

Subsidiary Legislation made under s.41A & 98.

## **Qualifying (Category 3) Individuals Rules 2008**

**LN.2008/018**

*Commencement*

**1.7.2007\***

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### **ARRANGEMENT OF RULES**

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\* See Act. 2008-07

**2010-21**

**Income Tax**

**2008/018**

**Qualifying (Category 3) Individuals Rules 2008**

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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.**

1. These Rules may be cited as the Qualifying (Category 3) Individuals Rules 2008.

**Interpretation.**

- 2.(1) In these Rules—

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

“a company” means an exempt company or a company which was exempt prior to 1 January 2008;

“existing Qualifying Category 3 Individual” means a person who, on or by the 1 July 2007, had been designated as a Qualifying Category 3 Individual under the Qualifying (Category 3) Individuals Rules, 1998;

“Finance Centre Director” means 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;

“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 and profits whatsoever;

“statutory body” means the Gibraltar Development Corporation, the Financial Services Commission, the Gibraltar Health Authority and such other statutory bodies as the Minister with responsibility for finance may approve; and

“taxable income” means—

- (a) the gross emoluments arising from the occupation or post of the Category 3 Individual in respect of whom the certificate issued in accordance with rule 3 is in operation;
- (b) any income of that individual falling within section 6(1)(c) and (d) of the Income Tax Act; or
- (c) any other income falling within section 6(3) of that Act.

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

**Category 3 Individual.**

3. A company or a statutory body may apply in writing to the Finance Centre Director for a certificate designating an individual as a Qualifying (Category 3) Individual (hereinafter referred to as a “Category 3 Individual”) if that individual is an existing Qualifying Category 3 Individual either—

- (a) by virtue of a Qualifying (Category 3) Individual certificate in respect of him issued to the company or statutory body making the application; or
- (b) by virtue of a Qualifying (Category 3) Individual certificate in respect of him issued to a different company or statutory body.

(2) The Finance Centre Director may issue a certificate designating an individual as a Category 3 Individual if—

- (a) the individual is an existing Qualifying Category 3 Individual either by virtue of a Qualifying (Category 3) certificate issued to the company or statutory body making the application or a different company or statutory body; and
- (b) the Finance Centre Director is satisfied that—
  - (i) the individual possesses skills essential to the operation of the company or statutory body by whom the application is made;
  - (ii) those skills are not available in Gibraltar;
  - (iii) those skills are important for the economic regeneration of Gibraltar; and
  - (iv) the individual 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, adequate for himself and any or all of his family in Gibraltar dependent upon him.

(3) A certificate may not be issued by the Finance Centre Director under sub-rule (2) without the approval of the Minister with responsibility for finance where the application has been made under sub-rule (1)(b).

**Terms and conditions of certificate.**

4.(1) A certificate issued pursuant to rule 3 shall specify–

- (a) the name of the Category 3 Individual in respect of whom it is issued and the company or statutory body in respect of which he has an occupation or holds a post; and
- (b) the period for which it is issued.

(2) A certificate may be issued for a maximum duration of up to 30 June 2009.

(3) If during the period for which a certificate has been issued the Finance Centre Director determines that–

- (a) any matter supplied in the application made under rule 3 was false or incomplete in a material particular; or
- (b) the tax payable in accordance with rule 6 was not paid at the times specified in that rule,

he may withdraw the certificate with effect from the beginning of the year of assessment in which it is withdrawn.

#### **Payment of fee.**

5. An application by a company or a statutory body for a certificate under rule 3 shall be accompanied by a non-refundable fee of £500 per annum or part thereof.

#### **Rate of tax.**

6.(1) Subject to sub-rule (3), a Category 3 Individual in respect of whom a certificate has been issued and which remains in effect, shall be charged to tax of £15,000 on his taxable income for each year of assessment during which the certificate is in effect.

(2) Subject to sub-rule (3), the tax charged for a year of assessment shall be due and payable in twelve equal monthly instalments, each instalment being due on the last day of each month of the year of assessment in respect of which the tax is charged.

(3) The amount of £15,000 shall be reduced by one twelfth for each complete calendar month in the year of assessment during which there is no certificate in effect in respect of that individual and the reduced amount shall be due and payable in equal monthly instalments each instalment being due on the last day of each month during which the certificate is in effect in the year of assessment for which the tax is charged.

**Treatment of other income.**

7. Where a Category 3 Individual in respect of whom a certificate has been issued under rule 3, has income which is not taxable income for the purposes of these Rules, that income shall be assessed in accordance with the provisions of the Income Tax Act.

**Revocation of 1998 Rules.**

8. Subject to rule 9, the Qualifying (Category 3) Individuals Rules, 1998 are revoked.

**Transitional provisions.**

9. An individual to whom a certificate has been issued in accordance with the Qualifying (Category 3) Individuals Rules, 1998—

- (a) shall continue to have the benefit of that certificate until the certificate expires, or for two years up to 30 June 2009, whichever is the later; and
- (b) rules 6 and 7 of these rules apply to him.