

Subsidiary Legislation made under ss. 41A and 98.

High Executive Possessing Specialist Skills Rules 2008

LN.2008/016

		<i>Commencement</i>	1.7.2007
Amending enactments	Relevant current provisions		Commencement date
Act. 2015-23	r. 4, 7-9		1.7.2007
“	r. 7(2)		1.7.2009
“	rr. 3, 7(1)-(2), (5), 8		1.7.2010
LN. 2010/112	r. 7		1.7.2010
Act. 2015-23	r. 7(2)		1.7.2011
LN. 2021/342	rr. 3(1)(a), 7(1)-(2), (5), 8(2)		1.8.2021
2022/216	rr. 2(1)-(2), 6, 7(2)(a)-(c), 8(1)		28.7.2022
2023/192	r. 6		17.7.2023

2010-21

Income Tax

2008/016 High Executive Possessing Specialist Skills Rules 2008

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ARRANGEMENT OF RULES

Rule

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In exercise of the powers conferred on him by sections 41A and 98 of the Income Tax Act, and of all other enabling powers, the Minister has made the following Rules—

Title and commencement.

1. These Rules may be cited as the High Executive Possessing Specialist Skills Rules 2008 and shall be deemed to have come into operation on 1st July 2007.

Interpretation.

2.(1) In these Rules—

“assessable income” means—

- (i) the gross emoluments arising from the occupation or post of the individual in respect of whom a certificate is issued in accordance with rule 3;
- (ii) any income of that individual falling within section 11(1) of the Income Tax Act 2010; or
- (iii) any other income falling within section 11(2) of that Act.

“a certificate” means a qualifying certificate issued under section 41A of the 1952 Act;

“a company” means a company incorporated, registered or carrying on business in Gibraltar; and

“gross emoluments” means the full amount of the emoluments earned in respect of the occupation carried out for, or post held with, the applicant company or statutory body and shall include all salaries, fees, wages, perquisites, benefits in kind and profits whatsoever;

“statutory body” means such statutory bodies as the Minister for finance may approve;

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

(2) For the purposes of section 41A of the 1952 Act, the prescribed requirements for the issue of a certificate shall be those set out in rules 3 to 5.

HEPSS individual.

3.(1) A company or a statutory body may apply in writing, together with all the required supporting documents, to the Finance Centre Director or such other public officer as the Minister with responsibility for finance may from time to time designate by notice in the Gazette for, and may be issued by him with, a certificate designating an individual remunerated in respect of an occupation carried out for, or a post held with, that company or statutory body as a High Executive Possessing Specialist Skills individual (hereinafter referred to as a “HEPSS individual”) where that individual is one in respect of whom the said Minister is satisfied that–

- (a) he possesses skills that are necessary to promote and sustain economic activity of particular economic value to Gibraltar or the establishment, development or growth of which the Government is seeking to facilitate and encourage, and who will occupy a high executive or senior management position and will earn more than £160,000 per annum in Gibraltar;
- (b) those skills are not available in Gibraltar;
- (c) those skills are important for the economic development and growth of Gibraltar;
- (d) he has available to him for his exclusive use for the period of the certificate, residential accommodation in Gibraltar, approved for this purpose by the Finance Centre Director or such other public officer as the Minister with responsibility for finance may from time to time designate by notice in the Gazette, adequate for himself and any or all of his family in Gibraltar dependent upon him; and
- (e) he has not been gainfully occupied or resident in Gibraltar in any part of the thirty six month period immediately preceding the year in which the application is made (although the Minister for finance may waive the requirement of this subparagraph (e)).

(2) Category 3 Individuals are exempted from this provision and may apply for a certificate under this Rule.

Terms and conditions of certificate.

4.(1) A certificate issued pursuant to rule 3 above, shall specify the following–

- (a) the name of the individual to whom it is issued;
- (b) the company or statutory body in respect of which that individual, for the purposes of rule 3 above, has an occupation or holds a post;

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- (c) the title and functions of the post mentioned in paragraph (b) above; and
- (d) the period of validity referred to in sub-rule (2) below.

(2) Subject to the provisions of rule 5 below, a certificate issued pursuant to rule 3 above, shall remain valid and in force for the period specified in the certificate or where no period is specified in the certificate until it is revoked by the Finance Centre Director.

Certificate.

5. A certificate issued under rule 3 shall be null and void and of no effect if—

- (a) any matter supplied in the application made under rule 3 was false or incomplete in a material particular;
- (b) the tax payable in accordance with rule 6 is not paid at the times specified in that rule; or
- (c) the individual in respect of whom the certificate is issued no longer meets the conditions of rule 3 or ceases to be of good character and of a reputation such that the continuance of the certificate would be deleterious to the reputation of Gibraltar.

Payment of fee.

6. An application by a company or a statutory body for a certificate under rule 3 shall be accompanied by a non-refundable fee of £1,168.

Deemed assessable income, rates of tax applicable and calculation of the tax.

7.(1) Subject to the provisions of this rule and rules 8 and 9 below, an individual in respect of whom a certificate has been issued under rule 3 above, shall be chargeable to tax for a year of assessment in the amount of £160,000 exactly of his assessable income under the Gross Income Based System in accordance with the provisions of rule 3(A) of the Rates of Tax Rules.

(2) Subject to the provisions of this rule and rules 8 and 9 below, the amount of tax payable shall be—

- (a) £3,595 for each complete calendar month or part of each calendar month in respect of the first year of assessment during which a certificate issued pursuant to rule 3

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above is valid and in force and shall be paid in accordance with sub-rule (3) below;

- (b) £43,140 for any whole year of assessment during which a certificate issued pursuant to rule 3 above is valid and in force and shall be paid by twelve equal monthly instalments in accordance with sub-rule (3) below;
- (c) £3,595 for each complete calendar month or part of each calendar month in respect of the last year of assessment during which a certificate issued pursuant to rule 3 above is valid and in force and shall be paid in accordance with sub-rule (3) below;

(3) Subject to sub-rule (4) below, and notwithstanding that no assessment has been made on an individual to whom these rules apply, the tax payable referred to in paragraphs (a) to (c) of sub-rule (2) above, shall be paid as follows—

- (a) on the last day of each month, or
- (b) on such day or days, as appears appropriate to the Commissioner to give effect to paragraph (a) above.

(4) In respect of the payment or payments, as the case may be, of any tax referred to in sub-rule (3) above, the Commissioner shall issue to any person, a directive or directives, as the case may be, pursuant to the provisions of rule 9 below.

(5) An individual who has a certificate issued to him pursuant to rule 3 above that is valid and in force for a whole year of assessment shall be deemed to be chargeable to tax in the amount of £160,000 exactly as prescribed by sub-rule (1) above, notwithstanding that the assessable income of that individual does not exceed £160,000 or is likely not to exceed £160,000 for that year of assessment.

Treatment of other income.

8.(1) Where an individual to whom these rules apply, has other assessable income from any source specified in the Income Tax Act 2010 (and such other assessable income is not from a source in respect of which he has a valid certificate issued under rule 3 above), the individual shall be chargeable to tax on the full amount of that other assessable income for the year of assessment under the Gross Income Based System in accordance with rule 3(A) of the Rates of Tax Rules at the appropriate rate prescribed therein.

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(2) For the purposes of determining the appropriate rate under sub-rule (1) above, the amount of £160,000 specified in rule 7 above, shall be included in the assessable income of that individual.

Commissioner may issue directive for collection of tax.

9.(1) Subject to sub-rule (2) below, on the making of any payment of, or on account of, any income assessable and chargeable on an individual to whom the provisions of these rules apply, tax shall be deducted by the person making the payment if required by the Commissioner, notwithstanding that when the payment is made no assessment has been made in respect of such income.

(2) Subject to the provisions of rule 7 above, the Commissioner may in such manner as seems appropriate to him issue a directive to the person referred to in sub-rule (1) above, requiring the person making any payment of, or on account of, any such income when he makes the payment, to make a deduction of tax in the amount specified in the directive and pay that amount to the Commissioner.

(3) For the purposes of this rule, a payment of, or on account of, any income assessable to tax on an individual to whom the provisions of these rules apply, shall be treated as made at the time when the payment is actually made or the time when the individual becomes entitled to the payment, whichever is the earlier.

(4) In this rule, “person” includes any statutory authority and any company referred to in rule 3 above.