

A.L. 382 tal-2014

**ATT DWAR IT-TRANSAZZJONIJIET ESTERNI
(KAP. 233)**

Regolamenti tal-2014 li jemendaw ir-Regolamenti dwar Skema ta' Registrazzjoni dwar l-Investimenti

BIS-SAHHA tas-setgħat mogħtija bl-artikolu 11(2) tal-Att dwar it-Transazzjonijiet Esterni, il-Ministru għall-Finanzi, wara konsultazzjoni mal-Bank Centrali ta' Malta, għamel dawn ir-regolamenti li ġejjin:-

1. It-titlu ta' dawn ir-regolamenti hu r-Regolamenti tal-2014 Titolu. li jemendaw ir-Regolamenti dwar Skema ta' Registrazzjoni dwar l-Investimenti, u dawn ir-regolamenti għandhom jinqraw u jinftiehmu haġa waħda mar-Regolamenti dwar Skema ta' Registrazzjoni dwar l-Investimenti, hawn iżjed 'il quddiem imsejha "ir-regolamenti principali". L.S. 233.11

2. Ir-regolament 2 tar-regolamenti principali għandu jiġi emendat kif ġej: Jemenda r-regolament 2 tar-regolamenti principali.

(a) fit-tifsira "data applikabbli" fis-subregolament (1) tiegħu, minflok il-kliem "bejn 1-4 ta' Novembru 2013 u t-30 ta' Settembru 2014" għandhom jidħlu l-kliem "bejn 1-4 ta' Novembru 2013 u t-30 ta' Novembru 2014";

(b) fit-tifsira "fiduċjarju" fis-subregolament (1) tiegħu, minflok il-kliem "tfisser kwalunkwe fondazzjoni privata jew kwalunkwe persuna li tkun involuta biex iżżomm f'isimha għan-nom ta' persuna oħra jew li għandha assi eligibbli taħt mandat jew *trust*;" għandhom jidħlu l-kliem "tfisser kwalunkwe fondazzjoni privata jew kwalunkwe persuna li tkun involuta biex iżżomm f'isimha għan-nom ta' persuna oħra jew li għandha assi eligibbli taħt mandat jew *trust* u tinkludi kumpannija msemmija fir-regolament 2(2)(b)(iv);"

(c) fl-aħħar tal-paragrafu (b) tas-subregolament (2) tiegħu, għandhom jiżdiedu l-kliem "u (iv) ishma li jirrappreżentaw l-assi, fejn il-preparazzjoni u l-preżentata tal-kontijiet verifikati mhumiex mandatorji taħt il-liġi tal-post tar-registrazzjoni tagħhom, u l-applikant ma jistax jipprovdi għas-sodisfazzjon tal-Kummissarju kontijiet verifikati minn ditta ta' l-auditjar magħrufa, kumpanniji msemmija fis-subparagrafu (i) għandhom jitqiesu bħala fiduċjarji tas-sid beneficiarju tat-tali

ishma, li jżomm l-assi għan-nom tas-sid beneficijarju u meta jkun hemm diversi azzjonisti, l-interess tal-applikant fl-assi eligibbli għandu jkun il-proporzjon tad-drittijiet tiegħu għall-assi disponibbli għal distribuzzjoni meta jsir stralč ta' kumpannija kif irrapreżentat mill-proporzjon tal-ishma tiegħu għan-numru totali ta' ishma eżistenti li għandhom drittijiet għall-assi disponibbli għal distribuzzjoni meta jsir stralč ta' kumpannija. Iżda fuq l-applikazzjoni tas-sid beneficijarju, li jkun l-azzjonist ta' dik il-kumpannija, dawk l-assi għandhom jiġu evalwati separatament ghall-eligibbiltà taħt il-paragrafi (a) sa (g) iżda ma jinkludux kwalunkwe self ta' azzjonisti jew avvanzi lill-kumpanniji bħal dawk imsemmija fil-paragrafu (f);" u

(d) fil-paragrafu (f) tas-subregolament (2) tiegħu, minflok il-kliem "jew self ieħor lil kumpannija registrata f'ġurisdizzjoni ta' fama" għandhom jidħlu l-kliem "jew self ieħor li sar direttament jew indirettament lil kumpannija registrata f'ġurisdizzjoni ta' fama".

Jemenda r-regolament 4 tar-regolamenti principali.

Jemenda r-regolament 6 tar-regolamenti principali.

Jemenda r-regolament 7 tar-regolamenti principali.

3. Fir-regolament 4 tar-regolamenti principali, minflok il-kliem "sat-30 ta' Settembru 2014" għandhom jidħlu l-kliem "sat-30 ta' Novembru 2014".

4. Fir-regolament 6 tar-regolamenti principali, minflok il-kliem "fid-data ta' regiżazzjoni." għandhom jidħlu l-kliem "fid-data ta' regiżazzjoni:", u minnufih wara għandu jiżdied il-proviso ġdid li ġej:

"Iżda fil-kaž li l-assi li jappartjeni lill-applikant fl-4 ta' Novembru 2013 ġie kkonvertit mill-applikant f'assu eligibbli li jikkonsisti f'depożitu fiss għal perjodu ta' sena miżimum ma' istituzzjoni ta' kreditu licenzjat f'Malta, fil-perjodu bejn l-4 ta' Novembru 2013 u d-data tar-regiżazzjoni, tali assi għandu jikkwalifika bħala assi eligibbli għal regiżazzjoni taħt din l-Iskema.".

5. Ir-regolament 7 tar-regolamenti principali għandu jiġi emen dat kif ġej:

(a) fil-paragrafu (ċ) tas-subregolament (2) tiegħu, minflok il-kliem "jew self ieħor lil kumpannija f'ġurisdizzjoni ta' fama, kopja certifikata tal-ftehim li permezz tiegħu fondi ġew mogħtija mill-applikant lill-kumpannija" għandhom jidħlu l-kliem "jew self ieħor li sar direttament jew indirettament lil kumpannija f'ġurisdizzjoni ta' fama, kopja certifikata tal-ftehim li permezz tiegħu fondi ġew mogħtija direttament jew indirettament mill-applikant lill-kumpannija";

(b) fil-paragrafu (d) tas-subregolament (2) tiegħu, minflok il-kliem "jew konferma oħra mill-intermedjarju finanzjarju licenzjat rispettiv" għandhom jidħlu l-kliem "jew konferma oħra mill-intermedjarju finanzjarju licenzjat rispettiv u fil-każ ta' assi eligibbli li għalihi japplika l-proviso mar-regolament 6 konferma bil-miktub mill-applikant li l-assi li ġie konvertit jappartjeni lill-applikant fl-4 ta' Novembru 2013.";

(c) fil-paragrafu (f) tas-subregolament (2), minflok il-kliem "meta l-assi eligibbli jkunu miżmuma minn terza persuna f'kapacità fiduċjarja," għandhom jidħlu l-kliem "meta l-assi eligibbli jkunu miżmuma minn terza persuna, inkluża kumpannija msemmija fir-regolament 2(2)(b)(iv), f'kapacità fiduċjarja"; u fl-ahħar tal-paragrafu (f) għandu jiżdied is-subparagrafu li ġej:

"(iii) fejn il-fiduċjarju huwa kumpannija msemmija fir-regolament 2(2)(b)(iv), kopja certifikata tal-memorandum u l-artikoli ta' assoċjazzjoni tal-kumpannija u certifikat tiegħu tar-registrazzjoni u r-registru tagħha tal-membri; u konferma li jkollu l-firma originali tad-diretturi tal-imsemmija kumpannija awtentikat fil-ġurisdizzjoni ta' registrazzjoni tal-kumpannija li juri li (a) l-applikant huwa s-sid beneficijär tal-ishma, waħdu jew ma' oħrajn, u jikkontrolla l-istess, waħdu jew ma' oħrajn; u (b) il-kumpannija hija s-sid beneficijär tal-assi kollha tal-kumpannija suġġett tal-applikazzjoni:

Iżda l-eżistenza ta' kwalunkwe self ta' azzjonisti jew avvanzi, responsabilitajiet lil terza persuni u kwalunkwe ftehim ta' garanzija relatati mal-assi m'għandhomx jxekklu l-għemil ta' tali konferma u jistgħu jigu msemmija fl-istqarrija tad-diretturi jekk id-diretturi jikkunsidraw xieraq li jsir hekk. Id-diretturi jistgħu jannettu kopja l-aktar riċenti tal-kontijiet mhux ivverifikati tal-kumpannija fi kwalunkwe forma li jistgħu jieħdu jekk jqis u jkun xieraq li jsir hekk." u

(d) fis-subregolament (3) tiegħu, minflok il-kliem "assi oħra" għandhom jidħlu l-kliem "assi eligibbli oħra"; u minflok il-kliem "Din ir-regola tapplika wkoll jekk dawk l-assi huma miżmuma minn fiduċjarju." għandhom jidħlu l-kliem "Din ir-regola tapplika wkoll jekk dawk l-assi eligibbli huma miżmuma minn fiduċjarju".

Jemenda r-regolament 8 tar-regolamenti principali.

6. Fil-paragrafu (f) tas-subregolament (1) tar-regolament 8 tar-regolamenti principali, minflok il-kliem "l-assi registrati kienu qed jinżammu gewwa jew barra minn Malta fl-4 ta' Novembru 2013;" għandhom jidħlu l-kliem "l-assi registrati kienu qed jinżammu gewwa jew barra minn Malta fl-4 ta' Novembru 2013 jew fil-każ ta' assi registrati msemmija fil-proviso tar-regolament 6 tali assi registrati kienu miżmuma f'Malta fid-data applikabbi;".

Jemenda r-regolament 12 tar-regolamenti principali.

7. Fis-subregolament (1) tar-regolament 12 tar-regolamenti principali minflok il-kliem "tal-Att dwar it-Taxxa fuq l-Income." għandhom jidħlu l-kliem "tal-Att dwar it-Taxxa fuq l-Income:", u minnufih wara għandu jiżdied il-proviso ġdid li ġej:

"Iżda fil-każ li l-assi eligibbli li għalihi japplika l-proviso tar-regolament 6, minkejja id-disposizzjonijiet tal-artiklu 9B ta' l-Att dwar it-Taxxa fuq l-Income, l-eżenzjoni mit-taxxa fuq l-income imsemmija fis-subregolament (2)(a) tal-imsemmi Att m'għandhiex tapplika u l-eżenzjoni mit-taxxa fuq id-dħul imsemmija fis-subartikolu (2)(b) tal-imsemmi Att għandha tapplika sakemm l-income ma ġiex iddikjarat fil-prospett tat-taxxa fuq l-income li ġiet provduta lill-Kummissarju sal-4 ta' Novembru 2013, u l-ebda taxxa ma giet stmata dwarhom fi kwalunkwe valutazzjoni taht l-Att dwar it-Taxxa fuq l-Income u notifikata qabel 31 Mejju 2014."

Jemenda r-regolament 13 tar-regolamenti principali.

8. Is-subartikolu (2) kollu tar-regolament 13 tar-regolamenti principali għandu jiġi emendat kif ġej:

(a) il-paragrafu (b) tiegħu għandu jiġi enumerat mill-ġdid bħala l-paragrafu (c);

(b) minnufih wara l-paragrafu (a) tiegħu għandu jiżdied il-paragrafu ġdid li ġej:

"(b) fil-każ ta' assi eligibbli li japplika għalihi il-proviso tar-regolament 6, sebgħa punt ħamsa fil-mija tas-suq attwali tal-assi rregistrat;"; u

(c) fit-tieni proviso tiegħu, minflok il-kliem "Iżda wkoll fil-każ ta' assi eligibbli msemmija fil-paragrafi (a) u (b) li kienu miżmuma barra minn Malta fl-4 ta' Novembru 2013" għandhom jidħlu l-kliem "Iżda wkoll fil-każ ta' assi eligibbli msemmija fil-paragrafi (b) u (c) li kienu miżmuma barra minn Malta fl-4 ta' Novembru 2013", u minflok il-kliem "għal mill-inqas tlett snin wara d-data tar-registrazzjoni." għandhom jidħlu l-kliem "għal mill-inqas tlett snin wara d-data tar-registrazzjoni:", u minnufih wara għandu jiżdied dan li ġej:

"Iżda wkoll fil-każ li l-assi eligibbli jikkonsistu f'ishma fil-kapital ta' kumpannija registrata jew inkorporata f'Malta jew f'gurisdizzjoni ta' fama barra minn Malta li ma tipposjedi l-ebda assi oħra ghajr proprjetà immobbbli jew iktar minn ħamsa u disghin fil-mija tal-assi li jikkonsistu f'proprjetà immobbbli, il-valur tas-suq attwali tal-kumpannija għandu jiġi mnaqqas bl-eċċess tal-valur tas-suq attwali tal-proprjetà immobbbli, li fuqu tfassal il-valur tas-suq tal-kumpannija, fuq l-ispiża oriġinali mid-data tal-akkwist tal-imsemmija proprjetà immobbbli tal-kumpannija.

Meta fil-każ ta' kumpannija msemmija fir-regolament 2(2)(b)(iv), l-assi eligibbli huwa proprjetà immobbbli li tifforma parti mill-assi tal-kumpannija li ma tipposjedi ebda assi appartī proprjetà immobbbli jew meta iktar minn ħamsa u disghin fil-mija tal-assi tagħha jikkonsistu f'proprjetà immobbbli, għandha ssir referenza għall-prezz oriġinali tal-immobbbli fid-data tal-akkwist. Fil-każ tal-assi eligibbli l-oħra kollha li jippartjenu mit-tali kumpannija għandha ssir referenza għall-valur tas-suq attwali tal-assi eligibbli, inkluzi meta l-assi eligibbli huma ishma skont ir-regolament 2(2)(b)(iv), u ebda referenza m'għandha ssir għall-valur tas-suq attwali tal-ishma fi ħdan il-kumpannija nnifisha.

Barra minn hekk, ebda referenza m'għandha ssir lil kontijiet tal-kumpannija (sakemm l-applikant jkun jista' jipprovdi għas-sodisfazzjon tal-Kummissarju kontijiet ivverifikati minn ditta ta' awditjar magħrufa) jew lil xi responsabbiltajiet, xi riżervi, self ta' azzjonisti jew avvanzi:

Iżda wkoll fir-rigward ta' assi eligibbli msemmija fil-paragrafi (a) u (c) li kien soġġetti għal ħlas ta' dritt ta' ħamsa fil-mija, fejn is-sid beneficijaru tal-assi eligibbli u f'isem jew għall-benefiċċju ta' min certifikat għar-registrazzjoni ġie maħruġ skont dawn ir-regolamenti u ma jżommx l-assi ripatrijati lokalment għall-perjodu ta' tlett snin wara d-data tar-registrazzjoni, huwa għandu jiġi kkunsidrat li qatt ma kien intitolat għall-eżenzjonijiet imsemmija fl-artiklu 9B tal-Att dwar it-Taxxa fuq l-Income, u għandu jitlef d-dritt li ma jirrifondix xi beneficiċju, eżenzjoni jew vantaġġ akkwistati qabel ir-registrazzjoni.".

L.N. 382 of 2014

**EXTERNAL TRANSACTIONS ACT
(CAP. 233)**

Investment Registration Scheme (Amendment) Regulations, 2014

IN exercise of the powers conferred by articles 11(2) of the External Transactions Act the Minister for Finance has, after consultation with the Central Bank of Malta, made the following regulations:-

Citation.

S.L. 233.11

Amends regulation 2 of the principal regulations.

1. The title of these regulations is the Investment Registration Scheme (Amendment) Regulations, 2014, and these regulations shall be read and construed as one with the Investment Registration Scheme Regulations, hereinafter referred to as "the principal regulations".

2. Regulation 2 of the principal regulations shall be amended as follows:

(a) in the definition "applicable date" in sub-regulation (1) thereof, for the words "between 4 November 2013 and 30 September 2014" there shall be substituted the words "between 4 November 2013 and 30 November 2014";

(b) in the definition "fiduciary" in sub-regulation (1) thereof, for the words "means 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;" there shall be substituted the words "means 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 and shall include a company referred to in regulation 2(2)(b)(iv);";

(c) at the end of paragraph (b) of sub-regulation (2) thereof, there shall be added the words "and (iv) shares representing assets, where the preparation and filing of audited accounts are not mandatory under the law of their place of registration, and the applicant is otherwise unable to provide to the satisfaction of the Commissioner audited accounts by a reputable audit firm, companies referred to in sub-paragraph (i) shall be deemed to be fiduciaries of the beneficial owner of the said shares, holding assets on behalf of the beneficial owner of such shares and where there are several shareholders, the interest of the applicant in the eligible assets shall be the proportion of his rights to assets available for distribution on a winding up of the company as represented by the proportion of

his shareholding to the total number of the shares in existence having rights to assets available for distribution on a winding up of the company. Provided that on the application of the beneficial owner, being the shareholder of such company, such assets shall be separately assessed for eligibility under paragraphs (a) to (g) but shall not include any shareholder loans or advances to such companies as is referred to in paragraph (f);"; and

(d) in paragraph (f) of sub-regulation (2) thereof, for the words "or other advances extended to a company registered in a reputable jurisdiction" there shall be substituted the words "or other advances extended directly or indirectly to a company registered in a reputable jurisdiction".

3. In regulation 4 of the principal regulations, for the words "until 30 September 2014" there shall be substituted the words "until 30 November 2014".

Amends regulation 4 of the principal regulations.

4. In regulation 6 of the principal regulations for the words "on date of registration." there shall be substituted the words "on date of registration:" and immediately thereafter there shall be added the following new proviso:

Amends regulation 6 of the principal regulations.

"Provided that where an asset belonging to the applicant on the 4 November 2013 has been converted by the applicant into an eligible asset, consisting of a deposit fixed for one year held with credit institutions licensed in Malta, during the period between 4 November 2013 and the registration date, such asset shall qualify as an eligible asset for registration under this Scheme.".

5. Regulation 7 of the principal regulations shall be amended as follows:

Amends regulation 7 of the principal regulations.

(a) in paragraph (c) of sub-regulation (2) thereof, for the words "or other 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" there shall be substituted the words "or other advances extended directly or indirectly to a company in a reputable jurisdiction, a duly authenticated copy of the agreement by virtue of which funds were advanced directly or indirectly by the applicant to such company";

(b) in paragraph (d) of sub-regulation (2) thereof, for the words "or other written confirmation from the relevant licensed financial intermediary;" there shall be substituted the

words "or other written confirmation from the relevant licensed financial intermediary and in the case of an eligible asset to which the proviso to regulation 6 applies a written confirmation from the applicant that the asset that has been converted belonged to the applicant on the 4 November 2013.";

(c) in paragraph (f) of sub-regulation (2) thereof, for the words "where eligible assets are held by a third party in a fiduciary capacity," there shall be substituted the words "where eligible assets are held by a third party, including a company referred to in regulation 2(2)(b)(iv), in a fiduciary capacity,"; and at the end of paragraph (f) there shall be added the following new sub-paragraph:

"(iii) where the fiduciary is a company referred to in regulation 2(2)(b)(iv), a certified copy of the company's memorandum and articles of association and its certificate of registration and its register of members; and a confirmation bearing the original signature of the directors of the said company authenticated in the jurisdiction of registration of the company evidencing that (a) the applicant is the beneficial owner of the shares, alone or with others, and controls the same, alone or with others; and (b) the company is the beneficial owner of all the assets of the company subject of the application:

Provided that the existence of any shareholder loans or advances, any liabilities to third parties and any security agreement relating to the assets shall not hinder the making of such confirmation and may be referred to in the directors' statement should the directors consider it appropriate to do so. The directors may also attach a copy of the latest unaudited accounts of the company in any form they may take should they consider it appropriate to do so."; and

(d) in sub-regulation (3) thereof, for the words "other assets" there shall be substituted the words "other eligible assets"; and for the words "This rule shall also apply if the assets are held by a fiduciary." there shall be substituted the words "This rule shall also apply if the eligible assets are held by a fiduciary.".

Amends
regulation 8 of
the principal
regulations.

6. In paragraph (f) of sub-regulation (1) of regulation 8 of the principal regulations for the words "the registered assets were held in or outside Malta on 4 November 2013;" there shall be substituted the words "the registered assets were held in or outside Malta on 4

November 2013 or in the case of registered assets referred to in the proviso to regulation 6 such registered assets were held in Malta on the applicable date;".

7. In sub-regulation (1) of regulation 12 of the principal regulations for the words "of the Income Tax Act." there shall be substituted the words "of the Income Tax Act:", and immediately thereafter there shall be added the following new proviso:

Amends regulation 12 of the principal regulations.

"Provided that in the case of an eligible asset to which the proviso to regulation 6 applies, notwithstanding the provisions of article 9B of the Income Tax Act, the exemption from tax on income referred to in sub-article (2)(a) of the said Act shall not apply and the exemption from tax on income referred to in sub-article (2)(b) of the said Act shall apply to the extent that the said income has not been declared in any income tax return which has been furnished to the Commissioner by 4 November 2013, and no tax has been assessed with respect thereto in any assessment raised under the Income Tax Acts and notified before 31 May 2014.".

8. Sub-regulation (2) of regulation 13 of the principal regulations shall be amended as follows:

Amends regulation 13 of the principal regulations.

(a) paragraph (b) thereof shall be re-numbered as paragraph (c);

(b) immediately after paragraph (a) thereof there shall be added the following new paragraph:

"(b) in the case of an eligible asset to which the proviso to regulation 6 applies, seven and one half per centum of the current market value of the registered asset;"; and

(c) in the second proviso thereto, for the words "Provided that in respect of eligible assets referred to in paragraphs (a) and (b) which were held abroad on 4 November 2013" there shall be substituted the words "Provided also that in respect of eligible assets referred to in paragraphs (a) and (c) which were held abroad on 4 November 2013", and for the words "for at least three years after date of registration." there shall be substituted the words "for at least three years after date of registration:", and immediately thereafter there shall be added the following:

"Provided further that in the case where the eligible asset consists of shares in the capital of a company

registered or incorporated in Malta or in a reputable jurisdiction outside Malta which does not own any asset other than immovable property or where more than ninety five percent of its assets consist of immovable property, the current market value of the company shall be reduced by the excess of the current market value of the immovable property, upon which the current market value of the shares was determined, over the original cost on date of purchase of the said immovable property owned by the company.

Where in the case of a company referred to in regulation 2(2)(b)(iv), the eligible asset is an immovable property forming part of the assets of a company which does not own any asset other than immovable property or where more than ninety five per cent of its assets consist of immovable property, reference shall be made to the original cost of the immovable at the date of purchase. In the case of all other eligible assets owned by such company reference shall be made to the current market value of the eligible assets, including when the eligible assets are themselves shares within sub-paragraph 2(2)(b)(iv), and no reference shall be made to the current market value of the shares in the company itself.

Furthermore, no reference shall be made to any accounts of the company (unless the applicant is able to provide to the satisfaction of the Commissioner audited accounts by a reputable audit firm) or to any liabilities, any reserves, shareholder loans or advances:

Provided further that, in respect of eligible assets referred to in paragraphs (a) and (c) which have been subject to a registration fee of five per centum, where the beneficial owner of the eligible asset and in whose name or for whose benefit a Registration Certificate has been issued pursuant to these regulations does not retain the repatriated assets locally for a period of three years after the date of registration, he shall be considered as never having been entitled to the exemptions referred to in article 9B of the Income Tax Act, and shall forfeit the right not to refund any benefit, exemption or advantage acquired before the registration.".
