

L.N. 30 of 2015**INCOME TAX ACT
(CAP. 123)****Exchange of Information (United States of America) (FATCA)
(Amendment) Order, 2015**

IN exercise of the powers conferred by article 76 of the Income Tax Act, the Minister for Finance has made the following Order:-

- Citation. **1.** The title of this order is the Exchange of Information (United States of America) (FATCA) (Amendment) Order, 2015, and this Order shall be read and construed as one with the Exchange of Information (United States of America) (FATCA) Order, hereinafter referred to as "the principal order".
- S.L. 123.156
- Declaration. **2.** It is hereby declared:
- (a) that pursuant to Article 7 of the Agreement between the Government of the United States of America and the Government of the Republic of Malta to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act (the "Agreement"), done at Valletta, on December 16, 2013, and published as a Schedule to the principal order, the Government of the United States of America has notified the competent authority of Malta through letters dated 1 July 2014 and 3 October 2014 that Malta shall be granted the benefit of more favourable terms on the date of entry into force of the Agreement;
- (b) that the United States considers the language in italics in the Schedule to this Order to be "more favourable terms" in Annex I of the Agreement;
- (c) that the competent authority of Malta has accepted such favourable terms.
- Adds Schedule II to the principal order. **3.** The Schedule to the principal order shall be re-numbered as Schedule I, and Schedule II, contained in the schedule to this Order, shall be added to the principal order.
- Amends Schedule I to the principal order. **4.** In conformity with the contents of the Schedule to this Order, Schedule I to the principal order, as re-numbered, shall be amended as follows:

(a) sub-paragraph B(4)(e) of Section VI of Annex I thereof shall be substituted by the following:

"Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, and providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity shall not qualify for NFFE status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;"

(b) there shall be added paragraph G in Section VI of Annex I thereof as follows:

"G. Alternative Procedures for New Entity Accounts Opened on or after July 1, 2014, and before January 1, 2015. For New Entity Accounts opened on or after July 1, 2014, and before January 1, 2015, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, Malta may permit Reporting Malta Financial Institutions to treat such accounts as Preexisting Entity Accounts and apply the due diligence procedures related to Preexisting Entity Accounts specified in section IV of this Annex I in lieu of the due diligence procedures specified in section V of this Annex I. In this case, the due diligence procedures of section IV of this Annex I must be applied without regard to the account balance or value threshold specified in paragraph A of section IV of this Annex I."

5. It is expedient that such arrangements for more favourable terms as implemented through the addition of Schedule II to the principal order should have effect on the date of entry into force of the Agreement and in accordance with the relevant provisions of the said Schedule II.

Arrangements to have effect.

Schedule

(Article 3)

"Schedule II

Language in italics considered by the United States to be “more favourable terms” in Annex I of the Agreement as notified to the Competent Authority of Malta through letters dated 1 July 2014 and 3 October 2014.

1. Subparagraph B(4)(e) of Section VI of Annex I:

Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, and providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an *Entity* shall not qualify for *NFFE* status if the *Entity* functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

2. Paragraph G of section VI of Annex 1:

G Alternative Procedures for New Entity Accounts Opened on or after July 1, 2014, and before January 1, 2015. For New Entity Accounts opened on or after July 1, 2014, and before January 1, 2015, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, Malta may permit Reporting Malta Financial Institutions to treat such accounts as Preexisting Entity Accounts and apply the due diligence procedures related to Preexisting Entity Accounts specified in section IV of this Annex I in lieu of the due diligence procedures specified in section V of this Annex I. In this case, the due diligence procedures of section IV of this Annex I must be applied without regard to the account balance or value threshold specified in paragraph A of section IV of this Annex I.