

Subsidiary Legislation made under ss. 37, 37A, 41A and 98.

## Qualifying (Category 2) Individuals Rules 2004

### LN.2004/070

		<i>Commencement</i>	<b>1.7.2004</b>
Amending enactments	Relevant current provisions	Commencement date	
LN. 2004/072	r.2		1.7.2004
2008/017	r. 9(4)(a)-(d)		1.7.2007*
Act. 2009-35	r. 9(4)(a)-(d)		1.7.2009
LN. 2010/111	r. 9(4)(a)-(d)		1.7.2010
Act. 2015-23	rr. 4-5, 6(c), 7(1), (d)-(e), (4), 9(2), (4)(a), (5)		1.7.2013
2014-10	r. 11		28.3.2014
2015-23	r. 10		1.7.2015
LN. 2021/344	r. 9(4)(a)-(d)		1.8.2021
2022/173	rr. 7(3)(c)(i)(aa), 8, 9(4)(a)-(d)		7.7.2022
2022/217	rr. 2-3, 5(2)(a), 7(1)(c)-(d), (4), 8(1)(a), 9(1)(a)-(b), (2), 10(1), (3)-(4)		28.7.2022

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\* See Act 2008-07

**2010-21**

Income Tax

**2004/070**

**Qualifying (Category 2) Individuals Rules 2004**

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*This version is out of date*

**ARRANGEMENT OF RULES**

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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;

“the 1952 Act” means the Income Tax Act (Act No. 11 of 1952).

**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 1952 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.**

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4.(1) Subject to sub-rules (2) and (3) below, an individual who in the last five years of assessment immediately preceding the year of assessment in which the application is made—

- (a) was present in Gibraltar for a period exceeding—
  - (i) 183 days in any such year of assessment, or
  - (ii) an average of 90 days in any three of those years of assessment; or
- (b) has carried on or exercised any trade, business, profession, vocation or employment in Gibraltar,

shall not be entitled to a certificate issued under rule 6 of these rules.

(2) Paragraph (b) above shall not apply in relation to activities, duties or functions performed by the individual in Gibraltar that are incidental to any trade, business, profession, vocation or employment carried on or exercised outside Gibraltar by that individual.

(3) The Finance Centre Director may waive any requirement of this rule where he is satisfied that the issue of a certificate under rule 6 of these rules would be of benefit to the economic development of Gibraltar.

**Permitted activities and chargeability to taxation on those activities.**

5.(1) Subject to sub-rules (2) and (3) below, a Category 2 Individual may be permitted to carry on or exercise any trade, business, profession, vocation or employment in Gibraltar where the Finance Centre Director is satisfied that the exercise of such trade, business, profession, vocation or employment would be of benefit to the economic development of Gibraltar.

(2) A Category 2 Individual who is permitted by the Finance Centre Director under sub-rule (1) above, to carry on or exercise any trade, business, profession, vocation or employment in Gibraltar shall be assessable to taxation—

- (a) under the provisions of the Income Tax Act 2010 in relation to income accrued in or derived from Gibraltar, and
- (b) in accordance with the provisions of rule 10 of these rules.

(3) Sub-rule (2) above shall not apply in relation to activities, duties or functions performed by the Category 2 Individual in Gibraltar that are incidental to any trade,

business, profession, vocation or employment carried on or exercised outside Gibraltar by that Category 2 Individual.

**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,

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 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 of the certificate would not be deleterious to the reputation of Gibraltar, and
- (c) has met any liability to tax under the Income Tax Act 2010 for the previous year; and
- (d) has paid all the assessed tax due under the provisions of the Income Tax Act 2010, or
- (e) has paid the amount of any minimum tax payable or that would have been payable under rule 9 of these rules in relation to any year of assessment.

(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

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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.

(4) Where a Category 2 Individual makes a declaration that he is not chargeable to taxation under the provisions of the Income Tax Act 2010, the Finance Centre Director shall immediately revoke the certificate issued under rule 6 of these rules.

**Advance payment of tax and application fee.**

- 8.(1) The application for a certificate to be issued under rule 6 must be accompanied by–
- (a) a non-refundable application fee of £1,100; and
  - (b) a refundable advance payment equivalent to the maximum amount of tax as set out in rule 9(4)(a).

(2) Any Category 2 Individual in receipt of a valid certificate issued under rule 6 must make an advance payment of tax equal to the maximum amount of tax as set out in rule 9(4)(a) by not later than 30 November 2022.

(3) The advance payment of tax shall be refundable-

(a) if an application made under rule 6 is rejected; or

(b) upon a certificate issued under rule 6 being relinquished or surrendered.

(4) Any refund made under subrule (3)(b) shall be after the deduction of any outstanding tax in accordance with these rules.

#### **Calculation of Tax.**

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

(a) the provisions of the Income Tax Act 2010 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 Income Tax Act 2010 to that individual for any other purposes.

(2) Rules made under section 25 of the Income Tax Act 2010 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) subject to rule 10 of these Rules, the provisions of rule 2 of the Rates of Tax Rules 1989 shall be applied to the first £118,000 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 £37,000; 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 £3,083.33 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 £3,083.33 for each complete or part month for which the certificate was in force in that year.

(5) A Category 2 Individual shall not be assessable to tax on the Gross Income Based System under rule 3(A) of the Rates of Tax Rules.

**Assessable Income.**

10.(1) Subject to the provisions of these rules, the income chargeable to taxation under section 11 of the Income Tax Act 2010 in relation to dividends, pension or emoluments of office accruing in, derived from or received in any place other than Gibraltar of any person ordinarily resident in Gibraltar shall not be taken into account in determining the assessable income of a Category 2 Individual.

(2) A Category 2 Individual may elect that all or any part of the income excluded by sub-rule (1) above, is taken into account in determining the assessable income of that individual for any year of assessment.

(3) A Category 2 Individual shall be assessable to taxation under the provisions of the Income Tax Act 2010 in respect of income from rents, premiums and any other profits arising from any real property situate in Gibraltar.

(4) A Category 2 Individual who is permitted by the Finance Centre Director under rule 5 of these rules to carry on or exercise any trade, business, profession, vocation or employment in Gibraltar shall be assessable to taxation under the provisions of the Income Tax Act 2010 in relation to income accrued in or derived from Gibraltar.

(5) The income from sources referred to in sub-rules (3) and (4) above, for the purposes of rule 9 of these rules shall be assessable on a Category 2 Individual in accordance with the provisions of rule 2 of the Rates of Tax Rules at the appropriate rate prescribed therein.

(6) For the purposes of determining the appropriate rate under sub-rule (5) above, the amount specified in rule 9(4)(a) of these rules shall be included in the assessable income of the Category 2 Individual.

**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 civil partner or any child of his or his



spouse or civil partner 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 civil partner 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, civil partner 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, civil partner or child to have been withdrawn from the date of the commencement of the trade, business or employment.

(5) The spouse or civil partner of a Category 2 Individual or a child of his or his spouse or civil partner 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 or civil partner 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 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.**

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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”.