



FINANCIAL INTELLIGENCE ANALYSIS UNIT

GUIDANCE NOTE

ON

THE INVESTMENT REGISTRATION SCHEME 2014

A GUIDANCE NOTE ISSUED BY THE FIAU REQUIRING VIGILANCE AND A STRICT APPLICATION BY SUBJECT PERSONS OF THE OBLIGATIONS UNDER THE PREVENTION OF MONEY LAUNDERING AND FUNDING OF TERRORISM REGULATIONS WHEN REGISTERING ELIGIBLE ASSETS UNDER THE INVESTMENT REGISTRATION SCHEME REGULATIONS, 2014

Issued: 22 July 2014

Amended: 31 July 2014

Background information

1. This Guidance Note is being issued in terms of Regulation 17 of the Prevention of Money Laundering and Funding of Terrorism Regulations. As such, it is binding on all subject persons concerned and enforceable by the FIAU. Any failure to comply with guidance issued by the FIAU in accordance with the aforementioned provision is subject to the applicable administrative penalties.

Purpose and scope

2. Specific reference is being made to the publication of the **Investment Registration Scheme Regulations, 2014** which provide for the establishment of a registration scheme to be known as the Investment Registration Scheme, 2014, hereinafter referred to as the Scheme, whereby persons subject to tax in Malta who hold eligible assets without declaring the relevant income (including capital gains) for the purposes of the Income Tax Act, may regularise their position under the relevant tax laws.
3. This Guidance Note is intended to provide assistance to subject persons, who are 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 money laundering and terrorist financing (ML/TF) risks and to establish measures to mitigate the risks identified.
4. 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 ML/TF risks. These risks are greater when the scheme incorporates elements of tax amnesty and/or asset repatriation.
5. 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 funds or other 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 funds or assets being repatriated from third countries.

The Investment Registration Scheme Regulations, 2014

6. The **Investment Registration Scheme Regulations, 2014** contain a number of safeguards against the potential abuse and the ML/TF risks associated with such schemes. In particular, Regulation 10 provides that when registering any asset/s 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 Financial Intelligence Analysis Unit. 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. Furthermore, nothing in the Regulations should be construed as exempting the applicant or any other person from liability for the commission of any crime or from prosecution for any crime other than a crime under the relevant tax laws.
7. The **Investment Registration Scheme Regulations, 2014** contain various other measures which are aimed at reducing the potential for abuse and ML/TF risks. Regulation 3 provides that persons who register assets under the scheme regularise their position under the relevant tax laws. Registration of assets therefore does not regularise a person's position under other laws nor does it legitimise assets should they be the proceeds of crime. Furthermore assets may only be registered by the person who beneficially owns them or, in those cases where assets are held by a fiduciary, by the person from whom the assets originated, or by the heir or legatee of such person.
8. According to Regulation 5, assets are to be registered through appointed registration agents which shall be credit institutions licensed in Malta under the Banking Act, financial institutions licensed in Malta under the Financial Institutions Act, stockbrokers licensed under the Investment Services Act, and persons holding a category 2 or category 3 Investment Services Licence granted under the Investment Services Act and in each case appointed as registration agents by the Central Bank of Malta. All registration agents are therefore "subject persons" under the Prevention of Money Laundering and Funding of Terrorism Regulations and thus fully bound by AML/CFT requirements and obligations.
9. In terms of Regulation 7, original documentary evidence on eligible assets is to be provided to registration agents and Regulation 8 requires persons registering assets to make a statutory declaration to the Central Bank of Malta confirming the beneficial ownership of the assets or that the assets being held in the name or under the control of a fiduciary originated from him, and that the assets do not represent proceeds from money laundering or any crime other than a crime against the relevant tax laws.

Action by subject persons

10. In view of the risks associated with voluntary tax compliance schemes in general as outlined above and notwithstanding the safeguards inbuilt in the **Investment Registration Scheme Regulations, 2014**, subject persons appointed in terms of the Scheme to register eligible assets are hereby required to exercise increased vigilance and take into account the potential ML/FT risks when dealing with applicants and eligible assets under the Scheme.
11. Subject persons are reminded of their obligation to apply, on a risk sensitive basis, enhanced customer due diligence measures as appropriate in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations and the Implementing Procedures, in particular where they identify a higher risk of money laundering. Under the circumstances subject persons are therefore required to consider the registration of assets under the scheme to present a higher risk of money laundering in terms of Regulation 11(1) of the Prevention of Money Laundering and Funding of Terrorism Regulations, thereby requiring the application of enhanced customer due diligence measures.
12. Subject persons are also required to take all reasonable measures possible to establish the source of funds or assets being registered and to ensure, where appropriate, that funds or other assets repatriated from foreign jurisdictions are derived from jurisdictions considered as reputable in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations. For this purpose subject persons are to refer to the Guidance Note on High-Risk and Non-Cooperative Jurisdictions which is incorporated within the Implementing Procedures Part I issued by the Financial Intelligence Analysis Unit (Appendix IV).
13. All reporting and disclosure duties of subject persons arising under the Prevention of Money Laundering and Funding of Terrorism Regulations, in particular the reporting duty under Regulation 15 and the obligations under Regulation 8(5), shall be scrupulously applied by subject persons involved in the implementation of the Scheme. As already stated above, with the exception of a crime under the Income Tax Act and other relevant tax laws, regularisation under the scheme does not exempt any person from liability for the commission of any other crime. Subject persons should therefore bear this in mind when exercising their disclosure and reporting obligations to the FIAU in all the circumstances mentioned in terms of the applicable provisions of the Prevention of Money Laundering and Funding of Terrorism Regulations.
14. The reporting obligation under Regulation 15 of the Prevention of Money Laundering and Funding of Terrorism Regulations shall not arise in those situations where the subject person is still collecting information in order to determine whether a Registration Certificate should be issued and the subject person becomes aware or suspects that the relevant tax laws have been breached, provided that there is no suspicion or knowledge of the existence of proceeds derived from any other crime. However, should the process of registration not be completed for any reason and should no Registration Certificate be issued, any suspicion or knowledge of money laundering resulting from the proceeds of tax-related offences should be duly reported.

15. Subject persons should be aware that the Registration Certificate issued in terms of Regulation 9 of the **Investment Registration Scheme Regulations, 2014** 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.
16. This Guidance Note shall remain in force for the duration of the Scheme and any extensions thereof.

Questions or queries

17. Any questions or clarifications in relation to the contents of this Guidance Note may be addressed to the FIAU.

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