
QUALIFYING (CATEGORY 2) INDIVIDUALS RULES 2004

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Subsidiary
2004/070

Rules made under s37, 37A, 41A and 98 of the Income Tax Act.

**QUALIFYING (CATEGORY 2) INDIVIDUALS RULES
2004**

(LN. 2004/070)

1.7.2004

Amending enactments	Relevant current provisions	Commencement date
LN. 2004/072	r.2	1.7.2004
2008/017	r. 9(4)(a), (b), (c) & (d)	1.7.2007*
Act. 2009-35	r. 9(4)(a), (b), (c) & (d)	1.7.2009

* See Act 2008-07

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Title.

1. These Rules may be cited as the Qualifying (Category 2) Individuals Rules 2004 and come into operation on 1 July 2004.

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 brothers and sisters 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 as the Minister with responsibility for Financial Services may from time to time designate by notice in the Gazette;

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 Act qualifying him as a Category 2 Individual if that individual meets or undertakes to meet the following requirements–

- (a) subject to sub-rule (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.

- 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) Act, 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 Act,
 - (iv) duties as a director of a company which at the time of the performance of the duties was a company which did not carry on or transact any trade or business in Gibraltar, unless that trade or business was such that-
 - (aa) all receipts and income arising from it in the ordinary course of the trade or business arose either outside Gibraltar or from persons other than Gibraltarians or residents of Gibraltar, and
 - (bb) the trade or business was not in the opinion of the Finance Centre Director in direct competition with any other trade or business established in Gibraltar before the commencement of the duties,

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

(2) For the purposes of sub-rule (1)-

- (a) the holding and managing of investments or property shall be treated as a trade or business;

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- (b) the five years preceding the application shall be disregarded where the applicant has held a certificate qualifying him as-
 - (i) a Category 2 Individual under the Qualifying (Category 2) Individuals Rules 1999; or
 - (ii) 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-
 - (a) the requirements of sub-rule (1) are met in substance, or
 - (b) it would be to the benefit of the economic development of Gibraltar,

he may waive any part or parts of the requirements of that sub-rule.

Prohibited Activities.

5.(1) 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;
- (b) duties as a director of a company which was-
 - (i) an exempt company under the Companies (Taxation and Concessions) Act; or
 - (ii) a qualifying company under section 41 of the Act; or
- (c) duties as a director of a company which at the time of the performance of the duties is a company which does not carry on or transact any trade or business in Gibraltar, unless that trade or business is such that-
 - (aa) all receipts and income arising from it in the ordinary course of the trade or business arise either outside Gibraltar or from persons other than Gibraltarians or residents of Gibraltar, and

- (bb) the trade or business is not in the opinion of the Finance Centre Director in direct competition with any other trade or business established in Gibraltar before the commencement of the duties.

(2) For the purposes of sub-rule (1) the holding and managing of investments or property shall be treated as a trade or business.

(3) Where the Finance Centre Director is satisfied that-

- (a) the requirements of sub-rule (1) are met in substance, or
- (b) it would be to the benefit of the economic development of Gibraltar,

he may waive any part of parts of the requirements of that sub-rule.

Issue of Certificate.

6. Where the Finance Centre Director is satisfied that the provisions of rules 3, 4 and 5 are met, he shall consider the application of the individual and provided that he is satisfied that the applicant is-

- (a) of substantial and sound financial standing,
- (b) of good character, and
- (c) such that the issue of a certificate to him under these rules would not be deleterious to the reputation of Gibraltar as a finance centre,

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 effective 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) continues to be of good character, substantial and sound financial standing and of a reputation such that the continuance

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of the certificate would not be deleterious to the reputation of Gibraltar, and

(c) has met any liability to tax under the Act for the previous year.

(2) Where the Finance Centre Director has become aware that the Category 2 Individual has failed to meet any one or more of the conditions under sub-rule (1), he shall by notice in writing to such individual revoke the certificate with effect from the date from which, in the opinion of the Finance Centre Director, the failure first occurred.

(3)(a) In addition to and notwithstanding the provisions of sub-rule (1), each Category 2 Individual shall submit to the Finance Centre Director the certificate issued to him for endorsement to the effect that the Finance Centre Director is aware of no cause for the revocation of the certificate.

(b) The requirement in (a) above shall be stated on the certificate issued to each category 2 individual.

(c) Each category 2 individual shall submit his certificate for endorsement—

(i) within—

(aa) in the case of a previously issued certificate whose third anniversary fell before 1 July 2004, three months from the date of entry into operation of these rules,

(bb) the 30 days immediately preceding the third anniversary of the date of issue of the certificate and, subsequently,

(cc) the 30 days immediately preceding the third anniversary of the date of the most recent endorsement of the certificate; or

(ii) at such times as the certificate might otherwise specify.

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 £1,000.

Calculation of Tax.

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

- (a) the provisions of the Act 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 their application to a Category 2 Individual shall prejudice the application of the provisions of the Act to that individual for any other purposes.

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

(3) Subject to sub-rule (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 £70,000 of taxable income only;
- (b) subject to sub-rules (c) and (d), 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 £20,000; 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 £1,667 for each complete or part month for which the certificate is in force in that year.
- (d) the minimum amount of tax payable in the year of assessment during which a certificate issued under these Rules ceases to be in force shall be £1,667 for each complete or part month for which the certificate was in force in that year.

Assessable Income.

10.(1) Subject to sub-rule (3), income falling within section 6(3) of the Act 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 sub-rule 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 sub-rule (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 sub-rule (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.

(2) No election under sub-rule (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 sub-rule (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 sub-rule (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

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- (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 rule 14 of the Qualifying (Category 2) Individuals Rules 1999 (“the 1999 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 1999 Rules.

13. Subject to rule 14, the 1999 Rules are revoked.

Transitional Provisions.

14.(1) Any individual who at the date of commencement of these rules was certified as a Category 2 Individual in accordance with the 1999 rules shall be deemed to have been certified as such by virtue of these rules save that an individual first certified as a category 2 individual (other than a Qualifying (High Net Worth) Individual who elected to be subject to the 1999 rules) between 1 July 2002 and 30 June 2004 shall continue to pay tax under rules 9 and 10 of the 1999 rules until the second anniversary of the certification and to that extent the 1999 rules shall continue to apply to such an individual.

- (2) (a) Rule 14 of the 1999 rules shall remain in force in respect of any individual who at the date of commencement of these rules was certified as a Qualifying (High Net Worth) Individual in accordance with the Qualifying (High Net Worth) Individuals Rules 1992 (“the 1992 rules”) save that rules 4 and 5 of the 1992 rules shall not apply and the tax due from the individual will be calculated in accordance with rule 9 of these rules.
- (b) The expression “1999” in rule 14(5)(a) and (b) of the 1999 Rules shall be replaced by “2004”.