



## TRIBUNAL RULES THAT A CATEGORY 2 INDIVIDUAL WITH NO “TAXABLE INCOME” HAS NO LIABILITY TO PAY TAX

In a landmark ruling, on the 10th March 2011, the Income Tax Tribunal held that there are circumstances in which a person having “Category 2 Individual Status” **does not** have to pay any tax.

A person having “Category 2 Individual Status” is someone who has been given a certificate so certifying under the Qualifying (Category 2) Individual Rules 2004 which caps the amount of tax payable at a maximum. It also provides for a minimum amount of tax that is payable in any year of assessment.

The Tribunal found that the relevant rules are made under powers conferred by the Income Tax Act none of which authorise the creation of a charge to tax in subsidiary legislation, i.e. by making rules. It finds further, as argued in the appeal, that the charge for tax is made under section 6 of the Income Tax Act, which means, that for there to exist “taxable income” on which the minimum charge under the pertinent rules can be charged, there must first be “taxable income”.

In the event that there is no “taxable income” there is no minimum tax payable under the rules in question. In the case in point the appellant was only in receipt of income exempted from a charge to tax under section 6 of the Act because it was “investment and savings” income and so the assessments were set aside.

The successful appellant was advised throughout by Triay & Triay’s Private Client Team and Robert Vasquez a partner of Triay & Triay.

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