is the position with regard to all the rental income earned up to 2014 by the applicant from this apartment up to the date of the registration. Will it be all tax exempt?

Article 9B (2)(a) of the Income Tax Act exempts “any income, including capital gains, derived from a qualifying asset at any time before the date on which that asset is registered as a qualifying asset”. So, all rental income earned up to the date of registration from the registered apartment will be exempt from tax.

87. During the last few years an applicant under-declared for tax purposes his/her income from various sources to the amount of around €50,000. He/she lent some of this money to a company that he/she owns, while the rest he/she spent on holidays abroad and on living expenses. On the 4 November 2013 the loan advanced to the company amounted to €20,000. If the applicant registers the €20,000 loan, will all his/her under-declared income of €50,000 be exempted from tax?

The tax exemption applies only in respect of eligible assets which are duly registered under the scheme and which represent undeclared income. Therefore only €20,000 of the under-declared income represented by the registered loan to a company would be exempted. The remaining €30,000 would not benefit from any exemption and would remain subject to income tax.

88. The applicant is a full-time employee. During 2013 he/she did a one-off business deal, from which he/she earned €2,000. The applicant invested this amount in a fixed deposit account with a local bank. If the applicant registers this account, will the €2,000 business income be exempted from tax, and therefore he/she will have no need to declare it in the tax return for 2013 (year of assessment 2014)?

The Investment Registration Scheme exempts income, represented by a qualifying asset, which should have been declared in tax returns filed by the 4 November 2013. Since the tax return for the year 2013 (year of assessment 2014) will be filed after this date, any undeclared income will not be covered by the Investment Registration Scheme, and therefore should be declared in the tax return.

89. Over the years the applicant has failed to declare all his/her income for tax purposes. He/she invested the undeclared income in immovable property. Recently he/she was subject to an audit enquiry by the Inland Revenue Department. Following this enquiry, assessments were raised on the applicant by the department, bringing to charge an additional income of €30,000 a year over and above the income declared by such applicant. The assessments for the years of assessment 2009 to 2012 were notified to the applicant in April 2014, while the assessment for the year of assessment 2013 was notified to him/her in June 2014. If the applicant registers the immovable property for the purposes of the Investment Registration Scheme, will all assessments issued by the department be withdrawn?

Any income brought to charge in an assessment notified before the 31 May 2014 will remain and will not be exempted. Therefore, in this case only the assessment for the year of assessment 2013 will be affected, provided the applicant has filed an objection within the prescribed time. If the qualifying assets registered for the Investment Registration Scheme are considered to represent the undeclared income for the year of assessment 2013, then the assessment for this particular year will be withdrawn and the undeclared income will be exempted.

90. In the case of a person who has been declaring to the Inland Revenue Department only part of the income earned, what should be the amount registered?

The Scheme is intended to enable persons to regularise their position in respect of eligible assets derived from undeclared income. Only the relevant undeclared portion of a person's eligible assets is to be registered.

91. What happens if only part of the undeclared assets owned are registered under the Scheme?

If only part of the assets derived from undeclared income are registered under the Scheme, only the registered amount will be eligible to the benefits and exemptions granted under the Scheme.

92. In the year 2011 the applicant earned a commission of €10,000 from the sale of immovable property. He/she invested the €10,000 in Malta Government Stock (MGS). Through an oversight the applicant failed to declare the €10,000 commission earned in his/her tax return. However he/she has always been taxed at source on the interest received from the MGS. Does the applicant need to register the MG Stock, since he or she has always paid tax on the interest earned on this stock?

As things stand, this person has always honoured the tax obligation in respect of the interest earned on the MGS but is still in breach of the Income Tax Act with regard to the undeclared commission of €10,000. Consequently, if the Inland Revenue Department becomes aware of the commission earned but not declared, the applicant will be charged tax on the €10,000 at a rate of tax which could go up to 35%. In addition, he/she will be liable to pay a penalty for omission, and interests for late payment of tax. If the applicant registers the Malta Government Stock under the Investment Registration Scheme, the undeclared commission will be exempted from tax.

93. Once the holder registers eligible assets, is any income derived from such assets after registration going to be taxed in some special way?

No. Income derived from registered assets will be treated in the same manner for tax purposes like any other sources of investment income, whether registered or not under the Scheme. The tax treatment will depend on the rate the holder opts for.

94. Is the applicant obliged to provide the Inland Revenue Department with any information in respect of past undeclared income arising from assets that have been registered?

Article 9B of the Income Tax Act exempts a person who registers eligible assets under the 2014 Scheme from any obligation to furnish any return or declaration that may have been required prior to registration in respect of undeclared income represented by the registered assets.

95. Should overseas assets be registered under the Scheme if income arising from such assets has been declared or taxed abroad and not declared for income tax purposes in Malta?

An individual who is ordinary resident and domiciled in Malta is obliged to declare to the Malta tax authorities all income, whether arising in Malta or outside Malta. Therefore, notwithstanding that such an individual may be taxed outside Malta on foreign sourced income, such income will still be liable to tax in Malta. Such an individual may regularise his position in Malta by registering the relevant assets. In most cases, the individual may claim relief from double taxation by setting off the tax paid in another country against the tax paid in Malta on the same income arising abroad.

96. The applicant is employed full time, but carries on a self-employment on a part-time basis. All the income he or she earns from this self-employment is deposited in an overseas bank account. The applicant never declared in the tax returns the income from the part-time self-employment or the interests from the bank account. If he or she registers the bank account, what undeclared income shall be exempt, the income from the self-employment or the interests from the bank account?

The exemption covers all income up to the calendar year 2012 from the part-time self-employment (as long as the relative tax returns were filed before the 4 November 2013), as well as all the interest accrued on the deposit in the bank account up to the date of registration of the eligible asset.

97. The applicant is self-employed and has for the last few years been under-declaring the income from his business. He or she has used up the undeclared income for normal living expenses and to purchase an expensive car. The applicant has also failed to declare the income from foreign investments, which investments came into his or her possession through inheritance. If he or she registers these foreign investments, will all the undeclared income from his or her business and from the investments be exempted from tax?

Since the foreign investments do not represent the undeclared income from business, or an accumulation thereof, then the undeclared income from business is not exempted. However, all the undeclared income from investments up to the date of registration of the assets is exempt.

98. What is the position of persons who had declared income derived from their eligible assets for the years up to 2000 for Income Tax purposes and have not declared it since then?

Such persons are in breach of the law for the years during which they were not declaring income earned on their assets, namely for undeclared income earned from 2001 onwards. They may regularise their position by registering such eligible assets under the Scheme.

99. What is the tax position of income arising after 4 November 2013 and not yet received?

If the income arising after 4 November 2013 from registered eligible assets has only been accruing but has not yet been actually received by the date of registration, such income is not exempted from tax. Such income, once received, would have to be declared in the income tax return in due course.

100. If certain assets (for example real estate and shares in a company) are registered under the Scheme and sold after registration, should the cost of acquisition of the assets or the market value at which they were registered be taken into consideration for the purposes of ascertaining capital gains for tax purposes?

Income earned (including capital gains) after the date of registration will be regulated by the normal taxation system. This means that the cost of acquisition will be taken into consideration for the purposes of determining the capital gains.

101. What is the position of income that has already been declared in an Income Tax return prior to registration?

The exemptions arising under the 2014 Scheme only apply to income that has never been declared to the Inland Revenue Department and no tax has been assessed with respect thereto in any assessment raised under the Income Tax Acts and notified before 31 May 2014. The exemption does not apply to any income that has already been declared in an Income Tax return by the applicant prior to registration. Similarly, no exemption is applicable in respect of any income that has already been charged to tax.

102. The applicant did not always declare all his income for tax purposes. If he or she registers a qualifying asset under the Investment Registration Scheme, it is understood that all undeclared income, including any capital gains, derived from the qualifying asset, as well as any undeclared income to the extent that the qualifying asset represents such undeclared income or an accumulation thereof, will be exempt from tax. Is this correct?

All undeclared income, including any capital gains, derived from the qualifying asset up to the date of registration of the asset will be exempt from tax. All undeclared income to the extent that the qualifying asset represents such undeclared income or an accumulation thereof will be exempt, as long as that income was undeclared in the tax returns filed before the 4 November 2013.

103. A Maltese national receives a UK pension which has been regularly transferred to an offshore bank account which has never been declared to the tax authorities. He has effected several withdrawals from the account from time to time. He is seeking to rectify his tax position with regard to both the pensions received over the years and the interest earned on the bank account.

Upon registration, all the undeclared bank interest received up to the date of registration plus all remaining balances in the account derived from the undeclared pensions will be regularized. This

implies that if, for instance, this pensioner had received an aggregate cumulative pension of €50,000 over the years but only €10,000 are left in the bank account, the latter balance has been regularized but the remaining €40,000 of undeclared pensions are still in breach of the Income Tax Act.

104. What should the applicant do if he or she receives a notification from the Inland Revenue Department that an inquiry is being carried out on his tax deductions?

In the case of a notification of a tax enquiry in terms of Article 13(7) of the Income Tax Management Act, the applicant shall within 30 days of service of notice, submit to the Commissioner for Revenue the Registration certificate. If the applicant fails to submit the certificate within the 30 day period he will no longer be able to benefit from the exemptions provided under the Scheme [see Article 9B (6)(a) of Income Tax Act]. The Commissioner may extend the period for submission if he is satisfied that the applicant was prevented from submitting the certificate owing to a cause which is deemed reasonable in the circumstances, such as if the applicant was abroad at the time of the notification of the enquiry [see Article 9B (6)(b)].

105. If tax losses are declared in the return for year of assessment 2013 and for any preceding year of assessment, would they be carried forward and set-off against the total income of the applicant for the year preceding the year of assessment 2014 or in any subsequent year?

No. Where a person has availed of the Investment Registration Scheme he or she would have to forfeit any tax losses referred to in Article 5(10)(a) and 14(1)(g) of the Income Tax Act declared in the return for year of assessment 2013 and for any preceding year of assessment.

106. If foreign investments are repatriated to Malta and realised prior to registration under the Scheme, would the applicant be required to declare any realised capital gains to the tax authorities?

The scope of the Scheme is to exempt income (including capital gains) which was not declared for tax purposes up to date of registration. In the case of any capital gains which were realised on the transfer of such foreign shares prior to the date of registration, these will be covered by the Scheme and would therefore not be taxable. Given that the funds were repatriated prior to registration, the applicable registration fee is 7.5%.

107. What is the position of a person who agrees to repatriate his foreign investments in order to benefit from the 5% registration fee instead of 7.5%?

If a person owning foreign investments opts to register these assets at the 5% fee, he/she must sell such assets and repatriate the proceeds within two weeks after the registration of the asset. In such a case, any realized capital gains would be exempt from taxation on the basis of Article 9B(2)(a) of the Income Tax Act.

108. The owner of foreign assets would like to register under the Scheme but would prefer to retain these assets abroad. What is the position with regard to the relative unrealized gains?

If the applicant registers foreign investments which are retained abroad, he/she has to pay a registration fee of 7.5% of the current market value of such assets. Any capital gains which may be realised in the future (for instance, six months after date of registration) would not be covered by the Scheme and hence would be subject to tax. The cost for capital gains purposes will remain the original acquisition cost and any capital gains realized in the future on the sale of such assets must be declared to the tax authorities.

109. A person has been carrying out business operations without paying any value added tax on his operations. Will he be able to regularize his position in respect of the Value Added Tax Act by registering assets under the Scheme?

The Value Added Tax Act is not one of the relevant laws covered by the Scheme. Therefore breaches of the Value Added Tax Act cannot be regularised by the Scheme.

XX. Position of Foreign Settlers in Malta vis-à-vis Investment Registration Scheme

110. Is the Investment Registration Scheme applicable to foreign settlers with a Permanent Residence Permit in Malta?

Yes. For the purposes of the Income Tax Act, foreigners who have a permanent residence permit to reside in Malta are considered to be ordinarily resident but not domiciled in Malta. Consequently, they are not taxed on all income arising worldwide. Instead, such permanent foreign settlers are obliged to declare to the tax authorities:

- a) all income arising in Malta, and

- b) all income arising from overseas sources and received in Malta.

In the event that such foreign settlers have not been duly declaring such income, they may regularise their position vis-a-vis the Income Tax Act by registering the eligible assets that originated from such undeclared income.

111. Is the situation different for foreigners with a temporary residence permit?

Like those with a permanent residence permit, expatriates who are residing in Malta with a temporary residence permit are subject to tax with regard to:

- a) all income arising in Malta, and
- b) all income arising from overseas sources and received in Malta.

To the extent that such temporary residents are remitting to Malta undeclared income arising from overseas sources, or have undeclared income arising in Malta, they are entitled to regularise their position by registering the eligible assets derived from such undeclared income.

XXI. Additional Information on the Special Registration Scheme

112. How can one obtain additional information on the Special Registration Scheme?

Information on the Scheme may be obtained from the appointed registration agents. As indicated, a list of these Agents is published on the Central Bank of Malta's website at www.centralbankmalta.org

Enquiries of a **general nature** regarding the Scheme may also be addressed to Central Bank of Malta (CBM), Annexe, St James Counterguard, Valletta, Freephone No: 80072214 (contact persons: Mr Frank Caruana, Tel. No: 25504420 email: caruanaf@centralbankmalta.org and Mr Adrian Bonello, Tel. No: 25506013 email: bonelload@centralbankmalta.org – CBM Central Registration Certificate Depository)

Enquiries of a technical nature regarding **income tax matters** may be addressed to the Inland Revenue Department (IRD), Block 2, Beltissebħ, (contact persons: Mr Hector Buhagiar, Tel. No: 22962744 email: hector.buhagiar@gov.mt and Ms Elaine Bartolo, Tel. No: 22962745 email: elaine.bartolo@gov.mt – Technical and Legal Office, IRD)

Enquiries of a technical nature regarding matters related to **prevention of money laundering** may be addressed to the Financial Intelligence Analysis Unit (FIAU), 67/4 South Street, Valletta (contact person: Dr Manfred Galdes, Director FIAU Tel. No: 21231333 email: manfred.galdes@fiumalta.org)

Appendix I

Investment Registration Scheme Regulations Legal Notice No 256/2014 published in the Government Gazette of 22 July 2014

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26216&l=1>

Appendix II

Article 11 of External Transactions Act, provides the legal basis for the establishment of the Investment Registration Scheme 2014.

Link to the External Transactions Act: (Refer to Article 11)

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8733&l=1>

Appendix III

Article 9B of the Income Tax Act (as amended by Act XXIII of 2014 published in the Government Gazette of 27 June 2014), governs the exemptions granted in respect of qualifying assets registered under the Investment Registration Scheme 2014.

Link to the Income Tax Act: (Refer to Article 9B)

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8658&l=1>

Appendix IV

List of Approved Registration Agents

<http://centralbankmalta.org/updates/Downloads/pdfs/Registration-Agents-IRS2014.pdf>

Appendix V

Guidance Note issued by Financial Intelligence Analysis Unit on the Investment Registration Scheme 2014

[http://www.fiumalta.org/library/PDF/misc/Guidance%20Note%20Investment%20Registration%20Scheme%20\(Final%20Version\).pdf](http://www.fiumalta.org/library/PDF/misc/Guidance%20Note%20Investment%20Registration%20Scheme%20(Final%20Version).pdf)