
QUALIFYING (CATEGORY 2) INDIVIDUALS RULES 1999Subsidiary
1999/075

Rules made under s.37.

**QUALIFYING (CATEGORY 2) INDIVIDUALS
RULES 1999****REVOKED by LN 2004/070 as from 1.7.2004**
*(but with Transitional Provisions)***(LN. 1999/075)****1.11.1999**

Amending enactments	Relevant current provisions	Commencement date
None		

ARRANGEMENT OF RULES.

Rule

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Income Tax

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1. These Rules may be cited as the Qualifying (Category 2) Individuals Rules, 1999 and come into operation on such date as the Governor may by notice in the Gazette appoint.

Interpretation

2. In these Rules, unless the context otherwise requires—

“approved residential accommodation” means any property which the Finance Centre Director approves as property to which these Rules apply;

“Category 2 Individual” means an individual for whom a certificate is in force in accordance with rule 6;

“exclusive use” means use for the residential purposes of the applicant and his family, i.e. spouse, children and parents of himself and his spouse, together with the occasional use of non paying guests but does not include letting or leasing of any sort;

“Finance Centre Director” means the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette;

“the Ordinance” means the Income Tax Ordinance.

Category 2 Individual

3. Subject to rules 4 and 5, an individual may apply in writing to the Finance Centre Director for the issue of a certificate under section 41A of the Income Tax Ordinance qualifying him as a Category 2 Individual if that individual meets or undertakes to meet the following requirements—

- (a) subject to subrule (b) below, the individual has available to him for his exclusive use approved residential accommodation in Gibraltar for the whole of the year of assessment;
- (b) in the year of application, the individual has the approved residential accommodation available to him for his exclusive use for that part of the year of assessment remaining from the date of issue of the certificate.

Exclusion by Previous Residence and Activity

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4.(1) An individual who has within the period of five years immediately preceding the year of assessment in which the application is made—

- (a) been present in Gibraltar for a period greater than either—
 - (i) 183 days in any one of those years, or
 - (ii) an average of 90 days in any three of those years; or
- (b) been engaged in a trade, business or employment in Gibraltar other than—
 - (i) duties incidental to any trade, business or employment based outside Gibraltar,
 - (ii) duties as a director of a company which at the time of the performance of the duties was an exempt company under the Companies (Taxation and Concessions) Ordinance, or
 - (iii) duties as a director of a company which at the time of the performance was a qualifying company under section 41 of the Ordinance,

shall not be entitled to a certificate issued under section 41A of the Ordinance.

(2) For the purposes of subrule (1) the five years preceding the application shall be disregarded where the applicant has held a certificate qualifying him as—

- (a) a Category 2 Individual; or
- (b) a Qualifying (High Net Worth) Individual in accordance with the Qualifying (High Net Worth) Individuals Rules 1992.

(3) Where the Finance Centre Director is satisfied that the requirements of subrule (1) are met in substance, he may waive any part or parts of the requirements of that subrule.

Prohibited Activities

5. A Category 2 individual may not engage in a trade, business or employment in Gibraltar other than —

- (a) duties incidental to any trade, business or employment based outside Gibraltar;

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- (b) duties as a director of a company which is and has not ceased to be an exempt company under the Companies (Taxation and Concessions) Ordinance; or
- (c) duties as a director of a company which is and has not ceased to be a qualifying company under section 41 of the Ordinance.

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Issue of Certificate

6. Where the Finance Centre Director is satisfied that the provisions of rules 3, 4 and 5 are met, he may issue a certificate qualifying the individual as a Category 2 Individual and such certificate shall be effective, subject to rule 7, for an indefinite period from the date when the Finance Centre Director is satisfied that the provisions of rules 3, 4 and 5 are first met.

Continuation of Certificate

7.(1) A certificate issued under rule 6 shall remain valid subject to the Finance Centre Director being satisfied on each anniversary of the issue of the certificate that the Category 2 Individual—

- (a) continues to meet the conditions of rules 3 and 5; and
- (b) has met any liability to tax under the Ordinance for the previous year.

(2) Where the Category 2 Individual fails to satisfy the Finance Centre Director under subrule (1), the Finance Centre Director may revoke the certificate with immediate effect.

Payment of Fee

8. The application for a certificate to be issued under rule 6 shall be accompanied by a non-refundable application fee of £500.

Calculation of Tax

9.(1) Except in so far as these Rules provide—

- (a) the provisions of the Ordinance shall apply to the income of an individual designated a Category 2 Individual for the purpose of determining the assessable income of that individual; and
- (b) nothing in these Rules or the application to a Category 2 Individual shall prejudice the application of the provisions of the Ordinance to that individual for any other purposes.

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(2) Rules made under section 37A of the Ordinance shall apply in determining the taxable income under these Rules of an individual designated a Category 2 Individual.

(3) Subject to subrule (4), the provisions of rule 2 of the Rates of Tax Rules, 1989 shall apply to the taxable income of a Category 2 Individual.

(4) In the case of a Category 2 Individual—

- (a) the provisions of rule 2 of the Rates of Tax Rules 1989 shall be applied to the first £45,000 of taxable income only;
- (b) the minimum amount of tax payable for any year of assessment following the year of assessment in which the initial application is made shall be £10,000; and
- (c) the minimum amount of tax payable for the first year of assessment during which a certificate issued under these Rules is in force shall be £833.33 for each complete or part month for which the certificate is in force in that year.

Assessable Income

10.(1) Subject to subrule (3), income falling within section 6(3) of the Ordinance and Rules 3(12)(ii), 3(24) and 3(25) of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992, shall not be taken into account in determining assessable income under these Rules unless it is received in Gibraltar and, for the purposes of these Rules, income arising from deposits in the name of qualifying or exempt companies shall not be regarded as having been received in Gibraltar.

(2) For the purposes of this rule, income received from a trust which qualifies for exemption from tax in accordance with subrule 3(27) of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 shall not be regarded as accruing in, derived from, or received in, Gibraltar.

(3) A Category 2 Individual may elect that all or any part of the income excluded by subrule (1) is taken into account in determining his assessable income under the provisions of these Rules for any year of assessment.

Family of a Category 2 Individual

11.(1) Subject to subrule (2), a category 2 individual may, by notice in writing to the Finance Centre Director, elect that the income of a spouse or any child of his or his spouse be deemed to be that of the Category 2 Individual for the purposes of these Rules.

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(2) No election under subrule (1) may be made in respect of a spouse or child who would be prevented from applying for a certificate by rule 4 of these Rules.

(3) An election made under subrule (1) may be withdrawn by the applicant by notice in writing to the Finance Centre Director and shall have effect from the date of the notice of withdrawal.

(4) Where a spouse or child in respect of whom an election has been made under subrule (1) commences a trade, business or employment which would prevent him from applying for a certificate under rule 5, the Finance Centre Director shall deem the election made in respect of that spouse or child to have been withdrawn from the date of the commencement of the trade, business or employment.

(5) The spouse of a Category 2 Individual or a child of his or his spouse may apply for a certificate in their own right under these Rules and for this purpose that individual and the Category 2 Individual shall each be deemed to have exclusive use of the approved property.

(6) For the purposes of this rule a child means an unmarried child of the Category 2 Individual or his spouse who—

- (a) is under the age of eighteen at the commencement of the year of assessment;
- (b) during the year of assessment is receiving full time instruction at any university, college, school or other educational establishment; or
- (c) during the year of assessment was under articles or indentures with a view to qualifying in a trade or profession.

Elections

12. Any election made under these Rules shall be made within the six months immediately following the last day of the year of assessment in which the election is to take effect.

Revocation of the 1992 Rules

13. Subject to rule 14, the Qualifying (High Net Worth) Individuals Rules 1992 (“the 1992 Rules”) are revoked.

Transitional Provisions

14.(1) Any individual to whom a certificate has been issued in accordance with the 1992 Rules may elect at any time by notice in writing to the Finance Centre Director to be subject to the provisions of these Rules and

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shall be deemed to have been issued with a certificate issued under these Rules.

(2) An election made under subrule (1) shall be irrevocable and shall take effect as specified in the notice of election in respect of the year of assessment immediately following the year in which the notice is given.

(3) Where an individual has made an election under subrule (1) the provisions of these Rules shall thereafter apply as if the certificate had been issued under these Rules and the individual shall take all steps as are necessary to comply with the requirements of these Rules from the commencement of the year in respect of which the election takes effect.

(4) Where no election has been made under subrule (1) an individual to whom a certificate has been issued in accordance with the 1992 rules shall continue to have the benefit of the certificate issued to him under those rules and in accordance with those Rules so long as he complies with the requirements of those rules:

(5) On presentation to the Finance Centre Director of the certificate issued under the 1992 Rules held by a person by whom an election under subrule (1) has been made, the Finance Centre Director shall—

- (a) endorse that certificate showing it to be deemed to have been issued under the Qualifying (Category 2) Individuals Rules, 1999; or
- (b) if the individual so requests, issue a new certificate made under the Qualifying (Category 2) Individuals Rules, 1999 and effective from the commencement of the year specified under subrule (2).