

Rules made under s.37.

RATES OF TAX RULES, 1989

(LN. 1989/096)

23.11.1989

| Amending enactments | Relevant current provisions | Commencement date |
|--------------------------|------------------------------------------------------------|----------------------|
| LN.1990/176 | rr. 2(c), (d) and 7 | 1.7.1991 |
| 1992/018 | rr. 2(b), (d) and (e), 3 and 6 | 1.7.1991 |
| 1993/045 | rr.2, 3 and 8 | 8.3.1993 |
| 1992/022 | r.2(e) and (f) | 1.7.1993 |
| 1994/061 | r.6 | 7.7.1994 |
| 1999/082 | rr.2, 6 and 7 | 1.7.1999 |
| 2002/014 | r.2 | 1.7.2001 |
| 2002/085 | r. 3 | 1.7.2001 |
| “ | rr. 2 and 3 | 1.7.2002 |
| 2003/104 | rr. 2 and 3. | 1.7.2003 |
| 2006/112 | rr. 2, 3 and 4(a) | 1.7.2006 |
| 2008/069 | rr. 2, 3, 3A, 6 & 7 | 1.7.2007 |
| 2008/102 | rr. 3A(1), 6(1), (3) & (4), 7(1), (3) & (4) | 1.7.2008 |
| 2009/047 | rr. 3A(1) & (1A), 6(1), (3), (4) & (6), 7(1), (3) & (4) | 1.7.2009 |
| Act.2011-11 ¹ | rr. 3A(1) & (4), 3(1A) (1B), (1C), (1D), (1E) & (1F) | 1.7.2010 |

¹ For the avoidance of doubt, section 24 of the Interpretation and General Clauses Act restricting the retrospective commencement of subsidiary legislation shall not apply to subsidiary legislation made under sections 4 to 7 of Act 2011-11. (s.2(4))

ARRANGEMENT OF RULES

Rules

1. Title.
2. Rates of tax chargeable on individuals, etc.
3. Tax charged on certain non-residents.
- 3A. Rates of tax chargeable on individuals under Gross Income Based System.
4. Tax charged on certain amounts received from pension schemes, etc.
5. Standard rate of tax.
6. Corporation tax.
7. Building Society tax.
8. Income from Development Bonds.

Title.

1. These Rules may be cited as the Rates of Tax Rules, 1989.

Rates of tax chargeable on individuals, etc .

2.(1) Subject to rule 8, tax shall be charged on the taxable income of every person including an individual to whom the provisions of section 34(3) apply, but excluding—

- (a) an individual who elects to be charged on his assessable income under the provisions of rule 3A and subject to the provisions of that rule such election is accepted by the Commissioner,
- (b) a company,
- (c) a building society,
- (d) a non-resident individual to whom the provisions of rule 24(1) of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 do not apply,
- (e) a Category 3 individual under the provisions of the Qualifying (Category 3) Individuals Rules 2008,
- (f) a Category 4 individual under the provisions of the Qualifying (Category 4) Individuals Rules 2008,
- (g) a High Executive Possessing Specialist Skills Individual under the provisions of the High Executive Possessing Specialist Skills Rules 2008,
- (h) a qualifying individual under the provisions of section 41A of the Act; and
- (i) an individual under the provisions of the Qualifying (High Net Worth) Individuals Rules 1992,

in accordance with the following bandings—

the first £4,000 of taxable income at the rate of 17 per cent;

the next £12,000 of taxable income at the rate of 30 per cent;

the remainder of taxable income at the rate of 40 per cent.

(2) In the case of an individual to whom the provisions of section 34(3) apply the amounts of taxable income set out in the above bandings shall be reduced by one-twelfth for each calendar month in the year of assessment during which that individual does not carry on, exercise or undertake any trade, business, profession, vocation or employment in Gibraltar.

Rates of tax charged on certain non-residents.

3.(1) Subject to the exceptions in subrule (2) and subject to rule 3A and rule 8, tax shall be charged on the taxable income of every non-resident individual in accordance with the following bandings—

the first £16,000 of taxable income at the rate of 30 per cent;

the remainder of taxable income at the rate of 40 per cent.

(2) Subrule (1) shall not apply in respect of the following non-resident individuals—

- (a) those to whom the provisions of rule 24(1) of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992 apply; or
- (b) individuals falling within rules made under section 41A, except in so far as those Rules provide for the application of subrule (1) to them.

Rates of tax chargeable on individuals under Gross Income Based System.

3A.(1) Subject to the provisions of this rule and rule 8, tax may be charged on the assessable income of an individual who has made an election on the appropriate form prescribed by the Commissioner to the effect that the provisions of this rule shall apply to that individual in accordance with the following bandings—

the first £25,000 of assessable income at the rate of 20 per cent;

the next £328,000 of assessable income at the rate of 29 per cent;

the next £351,800 of assessable income at the rate of 20 per cent;

the next £295,200 of assessable income at the rate of 10 per cent;

the remainder of assessable income at the rate of 5 per cent.

(1A) Subject to the provisions of this rule, this sub-rule applies where the assessable income of an individual does not exceed £25,000,—

- (a) where the assessable income does not exceed £16,000 the rate for the first £10,000 of assessable income shall be 8 per cent;
- (b) where the assessable income exceeds £16,000 but does not exceed £17,000 the rate for the first £6,000 of assessable income shall be zero per cent;
- (c) where the assessable income exceeds £17,000 but does not exceed £18,000 the rate for the first £5,000 of assessable income shall be zero per cent;
- (d) where the assessable income exceeds £18,000 but does not exceed £19,000 the rate for the first £4,000 of assessable income shall be zero per cent;
- (e) where the assessable income exceeds £19,000 but does not exceed £20,000 the rate for the first £3,000 of assessable income shall be zero per cent;
- (f) where the assessable income exceeds £20,000 but does not exceed £25,000 the rate for the first £2,000 of assessable income shall be zero per cent.

(1B) Subject to the provisions of subrules (1A) and (1C) to (1F), this subrule applies where the assessable income of an individual exceeds £25,000 but does not exceed £25,999—

- (a) for the purposes of this subrule, the amount of the assessable income to which the rate of zero per cent applies shall be deemed to be £2,000 (“deemed assessable income”);
- (b) the deemed assessable income referred to in this subrule shall be reduced by the sum of £2 in respect of each £1 that exceeds such assessable income of £25,000; and
- (c) tax shall be charged at the rate of 20 per cent on the assessable income after the reduction calculated in accordance with paragraph (b).

(1C) Subject to the provisions of subrules (1A), (1B) and (1D) to (1F), where the assessable income of an individual exceeds £25,999 but does not exceed £35,000 tax shall be charged at the rate of 20 per cent.

(1D) Subject to the provisions of subrules (1A) to (1C), (1E) and (1F), this subrule applies where the assessable income of an individual exceeds £35,000 but does not exceed £36,642—

- (a) for the purposes of this subrule, the amount of the assessable income to which the rate of zero per cent applies shall be deemed to be £3,284 (“deemed assessable income”);
- (b) the deemed assessable income referred to in this subrule shall be reduced by the sum of £2 in respect of each £1 that exceeds the assessable income figure of £35,001; and
- (c) tax shall be charged at a rate determined in accordance with subrule (1E) on the assessable income after the reduction calculated in accordance with paragraph (b).

(1E) Subject to the provisions of subrules (1A) to (1D) and (1F), where the assessable income of an individual exceeds £35,000 but does not exceed £100,000 tax shall be charged at a reduced rate determined by the formula—

$$\left[\frac{A}{B} \times 100 \right] - \frac{1}{2} \text{ per cent}$$

Where—

A is the tax calculated in accordance with the following bandings—

the first £25,000 of assessable income at the rate of 20 per cent;

the next £75,000 of assessable income at the rate of 29 per cent; and

B is the amount of the assessable income of an individual to which this subrule applies.

(1F) Subject to the provisions of subrules (1A) to (1E), this subrule applies where the assessable income of an individual exceeds £100,000 but does not exceed £100,861—

- (a) for the purposes of this subrule, the amount of the assessable income to which the rate of zero per cent applies shall be deemed to be £1,722 (“deemed assessable income”);
- (b) the deemed assessable income referred to in this subrule shall be reduced by the sum of £2 in respect of each £1 that exceeds the assessable income figure of £100,001; and
- (c) tax shall be charged at a rate determined under rule 3A(1) on the assessable income after the reduction calculated in accordance with (b).

(2) In the case of an individual to whom the provisions of section 34(3) apply the amounts of assessable income set out in the above bandings shall be reduced by one-twelfth for each calendar month in the year of assessment during which that individual does not carry on, exercise or undertake any trade, business, profession, vocation or employment in Gibraltar.

(3) Where an individual has made an election under subrule (1) and at any time within the year of assessment it appears to the Commissioner to the best of his judgement that—

- (a) the individual by virtue of his election would be liable to a greater amount in tax under the provisions of the Act for that year of assessment than if that individual had not made such an election, and
- (b) the individual would instead be liable to a lower amount in tax under the provisions of the Act for that year of assessment if that individual were chargeable under rule 2 of these Rules taking into account any allowances and deductions that may be due to him,

the Commissioner shall disregard the individual’s election for the purposes of the Act and that individual shall be chargeable under rule 2 of these Rules.

(4) In the case of an individual to whom the provisions of this rule apply, the amounts of assessable income and deemed assessable income specified in this rule shall be reduced by one-twelfth for each calendar month in the year of assessment during which that individual does not carry on, exercise or undertake any trade, business, profession or employment in Gibraltar.

Tax charged on certain amounts received from pension schemes, etc.

4. Tax shall be charged—

- (a) *Revoked*
- (b) at the rate of 10 per cent on any amount chargeable in accordance with section 6A(1).

Standard rate of tax.

5. The standard rate of tax shall be 30%.

Corporation tax.

6.(1) Except where otherwise expressly provided, tax which, for the avoidance of doubt, shall be known as Corporation Tax, shall be charged on the taxable income of every company in any year of assessment, at the rate of 22%.

(2) Where the Commissioner is satisfied that, in any year of assessment, a company has a taxable income of £35000 or less and is a small company, Corporation Tax shall be charged at the rate of 20%.

(3) Where the Commissioner is satisfied that, in any year of assessment, a company has a taxable income of less than the sum of £44,333 but more than the sum of £35000 and is a small company, Corporation Tax shall be charged at the rate of 22% less relief.

(4) The relief referred to in sub-rule (3) shall be determined by deducting the amount of the taxable income in any year of assessment from the sum of £44,333 and multiplying the resultant figure by the fraction $\frac{3}{40}$.

(5) In this rule, “small company” means a company whose trading activities, in any year of assessment, proves to the satisfaction of the Commissioner, has a minimum of 80% of its total trading receipts derived directly or indirectly from sources other than the following -

- (a) dividends, interest or discounts;
- (b) rents, royalties, premiums, and any other profits arising from property.

(6) Where the Commissioner is satisfied on the application of a company that—

- (a) the said company commenced business in Gibraltar on or after 1st July 2007 but before 1st July 2009;
- (b) such business relates to a bona-fide new activity in Gibraltar; and
- (c) the company agrees to be taxed on its assessable income, computed in accordance with the provisions of subsection (1) of section 8 of the Act (the year preceding the year of assessment),

the Commissioner may (subject to subrule (10)) direct that corporation tax in respect of such company shall be charged in accordance with subrule (7).

(7) Where this sub-rule applies corporation tax shall be charged—

- (a) for the year of assessment commencing 1st July 2008, at the rate of 27%;
- (b) for each subsequent year of assessment, at the rate of 10%.

(8) Where the Commissioner is satisfied on the application of a company that—

- (a) the said company commenced business in Gibraltar on or after 1st July 2009; and
- (b) such business relates to a bona-fide new activity in Gibraltar;

the Commissioner may (subject to subrule (10)) direct that corporation tax in respect of such company shall be charged in accordance with subrule (9).

(9) Where this sub-rule applies—

- (a) corporation tax shall be charged at the rate of 10%; and
- (b) notwithstanding section 8 of the Act, the assessable income of the company for any year of assessment shall be the income computed in accordance with the provisions of that Act, of that year.

(10) Where the Commissioner is of the opinion—

- (a) that a person connected to the company undertook business in Gibraltar before the company's commencement of business in Gibraltar and that the business undertaken by him was of the same or similar nature (or of an ancillary nature) to the business being undertaken by the company; or
- (b) that the incorporation of the company or the commencement of business in Gibraltar by that company is an artificial or fictitious arrangement,

the Commissioner shall not direct that corporation tax in respect of such company shall be charged in accordance with subrule (7) or subrule (9).

(11) For the purposes of subrules (6) to (10) of this rule, "business" means any new trade, business, profession, vocation, adventure or concern in respect of sources of income chargeable to tax under the Act.

Building Society tax.

7.(1) Except where otherwise expressly provided, tax shall be charged on the taxable income of every building society in any year of assessment, at the rate of 22%.

(2) Where the Commissioner is satisfied that, in any year of assessment, a building society has a taxable income of £35000 or less, tax shall be charged at the rate of 20%.

(3) Where the Commissioner is satisfied that, in any year of assessment, a building society has a taxable income of less than the sum of £44,333 but more than the sum of £35000, tax shall be charged at the rate of 22% less relief.

The relief referred to in sub-rule (3) shall be determined by deducting the amount of the taxable income in any year of assessment from the sum of £44,333 and multiplying the resultant figure by the fraction $\frac{3}{40}$.

In this rule "building society" shall be construed in accordance with the provisions of the Building Societies Act as amended from time to time.

Income from Development bonds.

8. (1) Tax shall be charged on the income of every person by way of interest on a Development Bond (as defined in regulation 2 of the Savings Bank (Development Bonds) Regulations, 1993) at the rate of 25%.

(2) In ascertaining the amount of income by way of interest chargeable to tax in accordance with subrule (1), no reliefs (personal or otherwise) exemptions or allowances otherwise to be taken into account in accordance with the Income Tax Act or rules made thereunder shall be allowed, and such income shall not form part of the assessable income of the person to whom it is paid and the tax deducted in accordance with the proviso to regulation 3 of the Savings Bank (Development Bonds) Regulations, 1993, shall not be refundable.