

INCOME TAX ACT**Principal Act**

Act. No. 1952-11	<i>Commencement</i>	1.4.1953
	<i>Assent</i>	24.4.1952

Amending enactments	Relevant current provisions	Commencement date
1952-20	ss.20(1), 44(1), (2) and (5) and 88(9)	
1953-07	ss.7(1) and 27(1)	
1953-09	ss.7(1) and 39(7)	
1957-10	s.4(2) and (3)	
1960-08	ss.2, 7(1), 16(4), 26(1), 27(1), 33(1), 35, 39(3), 59 and 94	
1962-19	ss.2 and 16	
1965-02	–	
1965-15	–	
1965-20	ss.6(3) and (7), 24(1) and 26(1)	
1966-18	s.6(2)	
1967-03	ss.2, 6(1), (5) and (6), 7(1) and (3), 14(5) and 22	
1968-01	ss.16 and 29	
1969-07	ss.2,6(1) and 31(2)	
1969-12	s.7(1)	
1969-22	s.46	
28.5.1970	ss.7(1) and (2), 27(2) and 47(1)	
1970-04	ss.7(1), 19, 26(2), 35, 65(1)-(6) and 84	
1971-08	ss.7(1), 24(2) and (3), 34(1) and 35	
1971-20	s.7(1)	
1972-09	–	
1973-13	ss.2, 6(1), 7(1), 24(1), 26(1) and (2), 28, 35, 65(2) and 66	
1973-29	s.7(1)	
1974-21	s.23	
1974-36	ss. 8(1), 57(2), 64(2)-(5), 65(7), 87 and Sch.	

1975-23	Sch.	
1975-41	ss.6(1), 7(1) and (2), 10(1) and (4), 14(5), 24(1)-(3), 25, 26(1) and (2), 27(1), 32, 33 and 36	
1976-09	ss.23(1) and (2), 28 and Sch.	
1977-14	s.26(1)	
1977-16	ss.2, 7(1), 10(3) and (5), 16, 17, 20(2), 27(8), 31(2), 34(1), 35, 36, 40(3), 44(1), 49(2), (3), (5) and (7), 54(2), 57(3), 71, 73, 90(2) and Sch.	
1977-28	s.2	
1978-09	ss.6(1),7(1) and (3)-(5), 17(1), 26(1), 33(1) and 46(4)	
1978-33	–	
1979-05	ss.2, 6(1), 7(1), 8(1), 24(1), 26(1), 27(8), 28, 29, 38, 39(1), 40(4), 46(3), 66(1), 82 and Sch.	
1979-23	s.23(3)	
1980-06	ss.8(3) and (4), 23(1), 24(1), 26, 28, 67-69, 79(1)-(6), 81, 82, 85, 91(1), 92(1) and 94(1)	
1980-10	ss.7(1), 34(3) and (4)	
1981-07	ss.7(1), 16, 18, 24(1), 25(1), 26, 27(1)-(8), 28, 30, 36 and 37	
1982-06	ss.2, 6(5), 7(1), 33(3), 37 and 54(1)	
1982-10	ss.7(1) and 27(8)	
1983-15	ss.47, 98(3) and Sch.	
1983-24	ss.2, 7(1), 41 and 98(2)	
1983-35	ss.91(1), 92(1) and 98(4)	
1983-48	s.7(1), 92(1)	
1983-49	s.18A	1.7.1985
1984-04	ss. 7, 23A, 26, 26A, 34A and 41	1.7.1984
1984-05	ss.21(1) and 21A	1.7.1984
1984-21	s.21A	1.7.1984
1985-12	s.7(1)(gg)	1.3.1984
1985-12	s.7(1)(ff)	1.7.1983
1985-14	ss.7(1)(hh), 19C, Sch.	26.4.1985
1985-26	ss.7(1)(jj) and (kk) and 40(1A)	1.7.1985
1986-08	ss.2, 18(2), 24(1), 25(1), 26(1)(i) and (2), 27(1) to (4) and (8), 28, 32, 36, 37, 37A, 38, 54(2) and Sch.	1.7.1986
1986-08	s.26A	1.7.1985
1987-16	ss.6(1)(d), (g) and (h), (2) and (3), 7(1)(j), (l), (t), (v) and (w), 18(1)(a), (c), (d) and (e), 23(1),	

	24(1), 25(1), 26(1) and (2), 27(1), (1A), (1B), (2) to (4), (8) and (8A), 28, 30, 37, 37A, 37B, 41(4)(a)(ii) and (b), (5) and (7)	1.7.1987
1987-16	ss.2 and 16(h) and Sch.	7.5.1987
1988-04	ss.6A, 17(1), 24(2) and (3), 26A, 27(3), 31, 32, 34(1) and (3), 35 and 37B	1.7.1987
1988-12	s.26B	23.6.1988
1988-37	s.4(6)	15.12.1988
1989/099	s.26A	23.11.1989
1989-28	ss.7(jj), 36, 37, 37A, 37B and 37C, 38, 41(4)(a)(i), (ii), (b), and (5) and 41A	23.11.1989
1989-34	ss.6(1)(g) and (h) and 6A(1)	23.11.1989
1989-48	ss.2, 7(1)(y)(i), 8(3) and (4), 14, 54(1)(b), 57(2), 65(7), 87 and Sch.	28.12.1989
1990-26	s.7(1)(w)	23.6.1990
1990-32	s.26A	1.11.1990
1990-37	ss. 40(1), (2), (3) and (5), 41(4)(a) and (b), (5) and (7) and 53	1.12.1990
1990-37	s.11A	1.7.1990
1990-37	ss.67, 68 and 69	1.8.1994
1991-38	ss.67(g), 90(1), 91(1), 92(1), 93 and 98(1)(a) and (b) and 98(4)	19.12.1991
1992/015	s.27(8)	1.7.1991
1992/016	ss.6(1)(b), 6A(1), 7, 10(4) and (5), 16, 17, 19, 23, 24, 25, 26, 26B, 27, 28, 29, 30, 32, 33, 34(1), (2) and (3), 34A, 35, 39(5), 40(1A), 43, 44, 45, 46, 49(1)(a) and 54(2)	1.7.1991
1992/016	s.66(3)	1.7.1993
1994-06	ss.6(1)(d) and (f), 41(4)(a) and 47(2)	1.7.1993
1994-06	ss.55(1) and (2), 59(1) and (2)	1.7.1994
1995-18	ss.2 and 92(1)	22.12.1995
1996-02	ss.41(4)(a) and 87	15.2.1996
1997-24	ss. 57(1), (2) and (3), 58, 59, 60, 62, 64, 66, 70, 71, 72(1), (1A) and (3), 73, 76, 77, 77A, 79, 80, 81, 82, 83(1), (2)(a), (b) and (4), 85, 88(3), 90, 91(1)(a) and Sch.	1.10.1997
1997-26	ss.4A and 4B	1.10.1997
1998/076	s.47(2)	1.7.1998
1999-07	ss.41(1) and 3, 41A(1) and (3)	1.11.1999
1999-13	s. 57(3)	12.8.1999

2000-04	s.39(1) and (7)	1.7.1999
2000-14	s. 4(1) and (2)	12.10.2000
2002-05	ss. 77A(7)(a)(ii) and (b)(ii) and 82	30.5.2002
2004-30	ss. 6(1)(g) and (h)	17.8.2004
2005-10	ss.2, 6A(2)(c) and 41	24.2.2005
2005-62	ss. 6(1)(g)(B), (2), (8) & (9), 39, 42, 43, 84(a)(ii)	1.7.2005
2005-69	ss.4B(3), (4), (5), (6)(a), (6A) & (7), 4C, 4D, 6(1), 40(1), 47A- 47M & Sch.2	29.12.2005
2006-06	ss. 47A(1), 47C(4), 47D, 47F(2)(b), (3), 47I(2), 47M(1), Sch.2	20.4.2006
2006-13	s. 82	18.5.2006
2006-17	ss. 2, 3(1), 37, 37A, 47(1), 47C(2)(a), 76, 87 & 98	5.6.2006
2006-25	ss. 6(1)(d), (g) & (h), 47 & 98(3)	1.7.2006
2007-17	ss. 4(6), 67 & 89	14.6.2007
2008-07	s. 41A(1) & (3), 4(6) & 67	29.5.2008
2009-04	s. 4A(7) & Sch.2	15.1.2009

English sources:

None cited

EU Legislation/International Agreements involved:

Directive 77/799/EEC

Directive 92/65/EC

Directive 2003/49/EC

Directive 2004/56/EC

Directive 2004/106/EC

RENUMBERING OF SECTIONS

Previous number	New number	Remark
1	1	
2	2	
3	3	
4	4	
5	5	
6	6	
7	7	
8	8	
9	9	
10	10	
11	11 and 12	
12	13	
13	14	
14	15	
15	16	
15A	17	
15B	18	
16	19	
17	20	
18	21	
19		<i>Repealed</i>
19A	22	
19B	23	
19C	23A	
20	24	
20A	25	
21(1) and (2)	26	
21(3)-(5) and (10)	27	
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21(7)	29	
21(7A)	30	
21(8) and (9)	31	
21(11)	32	
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23	34	
23A		<i>Repealed.</i>
23B		<i>Repealed</i>
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25	36	
25A	37	
25B	38	
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27	40	
27A	41	
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31A	46	
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64		<i>Repealed</i>
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Income Tax

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74	98	
75– 81		<i>Omitted</i>
First Sch.		<i>Repealed</i>
Second Sch.		

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- 27. *Repealed.*
- 28. *Repealed.*
- 29. *Repealed.*
- 30. *Repealed.*
- 31. *Repealed.*
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SCHEDULE 2

AN ACT TO IMPOSE A TAX UPON INCOMES AND TO REGULATE THE COLLECTION THEREOF.

Short title.

1. This Act may be cited as the Income Tax Act.

Interpretation.

2. In this Act, unless the context otherwise requires,—

“basis period” means any period on the basis of which income for any year of assessment is computed;

“body of persons” means any body politic, corporate or collegiate and any fraternity, fellowship or society of persons whether corporate or not corporate but does not include a company or partnership;

“Commissioner” means the Commissioner charged with the administration of this Act and includes a Deputy Commissioner or an Assistant Commissioner for the purposes of this Act except the exercise of the powers conferred upon the Commissioner by section 96;

“Commonwealth” means and includes the whole of those territories and dependencies (including republics within the Commonwealth and having membership of the Commonwealth) of which Her Majesty is head;

“Commonwealth income tax” means any income tax charged under any law in force in any part of the Commonwealth other than the United Kingdom;

“company” means any company incorporated or registered under any law in force in Gibraltar or elsewhere;

“conviction”, except in section 93, means summary conviction;

“court” means the Supreme Court;

“executor” includes any executor, administrator, or other person administering the estate of a deceased person;

“family allowance” means a family allowance under the Social Security (Family Allowances) Act;

“incapacitated person” means a minor, a married woman or a person suffering from mental disorder within the meaning of the Mental Health Act;

“investment Company” means a company the income whereof consists mainly of income which does not arise in respect of any gains or profits derived from any trade, business or employment;

“loss”, in relation to a trade, business, profession or vocation, means loss computed in like manner as profits;

“mills, factories or other similar premises” means any building which forms part of premises, being either—

- (i) a building which contains, and is used wholly or mainly for the purpose of operating machinery worked by steam, electricity or other mechanical power; or
- (ii) a building the depreciation of which is substantially increased by the operation of machinery so worked on the premises in any such building as is mentioned in paragraph (i) of this definition;

“Minister” means the Minister with responsibility for Public Finance;

“net annual value” has the same meaning as in the Public Health Act.

“non-resident person” means any person other than a person ordinarily resident;

“ordinarily resident”, when applied to an individual, means an individual who, irrespective of whether such individual is domiciled in Gibraltar or otherwise, resides in Gibraltar except for such temporary absences as to the Commissioner may seem reasonable and not inconsistent with the claim of such person to be ordinarily resident, and includes an individual who is a British subject or a citizen of the Republic of Ireland who is employed or self-employed in Gibraltar and who resides wholly within the Campo district or partly within Gibraltar and partly within that district, except for such temporary absences as aforesaid (the Campo district for this purpose being the areas comprised within the former Consular Districts of Her Majesty’s Vice-Consulates at La Linea and Algeciras as they existed immediately prior to the abolition of those Vice-Consulates);

“ordinarily resident” means, when applied to any company,—

- (a) a company the management and control of whose business is exercised in Gibraltar; or
- (b) a company which carries on business in Gibraltar and the management and control of which is exercised outside Gibraltar by persons ordinarily resident within the meaning of this Act,

and when applied to an investment company shall include in addition an investment company as so defined wherever resident control of which is exercised by persons ordinarily resident in Gibraltar. In relation to an investment company as so defined control shall be deemed to be exercised by a person if such person has power to secure by means of the holding of shares or the possession of voting power in or relation to that or any other company or by virtue of any powers conferred by the articles of association or other document regulating that or any other company, that the affairs of that investment company are conducted in accordance with the wishes of that person;

“pension” shall not include a pension granted under the Social Security (Insurance) Act or the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act or any pension or other periodical benefits paid on the grounds of age or widowhood under the social security legislation of a member State of the European Communities;

“permitted individual” means an individual who—

- (a) is a non-resident individual; and
- (b) carries on, exercises or undertakes in Gibraltar any trade, business, profession, vocation or employment;

“person” includes a company or body of persons;

“premises” has the same meaning as in the Public Health Act;

“standard rate” mean—

- (a) in relation to a company, the rate of tax imposed by section 38;
- (b) in relation to any other person, the standard rate imposed by section 36;

“standard rate” means the standard rate of tax specified in the Rates of Tax Rules in force from time to time;

“tax” means any tax imposed by this Act;

“trade” includes every trade, manufacture, adventure or concern in the nature of trade;

“written down value” means, in relation to any plant, machinery, fixtures or premises the cost thereof less the sum of any allowances made in respect of wear and tear under section 16 and any such allowances as would have been made if the provisions of this Act had been in force at all times since such plant, machinery, fixtures or premises were acquired by the person using the same for the purpose of a trade, business or profession and if he had used the same for such purposes ever since that date; and

“year of assessment” means the period of twelve months commencing on the 1st day of July, 1979, and each subsequent period of twelve months.

PART I. **ADMINISTRATION.**

Administrative authority.

3. (1) For the due administration of this Act the Minister may appoint a Commissioner and such other officers and persons as may be necessary. The Commissioner shall be responsible for the assessment and collection of the tax and shall pay all amounts collected in respect thereof into the Treasury for the credit of the Consolidated Fund.

(2) The Commissioner may by notice in the Gazette or in writing authorize any person to perform or to assist in the performance of any specific duty imposed on the Commissioner by this Act.

(3) Subject to such conditions as the Commissioner may specify the Commissioner may by notice in the Gazette direct that any information, return or document required to be supplied, forwarded or given to the Commissioner may be supplied to such other person as the Commissioner may direct.

(4) Any person within or without Gibraltar may be appointed as authorized under the provisions of this section.

Official secrecy.

4. (1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with as secret and confidential all information relating to the income or items of income of any

person whether contained in a document, returns, assessment lists or a copy thereof.

(2) A person referred to in subsection (1) who has possession of or control over any document, return, assessment list, or a copy thereof, containing information relating to the income or items of income of any person and who, at any time, communicates or attempts to communicate such information to any other person otherwise than for the purpose of this Act or of the Estates Duties Act, is guilty of an offence against this Act.

(3) No person appointed under or employed in carrying out the provisions of this Act shall be required to produce in any court any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Act except as may be necessary for the purpose of carrying into effect the provisions of this Act or of the Estate Duties Act or in order to institute a prosecution, or in the course of a prosecution for any offence committed in relation to income tax or estate duty under the Estate Duties Act.

(4) Where under any law in force in any territory outside Gibraltar provision is made for the allowance of relief from income tax in respect of the payment of income tax in Gibraltar, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorized officers of the Government of that territory of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from income tax in Gibraltar or from income tax in that other territory.

(5) Notwithstanding anything contained in this section the Commissioner may permit the Principal Auditor or any officer duly authorized in that behalf by him to have such access to any records or documents as may be necessary for the performance of his official duties. The Principal Auditor or any such officer shall be deemed to be a person employed in carrying out the provisions of this Act for the purpose of this section.

(6) Notwithstanding anything contained in this section the Commissioner shall, at the request of the Minister, provide such information relating to any matter referred to in this section, as the Government of Gibraltar may require for the purposes of formulating the economic and fiscal policies of the Government.

Disclosure to competent authorities of member States.

4A. (1) For the purpose of this section and section 4B the Commissioner of Income Tax shall act as competent authority within the meaning of the Directive in relation to the requirements of that Directive as respects Gibraltar.

(2) The Commissioner may disclose to the competent authority of another member State information in a particular case except where it appears to him that the competent authority requesting the information has not exhausted its own usual sources of information which it could have utilised according to the circumstances to obtain the information requested.

(3) The Commissioner shall regularly exchange information without prior request with the competent authorities of other member States for categories of cases which he shall determine with them under the consultation procedure laid down in Article 9 of the Directive.

(4) The Commissioner shall without prior request forward information of which he has knowledge to the competent authority of another member State in the following circumstances,

- (a) he has grounds for supposing that there may be a loss of tax in the other member State;
- (b) a person liable to tax obtains a reduction in, or an exemption from, tax in Gibraltar which would give rise to an increase in tax or to liability in the other member State;
- (c) business dealings between a person liable to tax in Gibraltar and a person liable to tax in another member State are conducted through one or more countries in such a way that a saving in tax may result in Gibraltar or in the other member State or in both;
- (d) he has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
- (e) information forwarded to him by the competent authority of the other member State has enabled information to be obtained which may be relevant in assessing liability to tax in that State.

(5) The Commissioner may, under the consultation procedure laid down in Article 9 of the Directive, extend the exchange of information provided for in subsection (3) to cases other than those specified therein.

(6) This section and section 4B shall apply notwithstanding any law imposing obligations of secrecy on the Commissioner.

(7) In section 4B and in this section, “the Directive” means Council Directive 77/799/EEC as amended from time to time.

Conditions for disclosure.

4B.(1) The Commissioner shall not disclose information to the competent authority of another member State unless the conditions set out in this section are met.

(2) The conditions are that—

(a) the competent authority of the member State to which information is to be disclosed has undertaken to observe rules of confidentiality with respect to the information which are not less strict than those applying to that information in Gibraltar; and

(b) the disclosure of information to that competent authority will not lead to the disclosure of—

(i) a commercial, industrial or professional secret or of a commercial process; or

(ii) of information whose disclosure would be contrary to public policy.

(3) Subject to subsections (4) and (5) where the conditions set out in this section are met the Commissioner shall arrange for the conduct of any enquiries necessary to obtain the information requested by the competent authority of another member State; and for that purpose -

(a) in order to obtain the information sought, the Commissioner shall proceed as though acting on his own account; and

(b) the provisions of this Act conferring powers on the Commissioner to call for information or documents shall have effect as if the references in those provisions to a tax liability included a reference to a liability to tax on income or capital in another member State.

(4) Nothing in this section or section 4A shall impose an obligation on the Commissioner to conduct any enquiry or provide information to the competent authority of another member State where any law or administrative practices would prevent him from conducting such enquiry or collecting such information for the purposes of his functions under the remainder of this Act.

(5) The Commissioner may refuse to provide information where the competent authority of the member State requesting that information is unable for reasons of fact or law to provide the same type of information.

(6) All information made known to the Commissioner under the Directive shall be kept secret in the same manner as information received by him under the provisions of this Act and in any case may,

- (a) be made known only to the persons directly involved in the assessment of the tax or in the administrative control of such assessment and in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or relating to, the making or reviewing of an income or corporation tax assessment and (except where the competent authority of the member State supplying the information raises no objection at the time when it first supplies the information) only to persons who are directly involved in such proceedings;
- (b) in no circumstances be used other than for taxation purposes or in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to or in relation to making or reviewing an income or corporation tax assessment;
- (c) not be used for other purposes in Gibraltar without the permission of the member State supplying the information; and
- (d) not be transmitted to the competent authority of another member State without the agreement of the competent authority which supplied the information.

(6A) Information made known to the Commissioner under the Directive may be used for the assessment of any tax, levy or duty as the Minister with responsibility for public finance may provide by notice in the Gazette.

(7) In section 4A and in this section,

“another member State” means a member State other than the United Kingdom;

“competent authority” has the same meaning as in the Directive;

“information” means information that may enable a competent authority to effect a correct assessment of taxes to which the Directive applies.

“tax” means tax to which Article 1(1) of the Directive applies.

Notification.

4C.(1) Subject to subsection (2), at the request of the competent authority of another Member State, the Commissioner shall, in accordance with the law of Gibraltar, notify the person in respect of whom the information is being sought of all instruments and decisions which emanate from the

administrative authorities of the other Member State and concern the application in that State's territory of legislation on taxes covered by the Directive.

(2) Subsection (1) applies only where the request for notification indicates the subject of the instrument or decision to be notified and specifies the name and address of the the person in respect of whom the information is being sought, together with any other information which tends to facilitate identification of that person.

(3) Where the Commissioner has received a request referred to in subsection (1), he shall immediately inform the competent authority that has made the request for notification of his response to the request and shall notify that authority, in particular, of the date of notification of the decision or instrument to the person in respect of whom the information is being sought.

Co-ordinated investigations.

4D.(1) Where—

- (a) the tax situation of one person or of a number of connected persons is of common or complementary interest to Gibraltar and any number of other Member States; and
- (b) the Commissioner is of the opinion that a co-ordinated investigation with the respective competent authorities of those other Member States would be more effective than an investigation conducted by the Commissioner alone,

the Commissioner may agree to conduct an investigation into that person's tax affairs in Gibraltar in co-ordination with the competent authorities of those other Member States who would conduct a like investigation in their respective home States, with a view to exchanging the information thus obtained.

(2) Where subsection (1) applies, the Commissioner shall notify the competent authority in those other Member States concerned of the cases which, in his view, should be subject to a co-ordinated investigation, giving reasons for his choice, as far as possible, by providing the information which led to his decision, and specifying the period of time during which it is proposed that such an investigation be conducted.

(3) On receipt of a proposal for a co-ordinated investigation from another Member State, the Commissioner shall confirm his agreement or communicate his reasoned refusal to the authority that has made the proposal within a reasonable period of time.

(4) The Minister with responsibility for public finance shall designate a person with responsibility for supervising and coordinating co-ordinated investigations under this section.

Service and signature of notices.

5. (1) Except where it is provided by this Act that service shall be effected either personally or by registered post a notice may be served either personally or by being sent through the post.

(2) Where a notice is served by ordinary or registered post it shall be deemed to have been served on the day succeeding the day on which the notice would have been received in the ordinary course of post if the notice is addressed—

- (a) in the case of a company incorporated in Gibraltar, to the registered office of the company;
- (b) in the case of a company incorporated outside Gibraltar, either to the individual authorized to accept service of process under the Companies Act at the address filed with the Registrar of Companies or to the registered office of the company wherever it may be situate; and
- (c) in the case of an individual or body of persons, to the last known business or private address of such individual or body of persons.

(3) Every notice to be given by the Commissioner under this Act shall be signed by the Commissioner or by some person or persons from time to time authorized by him for that purpose under section 3, and every such notice shall be valid if the signature of the Commissioner or of such person or persons is duly printed or written thereon:

Provided that any notice in writing under this Act to any person to furnish particulars to the Commissioner, or any notice under this Act requiring the attendance of any person or witness before the Commissioner, shall be personally signed by the Commissioner or by any person duly authorized by him.

(4) Where a person has applied for and been granted permission to make payment of the tax in the United Kingdom the signature of the agent appointed under section 76 on any assessment notice shall be deemed to be equivalent to that of the Commissioner.

PART II.

**CHARGE OF INCOME TAX AND ASCERTAINMENT OF
ASSESSABLE INCOME.**

Charge of income tax.

6. (1) Subject to the provisions of Part IIIA tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereafter for each year of assessment upon the income of any person accruing in, derived from, or received in, Gibraltar in respect of—

- (a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;
- (b) gains or profits from any employment, including (subject to any deductions which may be admissible under rule 5(g) of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992) allowances, perquisites or benefits in kind;
- (c) dividends, interest, discounts;
- (d) subject to rule 3A of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 any pension, charge or annuity:

Provided that any maintenance, alimony or any other payment made to a wife or child in accordance with an order of court or under a deed of separation shall not fall within this paragraph;

- (e) rents, royalties, premiums and any other profits arising from property;
- (f) the income of any person from the occupation of premises for residential purposes:

Provided that for the purposes of this paragraph occupation by a child of the property in respect of which the parent is receiving or has received relief on interest under the provisions of rules made under this Act, shall be deemed not to be occupation for residential purposes;

Provided that this paragraph shall not apply to any premises in respect of which a licence has been granted under section 10 of the Development Aid Act.

(g) *repealed*

(h) *repealed*

(2) *Repealed.*

(3) Subject to subsection (2) and to the other provisions of this Act, tax shall be payable at the aforesaid rates for each year of assessment upon the income in respect of dividends, interest, pension or emoluments of office, accruing in, derived from, or received in, any place other than Gibraltar, of any person ordinarily resident in Gibraltar other than a company which is and has not ceased to be an “exempt” company under the Companies (Taxation and Concessions) Act¹:

Provided that where the Commissioner is satisfied that such dividends, interest, pension or emoluments of office have actually borne income tax or a tax of a similar nature in the country where they have accrued then he may exempt from payment of tax in Gibraltar only such part of such dividends, interest, pension or emoluments of office as has been proved to his satisfaction not to have been received in Gibraltar.

(4) For the purposes of this Act it shall be sufficient to constitute receipt of income in Gibraltar from sources outside Gibraltar if, notwithstanding the absence of an actual remittance or transfer of income or property being proceeds of income, a person assessed has, by virtue of any act or arrangement made by him or on his behalf, obtained a benefit in Gibraltar equivalent to the receipt by him in Gibraltar of income arising outside Gibraltar.

(5) For the purposes of subsection (1)(f) the income of any person in respect of the occupation of premises for residential purposes shall, where the premises are occupied by a person other than the owner thereof and such person—

- (a) does not pay rent for such occupation, be the net annual value of such premises;
- (b) pays rent for such occupation, be the excess if any of the net annual value of such premises over the annual amount of rent payable.

(6) For the purposes of subsection (1)(f) occupation for residential purposes shall mean the occupation of such premises for the purpose of residence or enjoyment and not for the purpose of gain or profit.

(7) In calculating tax any fraction of a penny shall be charged as one penny.

(8) For the purposes of this Act subsection (1)(c) shall not apply to dividends, interest or discounts other than trading receipts as follows—

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- (a) dividends paid or payable by a company ordinarily resident in Gibraltar to a company;
- (b) dividends paid or payable to a person who for the purposes of this Act is neither ordinarily resident in Gibraltar nor a permitted individual;
- (c) dividends paid or payable by a company the shares of which are quoted on a Recognised Stock Exchange;
- (d) interest paid or payable by a bank, building society or other financial services institution licensed to take deposits under the Financial Services (Banking) Act or equivalent legislation in any other jurisdiction;
- (e) interest paid or payable by the Gibraltar Government Savings Bank;
- (f) income from debentures issued by a company the shares of which are quoted on a Recognised Stock Exchange, including debenture stock, loan stock, bonds, certificates of deposit and any other instruments creating or acknowledging indebtedness including bills of exchange accepted by a banker other than instruments included in (g) below;
- (g) income from loan stock, bonds, and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, a local or public authority;
- (h) income from units in a collective investment scheme which is marketed and available to the general public, including shares in or securities of an open-ended investment company;
- (i) income from rights to and interests in anything falling within (a) to (h) above; and
- (j) a dividend paid or payable out of the profits or gains of a company which has profits or gains on which the company is not liable to pay tax by virtue of (a) to (i) above to the extent of the amount of the dividend represented by the proportion which the amount of the income not liable to tax by virtue of (a) to (i) above bears to the entire income of the company for the year of assessment.

(9) For the purposes of this section “Recognised Stock Exchange” means any stock exchange regulated market or equivalent body as the Commissioner designates to be a Recognised Stock Exchange by Notice in the Gazette.

Provisions respecting refunds of certain contributions.

6A. (1) Subject to subsection (2), where, on the termination of employment of an individual an amount is received by that individual by way of a refund of the contributions paid by him, or by his employer in respect of him, or any interest, bonus or other payment related thereto, to any pension scheme, provident society or other fund approved by the Commissioner under rules 5(h) or 21 of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992, as the case may be, that amount shall not form part of the assessable income of that individual, but tax shall be payable at the prescribed rate on the amount so refunded.

(2) No tax shall be payable upon the amount of any contributions or any interest, bonus or other payment, referred to in subsection (1) and refunded in accordance with the rules of the pension scheme, provident society or other fund, to—

- (a) an individual who has become a member of such pension, provident society or other fund before 1 July, 1987;
- (b) the widow, widower or a dependent child or relative of an individual;
- (c) a non-resident individual (other than a permitted individual) on the termination of employment with an exempt company.

*7. Repealed.***Basis of assessment: income of the preceding year.****Special period for assessing income.**

8. (1) Save as otherwise provided hereafter, the assessable income of any person for each year of assessment shall be the income, computed in accordance with the provisions of this Act, of the year preceding the year of assessment; and an assessment shall be made and tax charged notwithstanding that a source of income may not be possessed in the year of assessment or no income may arise for or within the year of assessment from a source from which income arose in the preceding year:

Provided that for the year of assessment commencing on the 1st day of July, 1979, and for each subsequent year of assessment the assessable income of any person from an office or employment or from a pension shall be the income of that year of assessment.

(2) Where the Commissioner is satisfied that any person usually makes up the accounts of his trade, business, profession or vocation to some day other than that immediately preceding any year of assessment he may

permit the gains or profits of that trade, business, profession or vocation to be computed for the purposes of this Act upon the income of the year terminating on that day in the year immediately preceding the year of assessment to which the accounts of the trade, business, profession or vocation have been usually made up:

Provided that where the assessable income of any person from a trade, business, profession or vocation has been computed by reference to an account made up to a certain day, and such person fails to make up an account to the corresponding day in the year following, the assessable income from that source both for the year of assessment in which such failure occurs, and for the two years of assessment following, shall be computed on such basis as the Commissioner in his discretion shall think fit.

(3) Where in any year of assessment, a person commences to be liable to pay tax in Gibraltar on any income from a particular source (not being income to which the provisions of regulations made under section 87 apply), the assessable income of that person from that source shall be computed in the following manner:

- (a) in that year of assessment, it shall be the amount of such income in that year;
- (b) in the next succeeding year of assessment, it shall be the amount of such income during the period of 12 months next following the date on which his liability to pay tax in Gibraltar commenced in respect of such income; and
- (c) in each subsequent year of assessment, it shall be computed in accordance with the provisions of subsection (1):

Provided that where there has been no cessation of the income, the person may by notice given after but within 12 months of the third year of assessment require that the assessable income from such source for the second and third years (but not for one or the other only of those years) shall be the amount of such income in the second and third years.

(4) Where in any year of assessment, a person ceases to be liable to pay tax in Gibraltar on any income from any particular source (not being income to which the provisions of regulations made under section 87 apply), the assessable income of that person from that source for that year of assessment and for the immediately preceding year of assessment shall be computed in the following manner:

- (a) in the year of assessment in which such liability ceases, it shall be the amount of such income in the period commencing on the first day of that year of assessment and ending on the date of cessation of that liability;

- (b) in the immediately preceding year of assessment, it shall be either the amount of such income in that previous year of assessment or the amount of such income in the period of 12 months immediately preceding that previous year of assessment, whichever is the greater.

(5) Where in the case of any trade, business, profession or vocation it is necessary in order to arrive at the income for any year of assessment or other period to divide and apportion to specific periods the income of any period for which accounts have been made up, or to aggregate any such income or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation, and any apportionment under this subsection shall be made in proportion to the number of months or fractions thereof in the respective periods, unless the Commissioner, having regard to any special circumstances, otherwise directs.

Gains or profits of employments.

9. (1) The gains or profits from any employment exercised in Gibraltar shall be deemed to be derived from Gibraltar whether the gains or profits from such employment are received in Gibraltar or not.

(2) Where a trade, business, profession or vocation is carried on by two or more persons jointly—

- (a) the income of any partner from the partnership for any period shall be deemed to be the share to which he was entitled during that period in the income of the partnership, such income being ascertained in accordance with the provisions of this Act; and
- (b) the assessable income of any partner from the partnership shall be computed in accordance with the provisions of section 8 by treating his share of the divisible income of the partnership as though it were income of a trade, business, profession or vocation carried on or exercised by him.

Wife's income.

10. (1) The income of a married woman living with her husband, other than her earned income unless she has elected under subsection (4) to be treated as a married woman, shall, for the purposes of this Act, be deemed to be the income of the husband, and shall be charged in the name of the husband and not in her name nor in that of her trustee:

Provided that the part of the total amount of tax charged upon the husband which bears the same proportion to that total amount, as the amount of the total income of the wife bore to the amount of the total income of the

husband and wife may, if necessary, be collected from the wife, notwithstanding that no assessment has been made upon her.

(2) When a married woman is not living with her husband each spouse shall for all purposes of this Act be treated as if he or she were unmarried.

(3) For the purposes of this Act a married woman shall be treated as living with her husband unless—

- (a) they are separated under an order of court of competent jurisdiction or by deed of separation; or
- (b) they are in fact separated in such circumstances that the separation is likely to be permanent; or
- (c) she is ordinarily resident and her husband is a non-resident person.

(4) A married woman living with her husband shall be treated as an unmarried woman in respect of her earned income (as defined in rule 7(2) of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992) unless she elects in writing to the Commissioner to be treated as a married woman:

Provided that a married woman the emoluments, or any part of the emoluments, of whose husband are exempt from tax under the provisions of rule 3(3) of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992 shall not be entitled to make such election.

(5) A married woman who is treated as an unmarried woman by reason of the provisions of subsection (4) shall not be entitled to any deductions under rules 7 to 14, 17 to 19 and 23 of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992.

Special provision as to insurance companies.

11. (1) In the case of an insurance company which is ordinarily resident in Gibraltar the profits or gains on which tax is payable shall be the full profits or gains accruing in, derived from, or received in Gibraltar.

(2) In the case of a non-resident insurance company the profits or gains on which tax is payable shall be ascertained—

- (a) as regards profits or gains arising from business other than life insurance business, by taking the gross premiums and interest and other income received or receivable in Gibraltar (less any premium returned to the insured and premiums paid on reinsurance), and deducting from the balance so arrived at a

reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the period for which the profits or gains are being ascertained and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of such period, and from the net amount so arrived at, deducting the actual losses (less the amount recovered in respect thereof under re-insurance), the agency expenses in Gibraltar and a fair proportion of the expenses of the head office of the company; and

- (b) as regards profits or gains arising from life insurance business, by taking the amount which bears the same proportion to the total investment income of the company in respect of its life insurance funds as the premiums received in Gibraltar bore to the total premiums received in respect of life insurance and deducting from the amount so arrived at the agency expenses in Gibraltar and a fair proportion of the expenses of the head office of the company.

Special provision as to Building Societies.

11A. In the case of a Building Society, the profits or gains on which tax is payable in respect of a loan which the Commissioner is satisfied has been financed exclusively from funds of the Society originating outside Gibraltar, shall be 15% of the gross interest received on such loan less the expenses incurred by the Building Society in Gibraltar in connection with the administration of that loan.

Special provisions as to cable or wireless undertakings.

12. In the case of a non-resident person carrying on the business of transmission of messages by cable or any form of wireless apparatus, the profits or gains of that person shall be an amount bearing the same ratio to the receipts in respect of messages originating in Gibraltar, as the total profits or gains of that person for the relevant basis period for the year of assessment bear to the gross earnings of that person for that period.

Commissioner may disregard certain transactions and dispositions.

13. (1) Where the Commissioner is of the opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious or that any disposition is not in fact given effect to, he may disregard any such transaction or disposition and the persons concerned shall be assessable accordingly.

(2) In this section “disposition” includes any trust, grant, covenant, agreement or arrangement.

(3) Nothing contained in this section shall prevent the decision of the Commissioner in the exercise of any discretion given to him by this section from being questioned in an appeal against an assessment in accordance with section 79.

14. *Repealed.*

Loans to shareholders.

15. (1) If any amounts are advanced or any assets are distributed by a company to any of its shareholders by way of advances or loans, or any payment is made by the company on behalf of or for the benefit of any of its shareholders, so much of those advances, loans or payments as, in the opinion of the Commissioner, represent distributions of income, shall be deemed to be income as if a dividend had been paid, and so be assessable accordingly.

(2) If a dividend is paid and set off in satisfaction in whole or in part of any advance, loan or payment deemed to be income in accordance with subsection (1), then that dividend, to the extent that it is so set off, shall not be deemed to be assessable income in the hands of the recipient of the dividend.

16. *Repealed.*

17. *Repealed.*

Initial allowances for new plant and machinery.

18. (1) In this section, 'plant' and 'machinery', whether used conjunctively or disjunctively—

- (a) subject to paragraphs (b), (c), (d) and (e) include a fixture and a fitting;
- (b) do not include anything that was first acquired by any person before the 1st day of July, 1981;
- (c) do not include anything that was first acquired by any person after the 30th day of June 1987;
- (d) do not include any motor vehicle unless it is of a construction primarily suited for the conveyance of any goods or burden (other than passengers) of any description, or it is of a type not commonly used as a private motor vehicle and is unsuitable to be so used, or it is provided wholly or mainly for hire to or for

the carriage of members of the public in the ordinary course of a trade or business;

- (e) do not include an aircraft or vessel that is used for any purpose other than the purpose of a trade, business, profession or vocation.

(2) Subject to the provisions of this Act, where—

- (a) a person carrying on any trade, business, profession or vocation incurs in any year of assessment capital expenditure wholly and exclusively on the provision of plant or machinery for the purposes of producing income from that trade, business, profession or vocation; and
- (b) in consequence of his incurring that expenditure, the plant or machinery belongs to him at some time during the year of assessment—

then for the purposes of ascertaining the assessable income of that person from that trade, business, profession or vocation, there shall be deducted from his income the whole amount of that expenditure.

(3) Notwithstanding subsection (2), where a person who has already claimed a deduction under this section in respect of any plant or machinery claims a deduction under this section in respect of any capital expenditure by him for the provision of any plant or machinery in replacement of the first item of plant or machinery, the Commissioner may refuse to allow the deduction in respect of the second item of plant or machinery unless the person satisfies the Commissioner that, having regard to the condition and the expected life of the first item, it is reasonably necessary to replace it.

(4) Where any plant or machinery used for the purposes of any trade, business, profession or vocation, in respect of which a deduction is allowed under this section, subsequently ceases permanently to be used for those purposes, every sum received by the person in whose favour the deduction was allowed, by reason of the disposal of that plant or machinery, shall be deemed to be income of that person liable to tax.

Deduction for landlords.

18A. For the purpose of ascertaining the assessable income of any person who is in receipt of rents from a building containing premises to which the Landlord and Tenant Act 1983², applies, there shall be deducted from his assessable income all money paid by him in accordance with Section 80A of

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that Act during the year preceding the year of assessment into the reserve fund established under that Section of that Act in respect of the building.

19. *Repealed.*

19A and 19B*

19C. *Repealed.*

Allowance of trade losses.

20. (1) Where the amount of a loss incurred in any period which forms the basis period for any year of assessment in any trade, business, profession or vocation carried on by any person either solely or in partnership is such that it cannot be wholly set off against his income from other sources for that year of assessment, the amount of such loss shall, to the extent to which it is not allowed against his income from other sources for that year, be carried forward and shall, except as is hereafter provided, be set off against what would otherwise have been his assessable income for subsequent years of assessment:

Provided that—

- (i) the amount of any such loss allowed to be set off in computing the assessable income of any year shall not be set off in computing the assessable income of any other year; and
- (ii) nothing in this section shall be construed as permitting the set off of any loss which, if it had been a profit, would not have been chargeable with tax under this Act.

(2) If within any period of three years there is both a change in the ownership of a company and (either earlier or later in the period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, no relief shall be given under subsection (1) by setting off a loss incurred by the company in any basis period beginning before the change of ownership against any income or other profit of a basis period ending after the change of ownership.

Valuation of stock on discontinuance of trade.

21. (1) In computing for the purposes of this Act the income of any person engaged in a trade or business which has been discontinued, any trading stock belonging to the trade or business at the discontinuance thereof, shall be valued as follow—

* Renumbered as ss. 22 and 23.

(a) in the case of any such trading stock –

(i) which is sold or transferred for valuable consideration to a person who carries on or intends to carry on a trade or business in Gibraltar; and

(ii) the cost whereof may be deducted by the purchaser as an expense in computing, for the purposes of this Act, the assessable income from that trade or business,

the value thereof shall be taken to be the amount realised on the sale or the value of the consideration given for the transfer; and

(b) in the case of any other such trading stock, the value thereof shall be taken to be the amount which it would have realised if it had been sold in the open market at the discontinuance of the trade.

(2) The provisions of this section shall not apply in a case where a trade or business carried on by a single individual is discontinued by reason of his death.

(3) For the purposes of this section, the expression “trading stock”, in relation to any trade or business, means property of any description, whether movable or immovable, being either–

(a) property such as is sold in the ordinary course of the trade or would be so sold if it were mature or if its manufacture, preparation or construction were complete; or

(b) materials such as are used in the manufacture, preparation or construction of any such property as is referred to in paragraph (a) of this subsection.

21A. *Repealed.*

Assessment of purchased life annuity.

22. (1) Subject to the provisions of this Act, for the purpose of ascertaining the assessable income of any person, the Commissioner may in his discretion treat a purchased life annuity as containing a capital element and, to the extent of the capital element, as not being an annual payment or in the nature of an annual payment, but the capital element in such an annuity shall be taken into account in computing profits or gains or losses for other purposes of this Act in any circumstances in which a lump sum payment would be taken into account.

(2) For the purposes of this section, “life annuity” means an annuity payable for a term ending with (or at a time ascertainable only by reference to) the end of a human life, whether or not there is provision for the annuity to end during the life on the expiration of a fixed term or on the happening of any event or otherwise, or to continue after the end of the life in particular circumstances, and “purchased life annuity” means a life annuity granted for consideration in money or money’s worth in the ordinary course of a business of granting annuities on human life.

(3) This section shall not apply–

- (a) to any annuity which would, apart from this section, be treated for the purposes of the provisions of this Act relating to tax on annuities and other annual payments as consisting to any extent in the payment or repayment of a capital sum; or
- (b) to any annuity purchased in pursuance of any direction in a will, or to provide for an annuity payable by virtue of a will or settlement out of income of property disposed of by the will or settlement (whether with or without resort to capital); or
- (c) to any annuity purchased under or for the purposes of any sponsored superannuation scheme or arrangement relating to service in particular offices or employments, or in pursuance of any obligation imposed, or offer or invitation made, under or in connection with such scheme, or any other annuity purchased by any person in recognition of another’s services (or past services) in any office or employment.

(4) This section shall extend to life annuities whenever purchased or commencing in relation to tax chargeable for the year of assessment commencing the 1st day of April, 1967, and each succeeding year of assessment.

23. *Repealed.*

PART III.

PERSONAL RELIEFS, RATES OF TAX, DEDUCTION OF TAX FROM DIVIDENDS, FTC., AND DOUBLE TAXATION RELIEF.

24 to 26, 26A, 26B to 30, 31, 32. 33, 34A and 35 *Repealed.*

Non-resident individual: deductions.

34.(1) and (2) *Revoked.*

(3) Rules made under section 98 may prescribe that a non-resident individual (whether or not he is an individual referred to in subsection (1) of this section), on such conditions as may be specified in the rules, shall be a person to whom section 37 and rules 6 to 21 of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992 apply, as if he were resident in Gibraltar.

(4) Rules made under section 98 for the purposes of subsection (3) of this section shall be laid before the Parliament.

36. *Repealed.*

Rate of Tax.

37. Tax shall be charged on the taxable income of every person at such rates as the Minister may by rules prescribe, and different rules may be so prescribed with respect to

- (a) different descriptions of persons, or
- (b) different bandings of the taxable income, or
- (c) different descriptions of income.

Reliefs, allowances, etc.

37A. (1) For the purpose of ascertaining the amount of income chargeable to tax, there shall be allowed such reliefs (personal or otherwise), exemptions and allowances as the Minister may by rules prescribe.

(2) Without derogation of the generality of subsection (1) the rules made in pursuance of that subsection may make special provisions with respect to

- (a) the income of any company or other body of which the Government is a member being a company or body specified therein for the purpose of this rule,
- (b) moneys invested in any such company or body by way of a purchase of shares or otherwise,
- (c) income derived from the moneys so invested.

(3) The rules made in pursuance of subsection (1) may make provision for the repeal or modification of any of the provisions of this Act which concern any such reliefs, exemptions or allowances.

Tabling of rules before the Parliament and effect of annulments.

37B.(1) Any rule made in pursuance of section 37 or 37A, shall be laid before the Parliament at the meeting thereof next ensuing after such rule has been made.

(2) If any such rule is annulled by the Parliament in pursuance of the provisions of section 28 of the Interpretation and General Clauses Act, then—

- (a) any moneys paid in pursuance of such rule which, but for that rule, would not have been payable shall be repaid or made good, and
- (b) any deduction made in pursuance of such rule so far as it would not have been authorized but for that rule, shall be deemed to be an unauthorized deduction, and
- (c) subsection (2) of that section shall have effect only in so far as it relates to the duty of a person or authority to revoke the rule.

Rules may be given retrospective effect.

37C. Subject to proviso (b) to section 24 of the Interpretation and General Clauses Act³, the rules made in pursuance of section 37 or 37A may be given retrospective effect.

38. *Repealed.*

Dividend Tax Credit.

39.(1) Subject to subsection (5)—

- (a) dividends paid to shareholders of every company which is ordinarily resident in Gibraltar shall attract a tax credit at the rate paid or payable by the company on the profits out of which the dividend is being paid, double taxation relief being left out of account; and
- (b) for the purposes of identifying the rate at which the credit is allowed profits earned at an earlier date shall be deemed to be paid over as a dividend before profits earned at a later date.

(2) Within the thirty days following the end of each year of assessment every company which is ordinarily resident in Gibraltar which pays or votes a dividend to any person who may be taxable in Gibraltar on that dividend shall make a return to the Commissioner, in the form prescribed by the

³ 1962-08

Commissioner, of the amount of any dividend paid in that year of assessment.

(3) Where in any year of assessment the total amount of tax credit entitlement allowable on dividends paid by the company during that year is greater than the amount of tax chargeable on the income of the company for that year, the company shall forthwith account for and pay over to the Commissioner the difference between the amount of tax so chargeable and the total amount of tax credit attracting to the dividends paid by the company during that year: Provided that the difference which the company would, but for this proviso, be liable to pay to the Commissioner shall be reduced by such amount, not exceeding the said difference, as may in accordance with subsection (4) be available as a set off.

(4) Where in any year of assessment the total amount of tax credit allowable on dividends paid by the company during that year is less than the amount of tax chargeable on the income of the company for that year, the excess of tax shall for the purpose of subsection (3), but for no other purpose, be available as a set off against the amount of tax which the company would otherwise be required to pay to the Commissioner in accordance with that subsection. An excess so available as a set off shall be applied on the first occasion next arising to which subsection (3) is applicable, and to the extent that an excess cannot then be so applied shall be carried forward and applied in like manner on the next occasion so arising. An excess arising in any year of assessment may to the extent that it cannot be applied as a set off be aggregated with an excess arising in any other year of assessment, and the aggregate of such excesses shall be applied as if it were a single excess available as a set off.

(5) The Commissioner may disclose to any company to which this section applies such information as, in the opinion of the Commissioner, may aid the company with its duties under the provisions of this section.

Deduction of tax from interest paid by certain companies.

40. (1) Subject to the provisions of Part IIIA every company shall upon payment of mortgage or debenture interest, or interest on any loan advanced to the company for a capital purpose, deduct therefrom tax at the standard rate in force at the date the interest became due and payable and shall forthwith account for and pay over to the Commissioner the tax deducted and furnish him with a statement in such form as he may require, showing the interest payable, the amount of tax deducted and the names and addresses of the persons entitled to the interest or who have received payment.

(1A) The provisions of subsection (1) shall not apply in relation to any interest payable to any person to whom rule 3(35) of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992 applies.

(2) Tax shall be deducted from any interest paid on any loan charged on the Consolidated Fund at the standard rate in force at the date interest becomes due and payable. The persons entrusted with the payment of such interest shall account for and pay over to the Commissioner within one month of the making of such payments the amount of tax authorized by this subsection to be deducted, and shall furnish him with a statement in such form as he may require containing such particulars as are mentioned in subsection (1).

(3) The Commissioner may, in respect of any interest to which this section applies, issue a direction to the persons entrusted with the payment of such interest requiring that the interest shall be paid to such persons as the Commissioner may specify either without deduction of tax or after deduction of tax at such rate (being a rate lower than the standard rate) as he may determine and any such direction may be either in respect of creditors generally or of such special class of creditors as may be specified in the direction and may be generally or in relation to payments of interest during such years of assessment as may be specified and the direction may at any time be amended or revoked by the Commissioner.

(4) In this section, references to a standard rate of tax are references to the standard rate of tax in respect of the person to whom interest is paid.

(5) Notwithstanding any other provisions of the Act the rate of tax determined by the Commissioner under subsection (3), where the Commissioner so determines, shall be the rate of tax payable in respect of that interest by the creditors specified in the direction, and such interest shall not in that case form part of the assessable income of those creditors.

41. *Repealed.*

Qualifying individual.

41A. (1) The Finance Centre Director or such other public officer as the Minister may from time to time designate by notice in the Gazette, where he is satisfied that an individual complies with the prescribed requirements, may in his absolute discretion issue under his hand a qualifying certificate under this section to the individual, subject to such conditions as he may think fit, and the individual shall subject to subsections (2) and (3), be a qualifying individual from such date as may be stated in the certificate.

(2) A qualifying certificate shall remain in force for such a period as shall be stated in it.

(3) Notwithstanding subsection (2) an individual shall unless the Finance Centre Director or such other public officer as the Minister may from time to time designate by notice in the Gazette otherwise directs in

writing, cease to be a qualifying individual if he ceases to comply with the prescribed requirements or with any of the conditions specified in the qualifying certificate.

(4) Tax shall be charged on the taxable income of a qualifying individual at such rate of not less than 2 per cent per pound, as may be prescribed, provided that the total tax so charged shall not exceed such amount as may be prescribed.

(5) A qualifying individual who is subject to tax in pursuance of this section shall not be liable to tax under any other provision of this Act.

(6) An application by an individual for a qualifying certificate shall be subject to the payment of such a fee as may be prescribed.

Set off of Tax Credit.

42. Any tax deducted from any interest under the provisions of section 40 or any tax credit entitlement under section 39 or any tax which is applicable to the share to which any person is entitled in the income of a body of persons or in the income of the estate of a deceased person shall, when such dividend, interest or share is included in the assessable income of such person, be set off for the purpose of collection against the tax charged on that income.

43. *Repealed.*

44. *Repealed.*

45. *Repealed.*

46. *Repealed.*

Gifts to charity by individuals.

47.(1) The Minister, may, by rules, make provision for the paying to charities of amounts equal to the income tax paid by individuals.

(2) Rules made under subsection (1) may provide for such terms, conditions and consequential matters as the Minister may deem appropriate.

PART IIIA

**TAXATION APPLICABLE TO INTEREST AND ROYALTY
PAYMENTS MADE BETWEEN ASSOCIATED COMPANIES OF
DIFFERENT MEMBER STATES.**

Interpretation of Part.

47A.(1) In this Part, unless the context otherwise requires—

“company” has the same meaning as the expression “company of a member State” in article 3(a) of the Directive as set out in Schedule 2 and for the avoidance of doubt includes a company established under the Companies Act;

“Directive” means Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States;

“interest” means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest;

“permanent establishment” means—

- (a) a fixed place of business situated in Gibraltar through which the business of a company of a member State is wholly or partly carried on;
- (b) a fixed place of business situated in a member State through which the business of a company of Gibraltar is wholly or partly carried on;
- (c) a fixed place of business situated in a member State through which the business of a company of another member State is wholly or partly carried on;

“royalties” means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and software, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; payments for the use of, or the right to use, industrial, commercial or scientific equipment shall be regarded as royalties;

“source State” means the State or territory from which a company or permanent establishment makes a payment.

(2) In this Part, a company is an “associated company” of a second company if, at least—

- (a) the first company has a direct minimum holding of 25 % in the capital or voting rights of the second company; or
- (b) the second company has a direct minimum holding of 25 % in the capital or voting rights of the first company; or
- (c) a third company has a direct minimum holding of 25 % both in the capital or voting rights of the first company and in the capital of the second company.

Holdings must involve only companies resident in European Community territory.

(3) Terms used in this Part but not defined shall be interpreted in accordance with the provisions of the Directive.

Application of Part.

47B.(1) This Part shall not apply in the following cases—

- (a) payments which are treated as a distribution of profits or as a repayment of capital under the law of the source State;
- (b) payments from debt-claims which carry a right to participate in the debtor’s profits;
- (c) payments from debt-claims which entitle the creditor to exchange his right to interest for a right to participate in the debtor’s profits;
- (d) payments from debt-claims which contain no provision for repayment of the principal amount or where the repayment is due more than 50 years after the date of issue.

(2). Where, by reason of a special relationship between the payer and the beneficial owner of interest or royalties, or between one of them and some other person, the amount of the interest or royalties exceeds the amount which would have been agreed by the payer and the beneficial owner in the absence of such a relationship, the provisions of this Part shall apply only to the latter amount, if any.

Scope of Part.

47C.(1) Interest or royalty payments arising in Gibraltar shall be exempt from any taxes imposed on those payments, whether by deduction at source

or by assessment, provided that the beneficial owner of the interest or royalties–

- (a) is a company of another Member State; or
- (b) a permanent establishment situated in another Member State of a company of a Member State.

(2) Subsection (1)–

- (a) shall apply only where the company which is the payer, or the company whose permanent establishment is treated as the payer of interest or royalties is an associated company of the company which is the beneficial owner, or whose permanent establishment is treated as the beneficial owner, of that interest or those royalties;
- (b) shall not apply where interest or royalties are paid by or to a permanent establishment of a company situated in a State outside the EEA and the business of the company is wholly or partly carried on through that permanent establishment.

(3) Subsection (1) shall apply only where the Commissioner has issued an exemption certificate in accordance with section 47H.

(4) Notwithstanding any provision in this Part to the contrary, the Commissioner may, require the deduction of tax at source at the time of payment where he is not satisfied that that the requirements of this Part have been fully complied with.

Special provision for certain States.

47D.(1) This section shall cease applying–

- (a) in the case of Greece, Latvia, Poland and Portugal, 8 years; and
- (b) in the case of Spain, the Czech Republic or Lithuania, 6 years,

after article 17(2) and (3) of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments comes into force.

(2) In the case of the Slovak Republic, this section shall cease applying on 30 April 2006.

(3) Where a company or permanent establishment situated in Gibraltar–

- (a) receives interest or royalties from an associated company of Greece, Latvia, Lithuania, Poland and Portugal;
- (b) receives royalties from an associated company of Spain, or the Czech Republic;
- (c) receives interest or royalties from a permanent establishment situated in Greece, Latvia, Lithuania, Poland and Portugal of an associated company; or
- (d) receives royalties from a permanent establishment situated in Spain or the Czech Republic of an associated company,

there shall be allowed an amount equal to the tax paid in Greece, Spain, Portugal, the Czech Republic, Latvia, Lithuania or Poland on that income as a deduction from the tax on the income of the company or permanent establishment which received that income.

(4) The deduction provided for in subsection (3) shall not exceed the lower of—

- (a) in the case of Greece, Latvia, Poland and Portugal, 10% during the first four years and 5% during the final four years;
- (b) in the case of Spain and the Czech Republic, 10% during the six years;
- (c) in the case of Lithuania, 10% during the first four years and 5% during the final two years;
- (d) in the case of the Slovak Republic, an amount equal to the tax paid on that income as a deduction from the tax on the income of the company or permanent establishment which received that income; or
- (e) that part of the tax on the income of the company or permanent establishment which received the interest or royalties, as computed before the deduction is given, which is attributable to those payments under the Income Tax Act where the permanent establishment is situated in Gibraltar.

Criterion for establishing permanent establishment as payer

47E. A permanent establishment shall be treated as the payer of interest or royalties only insofar as those payments represent a tax-deductible expense for the permanent establishment under this Act.

Criteria for establishing identity of beneficial owner.

47F.(1) A company shall be treated as the beneficial owner of interest or royalties only if it receives those payments for its own benefit and not as an intermediary, such as an agent, trustee or authorised signatory, for some other person.

(2) A permanent establishment shall be treated as the beneficial owner of interest or royalties–

- (a) if the debt-claim, right or use of information in respect of which interest or royalty payments arise is effectively connected with that permanent establishment; and
- (b) if the interest or royalty payments represent income in respect of which that permanent establishment is subject in the Member State in which it is situated to one of the taxes mentioned in Article 3(a)(iii) of the Directive as set out in Schedule 2 or in the case of Belgium to the ‘impôt des non-résidents/belasting der niet-verblijfhouders’ or in the case of Spain to the ‘Impuesto sobre la Renta de no Residentes’ or to a tax which is identical or substantially similar and which is imposed after the date of entry into force of this Part in addition to, or in place of, those existing taxes.

(3) Where a permanent establishment of a company is treated–

- (a) in accordance with section 47E as the payer; or
- (b) in accordance with this section, as the beneficial owner,

as the case may be of interest or royalties, no other part of the company shall be treated as the payer, or as the beneficial owner, of that interest or those royalties for any purpose connected with this Part.

Identity of payer and beneficial owner: supplementary.

47G. Where a permanent establishment of a company of a Member State is treated as the payer, or as the beneficial owner, of interest or royalties, no other part of the company shall be treated as the payer, or as the beneficial owner, of that interest or those royalties for the purposes of this Part.

Certificates of exemption.

47H.(1) An exemption certificate may be issued at the request of the officer of a company to which this Part applies or its appointed agent.

(2) On receipt of a request under subsection (1), the Commissioner shall determine whether to issue an exemption certificate within three months of receipt of the request.

(3) An exemption certificate under subsection (1) shall be valid for 12 months from the date of issue.

Information to be provided in a request under section 47H.

47I.(1) A person requesting the issue of an exemption certificate under section 47H shall provide a written statement certifying that the payment concerned is one to which section 47C(1) applies.

(2) For the purposes of subsection (1), the written statement shall be valid for at least one year but for not more than three years from the date of issue and shall provide—

- (a) proof of residence for tax purposes of the company which is the beneficial owner, and where necessary, the existence of a permanent establishment certified by the tax authority of the Member State in which the receiving company is resident for tax purposes or in which the permanent establishment is situated;
- (b) information as to the beneficial ownership of the company set out in paragraph (a) of the income in respect of which the payment is made in accordance with section 47F;
- (c) information establishing that the company set out in paragraph (a) is subject to tax and details of the corporation tax or tax corresponding to that tax to which the company is subject;
- (d) information establishing that the payer, the company and its beneficial owners are associated companies within the meaning of this Part and, in particular, sections 47A(2) and 47C(2)(a)(ii);
- (e) details of the period during which the relations between the payer, the company and its beneficial owners has existed in accordance with paragraph (d);
- (f) a copy of the loan agreement or other document providing the legal justification for the interest payment.

Requirements where conditions for exemption cease to be satisfied.

47J. Where the person who requested the issue of the exemption certificate, the payer or the beneficial owner become aware that any requirement subject to which the certificate is issued has ceased to be satisfied—

- (a) he shall immediately notify the Commissioner and the other parties of the fact; and
- (b) the exemption certificate shall become ineffective,

and the Commissioner shall cancel the exemption certificate by notice in writing to the person who requested it and the payer.

Recovery of tax not deducted.

47K. If, after an exemption certificate has been issued, it is discovered that any of the requirements of this Part was not satisfied, and tax deductible from a payment was not so deducted, that tax may be recovered whether by assessment or otherwise in such manner as the Commissioner deems appropriate.

Repayment by company of tax deducted.

47L.(1) Where the paying company or permanent establishment has withheld tax at source to be exempted under this Part, an application may be made to the Commissioner for that tax to be refunded at source.

(2) A claim pursuant to subsection (1) shall contain the information requested under section 47I(2) and shall be submitted not later than two years from the date when the interest or royalties are paid to the beneficial owner.

(3) The Commissioner shall refund excess tax withheld at source within one year following due receipt of the application and relevant supporting information.

Regulations.

47M.(1) The Minister with responsibility for public finance may make regulations for carrying this Act into effect and the regulations may, in particular, make such supplementary provision for the better administration of this Act.

(2) Regulations made under subsection (1) may give effect to any agreement or arrangement that may be entered into by the Government of Gibraltar with any other country in relation to any matter falling within the scope of this Act.

(3) Regulations made under subsection (1) may provide for the levying of such fees and the creation of such offences as the Minister deems appropriate.

PART IV.

CHARGEABILITY OF, AND ACTS TO BE DONE BY, AGENTS AND OTHER REPRESENTATIVES.

Chargeability of trustees and other representatives.

48. A receiver appointed by the court, a trustee, guardian, curator, or committee, having the direction, control, or management of any property or concern on behalf of any incapacitated person shall be chargeable to tax in like manner and to the like amount as such person would be chargeable if he were not an incapacitated person:

Provided that this section shall not be construed to make any person chargeable to tax in respect of an incapacitated person, liable, in such respect, for a greater amount of tax than that for which the incapacitated person would have been liable had no receiver, trustee, guardian, curator or committee been appointed.

Chargeability of agent of a non-resident person.

49.(1) (a) A non-resident person shall be assessable and chargeable to tax either directly or in the name of his trustee, guardian or committee, or of any attorney, factor, agent, receiver, branch or manager, whether such attorney, factor, agent, receiver, branch or manager has the receipt of the income or not, in like manner and, subject to the provisions of rule 24 of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992, to the like amount as such non-resident person would be assessed and charged if he were resident in Gibraltar and in the actual receipt of such income; and

(b) a non-resident person shall be assessable and chargeable in respect of any income arising, whether directly or indirectly, through or from any attorneyship, factorship, agency, receivership, branch or management, and shall be so assessable and chargeable in the name of the attorney, factor, agent, receiver, branch or manager.

(2) Where a non-resident person carries on business with a person ordinarily resident, and it appears to the Commissioner that owing to the close connection between such person and the non-resident person and to the substantial control exercised by the non-resident person over such persons, the course of business between those persons can be so arranged

and is so arranged, that the business done by the person ordinarily resident in pursuance of his connection with the non-resident person produces to the person ordinarily resident either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the person ordinarily resident as if such person was an agent of the non-resident person.

(3) Where it appears to the Commissioner that the true amount of the gains or profits of any non-resident person chargeable with tax in the name of a person ordinarily resident cannot in any case be readily ascertained, the Commissioner may, if he thinks fit, assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business done by the non-resident person through or with the person in whose name he is chargeable as aforesaid, and in such case the provisions of this Act relating to the delivery of returns or particulars by persons acting on behalf of others shall extend so as to require returns or particulars to be furnished by the person ordinarily resident of the business so done by the non-resident person through or with such persons, in the same manner as returns or particulars are to be delivered by persons acting for incapacitated or non-resident persons, of income to be charged:

Provided that the amount of the percentage shall in each case be determined with regard to the nature of the business, and shall, when determined by the Commissioner, be subject to appeal in accordance with the provisions of section 79.

(4) Nothing in this section shall render a non-resident person chargeable in the name of a broker or general commission agent or other agent where such broker, general commission agent or agent is not an authorized person carrying on the regular agency of the non-resident person, or a person chargeable as if he were an agent in pursuance of subsections (2) and (3) in respect of gains or profits arising from sales or transactions carried out through such a broker or agent.

(5) The fact that a non-resident person executes sales or carries out transactions with other non-resident persons in circumstances which would make him chargeable in pursuance of subsections (2) and (3) in the name of a person ordinarily resident, shall not of itself make him chargeable in respect of gains or profits arising from those transactions.

(6) Where a non-resident person is chargeable to tax in the name of any attorney, factor, agent, receiver or manager, in respect of any gains or profits arising from the sale of goods or produce manufactured or produced outside Gibraltar by the non-resident person, the person in whose name the non-resident person is so chargeable may, if he thinks fit, apply to the Commissioner or, in the case of an appeal, to the court, to have the assessment to tax in respect of those gains or profits made or amended on

the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold, who had bought from the manufacturer or producer direct, and on proof to the satisfaction of the Commissioner or the court of the amount of the profits on the basis aforesaid, the assessment shall be made or amended accordingly.

(7) The income of any non-resident partner or partners from a partnership shall be assessable in the name of the partnership or of any partner ordinarily resident in Gibraltar or of any agent of the partnership in Gibraltar, and the tax shall be recoverable by all means provided in this Act out of the assets of the partnership or from any partner or from any such agent.

Acts to be done by trustees and certain others.

50. The person who is chargeable in respect of an incapacitated person, or in whose name a non-resident is chargeable, shall be answerable for all matters required to be done by virtue of this Act for the assessment of the income of any person for whom he acts and for paying the tax chargeable thereon.

Manager of corporate body of persons.

51. The manager or other principal officer in Gibraltar of every company or body of persons shall be answerable for doing all such acts, matters and things as are required to be done by virtue of this Act for the assessment of the company or such body and payment of tax.

Indemnification of representatives.

52. Every person answerable under this Act for the payment of tax on behalf of another person may retain out of any money coming into his hands on behalf of such other person so much thereof as shall be sufficient to pay such tax; and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Act.

Power to appoint agent.

53. (1) The Commissioner may by notice in writing, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared to be the agent shall be the agent of such other person for the purposes of this Act, and may be required to pay any tax due from any moneys, including pensions, salary, wages, or any other remuneration, which may be held by him for, or due by him to, the person whose agent he had been declared to be, and in default of such payment the tax shall be recoverable from him in the manner provided by section 86;

Provided that in respect of a company each and every director of that company shall be deemed to be the agent of that company for the purposes of this section.

(2) For the purpose of this section the Commissioner may require any person to give him information as to any moneys, funds or other assets which may be held by him for, or of any moneys due by him to, any other person.

(3) The provisions of section 79 shall apply mutatis mutandis where any person declared by the Commissioner to be the agent of any other person under the provisions of subsection (1) is aggrieved by such declaration.

Deceased persons.

54. (1) Where an individual dies, then as respects income arising before his death all rights and duties which would have attached to him, and any liability to be charged with or to pay tax to which he would have been subject under this Act if he had not died, shall pass to his executor, and the amount of any tax payable by the executor under this section shall be a debt due from and payable out of the estate of the deceased:

Provided that—

- (a) any assessment or additional assessment on any such income shall not be made later than the end of the third year of assessment following that in which the deceased died; and
- (b) where by reason of the death of an individual, he ceases to be liable to pay tax in Gibraltar on income from any particular source (not being income to which the provisions of regulations made under section 87 apply), the provisions of section 8(5) shall apply and the executor of the individual shall be liable for the tax for which the individual would have been liable if he had not died and a cessation had occurred at the date of his death.

(2) In assessing the income of a deceased person, any deduction allowable under any of the provisions of rules 6 to 12 and 15 to 19 of the Income Tax (Allowances, deductions and Exemptions) Rules, 1992 shall be reduced by one twelfth for each complete calendar month that the date of demise preceded the end of the year of assessment.

Company wound up.

55.(1) Where a company is being wound up, the liquidator of the company shall not distribute any of the assets of the company to the shareholders

thereof unless he has made provision for the payment in full of any tax which may be payable by the company.

(2) For the purposes of this section and section 305(1)* of the Companies Act⁴ “tax which maybe payable by the company” means any sum due at the relevant date (as defined in the Companies Act) from the company on account of tax deductions which the company is required by any provision of this Act to have made and for the purposes of this section only, shall also include all income tax, corporation tax and any other assessed taxes on the company up to the 30th of June next before the relevant date (as defined in the Companies Act).

Joint trustees.

56. Where two or more persons act in the capacity of trustees they may be charged jointly or severally with the tax with which they are chargeable in that capacity and shall be jointly or severally liable for the payment of the same.

PART V.
RETURNS, ASSESSMENTS, APPEALS,
COLLECTION AND REPAYMENT OF TAX.

Notice of chargeability and returns.

57. (1) The Commissioner may by request in writing ask any person to furnish him, with a return of income and such particulars as may be required for the purposes of this Act with respect to the income for which such person is chargeable.

(2) Every person chargeable with tax for any year of assessment other than a person who is only chargeable with tax by reason of the receipt of income from an office, employment or pension and who has been issued with a PAYE allowances certificate in accordance with the provisions of regulations made under section 87 who has not been asked within three months after the commencement of such year of assessment to make a return of his income for that year as provided in subsection (1) shall, within fourteen days after the expiration of that period, given notice to the Commissioner* that he is so chargeable:

* *Reference re-numbered as a consequence of the re-numbering of the Companies Ordinance [LN. 2004/061]*

⁴ 1930-07

* *LN 2004/028 Under section 3(2) Income Tax Ordinance individual authorised to assist in enforcement.*

Provided that any individual who arrives in Gibraltar during any year of assessment shall give such notice within one month of the date of his arrival.

(3) Any person who—

(i) contrary to subsection (2), fails to give notice to the Commissioner that he is chargeable; or

(ii) contrary to subsection (2), fails to give notice to the Commissioner of his arrival in Gibraltar,

shall be guilty of an offence and shall be sentenced on summary conviction to a fine at level 4 on the standard scale.

58 to 60. *Repealed.*

Books of account.

61. If a person who carries on a trade, business or profession, or the agent of such person fails or refuses to keep records, books or accounts in the English language which, in the opinion of the Commissioner, are adequate for the purposes of income tax, the Commissioner may by notice in writing require him to keep such records, books and accounts in the English language.

62. *Repealed.*

Return to be made by employer.

63. (1) Every employer when required to do so by notice from the Commissioner shall, within the time limited by such notice, prepare and deliver for any year a return containing—

- (a) the names and places of residence of all persons employed by him; and
- (b) the full amount of remuneration, whether in cash or otherwise, paid or payable to those persons in respect of that employment.

(2) Where the employer is a company or a body of persons, the manager or other principal officer shall be deemed to be the employer for the purposes of this section, and any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed.

64. *Repealed.*

Payment of tax of individuals employed but not domiciled or ordinarily resident in Gibraltar.

65. (1) In this section the expression “individual to whom this section applies” means an individual who is not domiciled in Gibraltar or who, if so domiciled, is not ordinarily resident therein.

(2) Where any person employs in Gibraltar an individual to whom this section applies and who is or is likely to be chargeable with tax under this Act he shall give notice in writing to the Commissioner not later than one month after the date of the commencement of such employment, stating the full name and address of such individual, the date of commencement and the terms of employment.

(3) Any person ceasing to employ in Gibraltar an individual to whom this section applies and who is or is likely to be chargeable with tax under this Act, shall give notice in writing to the Commissioner not less than one month before such individual ceases to be employed by him in Gibraltar stating the name and address of the individual and the expected date of cessation:

Provided that the Commissioner may accept such shorter notice as he may deem reasonable.

(4) Any person who employs in Gibraltar an individual to whom this section applies and who is to the knowledge of such person about to leave or intending to leave Gibraltar on termination of his employment with such person shall give notice in writing to the Commissioner of the expected date of departure of such individual. Such notice shall be given not less than one month before the expected date of departure:

Provided that the Commissioner may accept such shorter notice as he may deem reasonable.

(5) Where any person in his capacity as employer of an individual hereinafter mentioned has in possession any moneys whatsoever which are or may be payable to or for the benefit of an individual to whom this section applies and who has ceased or is about to cease to be employed by such person in Gibraltar, he shall not without the permission of the Commissioner, notwithstanding the provisions of any other law, pay any part of such moneys to or for the benefit of such individual until the expiry of thirty days after the receipt by the Commissioner of such notice as is required to be given under subsection (4).

(6) The Commissioner may by notice in writing whenever he thinks fit declare any person who employs in Gibraltar an individual to whom this section applies, being an individual who is or is likely to be chargeable with tax under this Act, to be the representative taxpayer of such individual, and

the person so declared shall be the representative taxpayer of such individual for the purposes of this Act and may be required to pay any tax due by such individual from property or moneys, including pension, salary, wages or any remuneration which may be due by him to such individual and, in default, such payment shall, notwithstanding the provisions of any other law, be recoverable from the representative taxpayer so declared by the Commissioner in the manner provided in section 88.

(7) The provisions of this section shall also apply to a person from whose emoluments tax is required to be deducted in accordance with the provisions of regulations made under section 87.

66. *Repealed.*

Payment of tax by or in respect of construction sub-contractors.

67. The Minister may make all such regulations as are necessary generally for ensuring compliance with the provisions of this Act by persons engaged in the business of construction sub-contractors, and in particular, without prejudice to the generality of the foregoing, may make regulations for all or any of the following purposes—

- (a) defining for the purposes of this Act “contractor”, “sub-contractor” and “construction” together with any other terms the definition of which is required for the purposes of this section;
- (b) prescribing the payments to which regulations made under this section shall apply;
- (c) determining the method of payment of tax including any obligation to deduct tax, in respect of construction contractors and sub-contractors;
- (d) prescribing, where necessary, procedures to be followed and notices and statements to be submitted in connection with the deduction and handing over of tax deducted by or on behalf of construction, contractors or sub-contractors;
- (e) prescribing the terms under which a construction, contractor or sub-contractor may be exempt from a requirement to comply with a provision or provisions of this Act or of these regulations and for the cancellation of any such exemption;
- (f) prescribing any fees payable in respect of any of the procedures in such regulations;

- (g) providing, where appropriate, that contravention of the regulations shall constitute a criminal offence and providing for a fine not exceeding the amount at level 4 on the standard scale together with three times the amount of any tax which should have been deducted or should have been paid to the Commissioner of Income Tax under the provisions of this section or to six months imprisonment or to both;
- (h) providing that fact of the issue or withdrawal of an exemption certificate may be published in the Gazette notwithstanding the provisions of section 4 of the Act.

68. *Repealed.*

69. *Repealed.*

70. *Repealed.*

71. *Repealed.*

Commissioner to make assessments.

72. (1) The Commissioner shall proceed to assess every person who he has reason to believe may be chargeable with the tax for a year of assessment as soon as may be after 30th September of that year of assessment.

(1A) Where the Commissioner has reason to believe that the source of income which gives rise to the liability has ceased before 30th September in the year of assessment, he shall proceed to assess the person as soon as possible after the date of cessation of the source of income.

(2) Where a person has delivered a return the Commissioner may—

- (a) accept the return and make an assessment accordingly; or
- (b) refuse to accept the return and, to the best of his judgment, determine the amount of the assessable income of the person and make an assessment accordingly.

(3) Where a person has not delivered a return and the Commissioner is of the opinion that such person is liable to pay tax, he may, according to the best of his judgment determine the amount of the assessable income of such person and make an assessment accordingly.

73. *Repealed.*

Additional assessment.

74. (1) Where it appears to the Commissioner that any person liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Commissioner may within the year of assessment or within six years after the expiration thereof, assess such person at such amount or additional amount as according to his judgment ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings under this Act shall apply to such assessment or additional assessment and to the tax charged thereunder.

(2) Where any form of fraud or wilful default has been committed by or on behalf of any person in connection with or in relation to income tax for any year of assessment, assessments or additional assessments on that person for that year may be amended or made at any time, notwithstanding that the time limited by subsection (1) has expired:

Provided that nothing in this subsection shall extend the time for making assessments or additional assessments or amending assessments on the executor of any person by whom or on whose behalf any form of fraud or wilful default has been committed.

Lists of persons assessed and notices of assessment.

75. (1) The Commissioner shall as soon as possible prepare lists of persons assessed to tax.

(2) Such lists, herein called assessment lists, shall contain the names and addresses of persons assessed to tax, the amount of the taxable income of each person, the amount of the tax payable by him, and such other particulars as the Commissioner may specify.

(3) Where complete copies of all notices of assessment are filed in the office of the Commissioner they shall constitute the assessment lists for the purpose of this Act.

Appointment of agents in the United Kingdom.

76. For the purpose of facilitating the assessment of the income of persons residing in the United Kingdom the Minister may appoint agents in the United Kingdom any one of whom may make enquiries on behalf of the Commissioner in respect of any such person as may apply to be dealt with through such agent, and shall ascertain and report to the Commissioner the amount of the assessable income of such persons in accordance with this Act and shall forward to the Commissioner the accounts and computations upon which his report is based. The Commissioner on receipt of the report shall enter the amount reported in the assessment lists:

Provided that—

- (a) if it appears to the Commissioner that any error has occurred in the accounts or computation he may refer the report back for further consideration; and
- (b) nothing in this section shall affect the right of appeal conferred by section 77.

Service of notice of assessment.

77. (1) The Commissioner shall cause to be served personally on or sent by registered post to each person whose name appears on the assessment lists, a notice stating the amount of his assessable income, the tax payable by him, the place at which such payment should be made, and informing him of his rights under subsection (2):

Provided that where a person has applied under section 76 to be dealt with through agents in the United Kingdom and has applied for and been granted permission to make payment of the tax in the United Kingdom the Commissioner may direct that the notice of assessment shall be served by the agent in the manner above prescribed:

Provided further that nothing in the above proviso shall affect the responsibility of the manager of any corporate body under section 51 for the payment of tax.

- (2) (a) If any person disputes an assessment he may appeal against that assessment by notice in writing addressed to the Commissioner within 21 days from the date of the service of the notice of assessment.
 - (b) Any appeal under (a) above shall be to the Income Tax Act Tribunal (in this section and section 77A referred to as “the Tribunal”).
 - (c) The notice of appeal against any assessment shall state the grounds of the appeal, but on the hearing of the appeal the Tribunal may allow the appellant to put forward any ground not specified in the notice, and take it into consideration if satisfied that the omission was not wilful or unreasonable.
- (3)(a) If the person disputing the assessment was prevented from making the appeal within the specified period owing to absence from Gibraltar, sickness or other reasonable cause, he may apply to the Commissioner for the appeal to be brought out of time.
 - (b) Where the Commissioner is satisfied that the applicant was so prevented and that the application was made thereafter without

unreasonable delay the Commissioner shall consent to the application; where the Commissioner is not satisfied he shall refer the application to the Tribunal.

(4) Where a person, who has appealed against an assessment made on him, agrees with the Commissioner as to the amount at which he is liable to be assessed before the matter is heard by the Tribunal, the like consequences shall follow as if the appeal had been determined, or the assessment confirmed, by the Tribunal in the agreed amount on the same date as the agreement is reached between that person and the Commissioner.

(5) Notice of any amended assessment as determined on appeal shall be served by the Commissioner on the appellant, either personally or by registered post; and any additional tax shall be due and payable in full within one month after such service, and if it is not paid within that period the provisions of section 84 shall apply.

(6) Nothing in subsection (5) shall require payment of tax to be made earlier than would be required under section 82 had no appeal been brought.

Application for postponement of tax payable.

77A. (1) Any person who has been assessed and who:

- (a) has appealed against the amount of the income assessed; or
- (b) has reason to believe that the tax payable on the assessment will be reduced by an excess of allowances which he is entitled to claim over those given in the assessment,

may submit an application to the Commissioner to have postponed collection of all or part of the tax shown as payable on the assessment.

(2) An application under subsection (1) shall be made in writing to the Commissioner within twenty one days of the service of the notice of assessment and shall state the amount in respect of which postponement is sought together with the precise grounds for the application for postponement.

(3) If the Commissioner is satisfied that owing to absence from Gibraltar, sickness or other reasonable cause, the person making the application was prevented from making it within the period in subsection (2), he may extend the period as may be reasonable in the circumstances.

(4) Where the person assessed is able to adduce sufficient evidence to satisfy the Commissioner with regard to the amount of tax which should be postponed, the Commissioner shall agree the postponement application by notice in writing.

(5) Where the person assessed is not able to adduce sufficient evidence to satisfy the Commissioner with regard to the amount of tax he has applied to have postponed:

- (a) if insufficient evidence has been adduced to support an application for postponement of any part of the tax, the Commissioner shall refuse the application by notice in writing;
- (b) if evidence has been adduced which is insufficient to support that application by the person assessed in full but which indicates that part of the tax should be postponed, the Commissioner shall determine the amount of tax to be postponed and notify the person assessed of his decision by notice in writing.

(6) (a) Any person who is aggrieved by a refusal or determination of the Commissioner under subsection (5) above may appeal against that refusal or determination to the Tribunal.

(b) An appeal under (a) above shall be made in writing addressed to the Commissioner within twenty one days of the date of the refusal or determination.

(7) (a) Any amount of tax postponed in respect of an application made under subsection (1)(a) shall be postponed until the earlier of:

(i) 90 days after the date of the agreement or final determination of the amount to be postponed; or

(ii) 60 days after the date the Commissioner serves his notice of agreement, confirmation or determination of the amount assessable in respect of the assessment for which application for postponement has been made.

(b) Any amount of tax postponed in respect of an application made under subsection (1)(b) shall be postponed until the earlier of:

(i) 30 days after the end of the year of assessment for which the assessment is made; and

(ii) 60 days after the agreement by the Commissioner of the tax payable for the year of assessment.

(c) Nothing in (a) and (b) above shall require payment of tax to be made earlier than would be required under section 82 had no application been made.

(8) For the purposes of calculating any penalty due under section 84, the postponement of collection of tax under this section shall not affect the due and payable date of any tax which is ultimately found to be due.

Errors and defects in assessment and notice.

78. (1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall be quashed, or deemed to be void or voidable for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is, in substance and effect, in conformity with or according to the intent and meaning of this Act, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected—

(a) by reason of a mistake therein as to—

(i) the name or surname of a person liable; or

(ii) the description of any income; or

(iii) the amount of tax charged; or

(b) by reason of any variance between the assessment and the notice thereof:

Provided that in cases of assessment the notice thereof shall be duly served on the person intended to be charged and such notice shall contain in substance and effect the particulars on which the assessment is made.

79. Repealed.

Assessments to be final and conclusive.

80. Except as expressly provided in this Act where no valid appeal has been lodged within the time limited as provided in section 77 against an assessment as regards the amount of the assessable income assessed thereby or where the amount of the assessable income has been agreed to under section 77(4) or where the amount of such assessable income has been determined or confirmed on appeal the assessment as made or agreed to or determined or confirmed on appeal, as the case may be, shall be final and conclusive for all purposes of this Act as regards the amount of such assessable income:

Provided that nothing in this section shall prevent the Commissioner from making any refund under the provisions of section 89 or any assessment or

additional assessment for any year of assessment which does not involve re-opening any matter which has been determined on appeal for the year.

81. *Repealed.*

Time within which payment is to be made.

82. Tax for any year of assessment shall be due and payable at the place stated in the notice of assessment under section 77 not later than 28th February in the year of assessment or within 60 days after the issue of the assessment whichever date is the later.

Recovery of tax from persons leaving Gibraltar.

83. (1) If in any particular case the Commissioner has reason to believe that a person who has been assessed to tax may leave Gibraltar before such tax becomes payable under the provisions of section 82 without having paid such tax, he may by notice in writing to such person demand payment of such tax within a time to be limited in such notice. Such tax shall thereupon be payable at the expiration of the time so limited and shall in default of payment, unless security for payment thereof be given to the satisfaction of the Commissioner, be recovered forthwith in the manner provided by section 86.

(2) If in any particular case the Commissioner has reason to believe that tax upon any assessable income may not eventually be recovered, he may at any time and as the case may require—

- (a) *Repealed*
- (b) make an assessment upon such person in such amount as the Commissioner may think reasonable; and
- (c) by notice in writing to the person assessed require that security for the payment of the tax assessed be forthwith given to his satisfaction.

(3) Notice of any assessment made in accordance with the provisions of subsection (2) shall be given to the person assessed, and any tax so assessed (in accordance with the provisions of subsection (2)) shall be payable on demand made in writing under the hand of the Commissioner and shall in default of payment, unless security for the payment thereof be given to the satisfaction of the Commissioner, be recoverable forthwith in the manner provided by section 86.

(4) Any person who has paid tax in accordance with a demand made by the Commissioner or who has given security for such payment under subsection (2) shall have the rights of appeal conferred by section 77 and

the amount paid by him shall be adjusted in accordance with the result of any such appeal.

(5) The provisions of subsection (2) shall not affect the power conferred upon the Commissioner by section 74.

Penalty for non payment of tax and recovery of payment.

84. If any tax is not paid within the period prescribed in section 82—

- (a) (i) an additional sum equal to ten per cent of the tax then payable shall thereupon become payable by way of penalty;
- (ii) if any tax remains unpaid for five months after the due date, a further penalty of ten per cent of the tax unpaid may, at the Commissioner's discretion become payable by way of additional penalty and further penalties of ten per cent each may, at the Commissioner's discretion become payable for each additional five months at the end of which any part of the tax remains unpaid;
- (iii) a penalty imposed under this section shall be deemed to be part of the tax;
- (b) the Commissioner shall serve a demand note upon the person assessed, and if payment is not made within one month from the date of service of such demand note, the Commissioner may proceed to recover payment as hereinafter provided.

85. *Repealed.*

Recovery of tax by Commissioner through the court.

86. (1) Tax due under this Act shall be recoverable summarily by the Commissioner as a civil debt.

(2) In any suit under subsection (1) the production of a certificate signed by the Commissioner giving the name and address of the defendant and the amount of tax due by him shall be sufficient evidence of the amount so due and sufficient authority for the magistrates' court to give judgment for such amount.

(3) In addition to any other powers of collection and recovery provided in this Act, the Commissioner may, where the tax charged on the income of any person who carries on the business of shipowner or charterer has been in default for more than three months, whether such person is assessed directly or in the name of some other person, issue to the Captain of the Port, or other authority by whom clearance may be granted, a certificate

containing the name or names of the said person and particulars of the tax in default. On receipt of such certificate, the Captain of the Port or other authority shall refuse clearance from Gibraltar to any ship owned wholly or partly by such persons until the tax has been paid or until security for the payment has been given to the satisfaction of the Commissioner.

(4) No civil or criminal proceedings shall be instituted against the Government, the Captain of the Port or other authority in respect of a refusal of clearance under this section, nor shall the fact that a ship is detained under this section affect the liability of the owner, charterer or agent to harbour or other dues and charges for the period of detention.

Pay As You Earn.

87. The Minister may make regulations for the purpose of requiring tax to be deducted upon the making of certain payments of or on account of income from office and employments and from pensions; for the purposes of determining the amounts of such deductions, the payment of tax so deducted, the keeping of records, the making of assessments for the recovery of any amounts deducted or due to be deducted by an employer from the employer and where the employer is a company, the recovery from the company, its Directors or shareholders and any other related matter.

Recovery of tax through employers and others.

88. (1) Notwithstanding anything to the contrary in this Act with regard to the making of assessments and the signature and service of notices thereof and payment of tax, the Commissioner may require the tax charged upon individuals employed in Gibraltar or in receipt of a pension accruing in or derived from Gibraltar, whether the income in respect of which the tax is charged is income arising from an employment or pension or not, to be deducted by any or all or particular employers only or persons making payment of a pension from any wages, salary, bonus, commission, allowance or other remuneration or pension paid to such individuals at such times and in such amounts as the Commissioner may determine, and may require employers or persons making payment of pensions to account for and pay over to him any tax required to be so deducted which shall be a debt due to the Government and recoverable as such, and the Commissioner may serve on such persons a direction to deduct and account for tax accordingly.

(2) The provisions of section 77 shall, subject to such modifications as may be appropriate with regard to payment of tax, apply to notices of assessment served on or sent to individuals named in a direction to deduct tax.

(3) An individual who has borne tax by deduction in accordance with the provisions of this section shall have the same rights of appeal as if an assessment had been made directly upon him:

Provided that where notice of appeal has been given, the direction given by the Commissioner to an employer or person making payment of a pension to deduct tax shall not be disturbed, and deduction of tax shall not, pending final determination of an appeal, be held in abeyance, but on final determination of an appeal any tax which may be found to have been overpaid shall be refunded by the Commissioner to the individual upon whom the tax was charged.

(4) A person who wilfully or without reasonable excuse fails to deduct an amount of tax in accordance with a direction given by the Commissioner shall be liable to pay to the Commissioner such an amount of tax as if he had deducted it.

(5) In cases where an individual named in a direction to deduct tax has left the employment of, or is not entitled to receive any further payment from, the person to whom a direction is addressed, the latter person shall, within seven days of the date of the direction, advise the Commissioner of –

- (a) the date of cessation of employment or pension and the amount of the total remuneration or pension payable to that individual from commencement of the year of assessment in which the cessation occurs to the date of cessation; and
- (b) the total remuneration or pension payable for the year of assessment immediately preceding the year of assessment in which cessation occurred; and
- (c) the present address of the individual named in the direction and the name and address of any new employer (if known).

(6) A person who has been required to deduct tax in accordance with the provisions of this section shall, not later than the fifteenth day of the month following any month in which he has deducted tax, remit to the Commissioner the total amount of tax so deducted in the previous month and furnish a statement in such form as the Commissioner may require of the deductions made, together with an explanation by the person to whom the direction to deduct tax was addressed of any failure on his part to comply in any respect with the said direction. A receipt for the total amount tax so paid shall be given to the person making that payment. Where tax is deducted from any disbursements made by Government the provisions of this subsection shall not apply.

(7) Where an individual has borne tax by deductions as provided in this section but a receipt has not been issued by the Commissioner to that

individual for the amount of tax so deducted, then that individual may, after the expiration of one month subsequent to the full amount of tax specified in the notice of assessment having been deducted, apply to the Commissioner for a certificate of payment of the tax.

(8) In the event of the death of an employer, any tax deducted or which ought to have been deducted by him under this section and which had not been paid to the Commissioner at the date of death of the employer shall be a debt due from and payable out of the estate of the deceased, and his executor shall be responsible for furnishing the Commissioner with any statement, information or explanation required to be furnished under this section.

(9) All sums which have been or should have been deducted in pursuance of a direction served by the Commissioner under the provisions of subsection (1) but which have not been paid to the Commissioner, shall be included among the debts which—

- (a) under the provisions of section 33 of the Bankruptcy Act⁵ are, in the distribution of the property of a bankrupt, to be paid in priority to all other debts; and
- (b) under the provisions of section 241 of the Companies Act are, in a winding up, to be paid in priority to all other debts.

Repayment of tax.

89. If it be proved to the satisfaction of the Commissioner that any person for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded. Every claim for repayment under this section shall be made within six years from the end of the year of assessment to which the claim relates. The Commissioner shall certify the amount to be repaid and the Financial Secretary shall cause repayment to be made accordingly.

PART VI.

OFFENCES, PENALTIES AND MISCELLANEOUS.

Penalties.

90.(1) A person guilty of an offence provided for by this Act or legislation subsidiary thereto for which no other penalty is specifically provided, is liable on conviction to a fine at level 3 on the standard scale.

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(2) A person who fails to comply with the requirements of this Act or of a notice served on him under this Act is guilty of an offence against this Act.

Penalty for making incorrect returns, etc.

91. (1) A person who without reasonable excuse—

- (a) makes an incorrect return by omitting or understating any income; or
- (b) gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership, or for any purpose in connection with section 41 or with any rule made for the purposes of that section,

is guilty of an offence against this Act and is liable on conviction to a fine at level 4 on the standard scale and double the amount of tax which has been undercharged in consequence of such incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct, and in default of payment to imprisonment for six months.

(2) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made in the year of assessment in respect of or during which the offence was committed or within six years of the expiration thereof.

Penal provisions relating to fraud, etc.

92. (1) A person who wilfully and with intent to evade or to assist any other person to evade tax—

- (a) omits from a return made under this Act any income which should be included; or
- (b) makes any false statement or gives any incorrect information for any purpose in connection with section 41 or with any rule made for the purposes of that section; or
- (c) makes any false statement or entry in any return made under this Act; or
- (d) gives any false answer, whether verbally or in writing to any question or request for information asked or made in accordance with the provisions of this Act; or

- (e) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of accounts or records; or
- (f) makes use of any fraud, art or contrivance whatsoever or authorizes the use of any such fraud, art or contrivance,

is guilty of an offence, and for such offence is liable on conviction to a fine at level 5 on the standard scale and treble the amount of tax for which he is liable under this Act for the year of assessment in respect of or during which the offence was committed, and to imprisonment for six months.

(2) Whenever in any proceedings under this section it is proved that any false statement or entry is made in any return furnished under this Act by or on behalf of any person or in any books of account or other records maintained by or on behalf of any person, that person shall be presumed, until the contrary is proved, to have made that false statement or entry with intent to evade tax.

Penalties for offences by authorized and unauthorized persons.

93. A person who—

- (a) being a person appointed for the due administration of this Act or any assistant employed in connection with the assessment and collection of tax—
 - (i) demands from any person an amount in excess of the authorized assessment of tax; or
 - (ii) withholds for his own use or otherwise any portion of the amount of tax collected; or
 - (iii) renders a false return, whether verbal or in writing, of the amounts of tax collected or received by him; or
 - (iv) defrauds any person, embezzles any money, or otherwise uses his position so as to deal wrongfully either with the Commissioner or any other individual; or
- (b) not being authorized under this Act to do so, collects or attempts to collect tax under this Act,

is guilty of an offence and is liable on conviction to imprisonment for three years and to a fine at level 4 on the standard scale.

Power of Commissioner to compound offence.

94. (1) Where any person has committed any offence against this Act, other than an offence against section 93, then the Commissioner may, at any time prior to the commencement of the hearing by any court of any charge in relation thereto, compound such offence and order such person to pay such sum of money, not exceeding the amount of the fine and the penalty to which such person would have been liable if he had been convicted of such offence, as he may think fit:

Provided that the Commissioner shall not exercise his powers under this section unless such person in writing admits that he has committed such offence and requests the Commissioner to deal with such offence under this section.

(2) Where the Commissioner compounds any offence under this section, then—

- (a) the order of the Commissioner shall be put into writing and there shall be attached to it the written admission and request referred to in the proviso to subsection (1); and
- (b) such order shall specify the offence committed, the sum of money ordered to be paid, and the date or dates on which payment is to be made; and
- (c) a copy of such order shall be given, if he so requests, to the person who committed the offence; and
- (d) such person shall not be liable to any further prosecution in respect of such offence; and if any such prosecution is brought it shall be a good defence for such person to prove that such offence has been compounded under this section; and
- (e) such order shall be final and shall not be subject to any appeal; and
- (f) such order may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order; and
- (g) such order shall, on production to any court, be treated as proof of the conviction of such person for such offence.

Tax to be payable notwithstanding any proceedings.

95. The institution of proceedings for, or the imposition of, a penalty, fine or term of imprisonment under this Act shall not relieve any person from liability to payment of any tax for which he is or may be liable,

Sanction for prosecution.

96. No prosecution in respect of an offence against this Act may be commenced except at the instance of or with the sanction of the Commissioner or of the Attorney-General.

Saving for criminal proceedings.

97. The provisions of this Act shall not affect any criminal proceedings under any other Act.

Rules and forms.

98. (1) The Minister may from time to time make rules generally for carrying out the provisions of this Act and in particular—

- (a) for anything which, under the provisions of this Act is required or permitted to be prescribed;
- (b) to give effect, notwithstanding the provisions of this or any other Act, to the application in Gibraltar of legislation of the European Economic Communities.

(2) Notwithstanding subsection (1), no rule shall be made for the purposes of section 41 unless it has been approved by a resolution of the Parliament.

(3) The Commissioner may from time to time specify the form of returns, claims, gifts to charity for the purposes of section 47, statements and notices required under this Act.

(4) *Repealed*

SCHEDULE 1

Section 77

THE INCOME TAX ACT TRIBUNAL

PART I.
ADMINISTRATION.**Appointment of Tribunal.**

1.(1) For the purpose of exercising such powers relating to appeals and other matters as are conferred on them by the Income Tax Act and any legislation subsidiary thereto there shall be Members of the Income Tax Act Tribunal.

(2) Members of the Tribunal shall be appointed by the Chief Minister by notice in the Gazette and shall hold office for a period of one year or for such other period of time as is specified in the notice of appointment.

(3) The Accountant General shall pay Members of the Tribunal by way of reimbursement of expenses such amounts as he may determine appropriate.

(4) A Member of the Tribunal shall not continue in office after he attains the age of seventy-five years.

(5) The validity of any proceedings of the Tribunal shall not be affected by a defect in the appointment of any of them, or by a failure to observe the requirements of the last preceding sub-paragraph.

Appointment of Clerk.

2. (1) A clerk to the Tribunal and, if it is necessary, a deputy clerk shall be appointed by the Chief Minister by notice in the Gazette and shall hold office for a period of one year or for such other period of time as is specified in the notice of appointment.

(2) A person appointed under the preceding sub-paragraph shall act under the direction of the Members of the Tribunal.

(3) The Accountant General shall pay a clerk such remuneration in respect of his services as he may determine.

(4) The Members of the Tribunal may, after consulting the Chief Minister, dismiss their clerk.

(5) A clerk or deputy clerk shall not continue in office after he has attained the age of seventy years unless the Chief Minister thinks it desirable in the public interest to extend his term of office; and the term shall not be extended beyond the age of seventy five years.

Personal interest.

3. No Member of the Tribunal shall act as such in relation to any matter in which he has a personal interest, or is interested on behalf of another person, except with the express consent of the parties to the proceedings.

Declaration.

4. (1) Every person who is appointed to be a Member of the Tribunal or a clerk or deputy clerk to the Tribunal shall make a declaration in the following form;

“I, [name] do solemnly declare that I will impartially and to the best of my ability execute the duties of my office; and that I will not disclose any information received by me in the execution of those duties except for the purposes of those duties or for the purposes of any prosecution for an offence relating to the Income Tax Act, or in such other cases as may be required by law.”.

(2) A declaration made under the preceding sub-paragraph by a Member of the Tribunal shall be made before another Member of the Tribunal, or before the Chief Secretary to the Government of Gibraltar.

(3) Every person who is appointed to be a clerk or deputy clerk shall make the declaration before a Member of the Tribunal.

(4) A declaration under this paragraph shall be made as soon as may be after the first appointment to the office in question.

PART II.
PROCEDURE

Quorum.

5. (1) A Tribunal hearing any proceedings shall, where possible, comprise at least three Members but the validity of any proceedings before a Tribunal shall not be challenged where the Tribunal in question is comprised of two Members.

(2) The Members comprising a Tribunal shall decide which one of them shall preside at the hearing of proceedings before them.

(3) Proceedings before any Tribunal may be continued by any one or more of the Members of the Tribunal if all the parties give their consent.

Procedure.

6. (1) Any party to proceedings which are to be heard by the Tribunal may serve notice on the clerk that he wishes a date for the hearing to be fixed.

(2) On receipt of a notice under sub-paragraph (1) above the clerk shall send notice to each party of the place, date and time of the hearing.

(3) Unless the parties otherwise agree or the Tribunal otherwise directs, the date of the hearing specified in a notice under sub-paragraph (2) above shall not be earlier than twenty eight days after the date on which the notice is sent to the parties.

Attendance of Commissioner.

7. The Commissioner or any officer appointed under section 3(1) may attend every appeal, and shall be entitled –

- (a) to be present during all the time of the hearing and at the determination of the appeal; and
- (b) to give reasons in support of the assessment or other decision against which the appeal is made.

Privacy of proceedings.

8. (1) Subject to sub-paragraph (2) below any proceedings before a Tribunal shall be heard in private.

(2) The clerk and any staff of the Tribunal may be present at the hearing of any proceedings before a Tribunal and may remain present during the deliberations of the Tribunal but shall take no part in those deliberations.

Adjournment.

9.(1) If it is shown to the satisfaction of the Tribunal that owing to absence, sickness or other reasonable cause any person has been prevented from attending the hearing of an appeal on the day fixed for that purpose, they may postpone the hearing of his appeal for such reasonable time as they think necessary, or admit the appeal to be made by any agent, clerk or servant on his behalf.

Representation.

10. At the hearing of any proceedings before the Members of the Tribunal –

- (a) a party other than the Commissioner may be represented by any person whether or not legally qualified, except that if in a particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person, other than a person who is legally qualified or any accountant or auditor, that is to say any person who has been admitted as a member of an incorporated society of accountants or who is registered as an auditor under the provisions of the Auditors Registration Act to represent a party at the hearing.
- (b) the Commissioner may be represented by a lawyer or any officer of the Income Tax Department.

Procedure in Hearings.

11.(1) At the beginning of the hearing of any proceedings the Tribunal shall, except where it considers it unnecessary to do so, explain the order of proceeding which it proposes to adopt.

(2) The Tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification and determination of the issues before it and generally to the just handling of the proceedings and, so far as it appears to it appropriate, shall seek to avoid formality in its procedure.

(3) The parties shall be heard in such order as the Tribunal shall determine and shall be entitled—

- (a) to give evidence;
- (b) to call witnesses;
- (c) to question witnesses including other parties who give evidence; and
- (d) to address the Tribunal both on the evidence and generally on the subject matter of the proceedings.

(4) In assessing the truth and weight of any evidence; the Tribunal may take account of its nature and source, and the manner in which it is given.

(5) Evidence before the Tribunal may be given orally or, if the Tribunal so directs, by affidavit or a statement made or recorded in a document, but at any stage of the hearing the Tribunal may, on the application of any party or of its own motion, require the personal attendance as a witness of —

- (a) the maker of an affidavit; or

- (b) the maker of such a statement; or
- (c) in the case of an oral statement recorded in a document, the person by whom the statement was so recorded.

(6) The Tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Tribunal decisions.

12.(1) Any decision of the Tribunal shall be made by the votes of the majority of the Members comprising that Tribunal and, in the event of an equality of votes, the Member presiding at the hearing shall be entitled to a second or casting vote.

(2) The final determination may be given orally by the presiding Member of the Tribunal at the end of the hearing or may be reserved and in either event shall be recorded in a document which will be signed and dated by the presiding Member of the Tribunal.

(3) The Clerk shall send to each party a notice setting out the final determination recorded under sub-paragraph (2) above.

(4) Except where the final determination is given at the end of a hearing, it shall be treated as having been made on the date when the notice is sent to the parties under sub-paragraph (3) above.

(5) Every notice sent to parties under sub-paragraph (3) above shall give details of the procedure available where the party is dissatisfied with the decision of the Tribunal on a point of law.

PART III. POWERS.

Power to vary assessments.

13.(1) If, on appeal, it appears to the Tribunal, by examination of the appellant on oath or affirmation or by other evidence, that the appellant is overcharged by any assessment, the assessment shall be reduced accordingly, but otherwise the assessment shall stand good.

(2) If on any appeal it appears to the Tribunal that the person assessed ought to be charged in an amount exceeding the amount contained in the assessment, the assessment shall be increased accordingly.

- (3) Where, on an appeal against an assessment which –
- (a) assesses an amount which is chargeable to tax; and
 - (b) charges tax on the amount assessed,

it appears to the Tribunal as mentioned in sub-paragraph (1) or (2) above, it may, unless the circumstances of the case otherwise require, reduce or, as the case may be, increase only the amount assessed; and where any appeal is so determined the tax charged by the assessment shall be taken to have been reduced or increased accordingly.

Information Power.

14. The Tribunal may at any time before the determination of an appeal give notice to the appellant or any other party to the proceedings (not being the Commissioner or an officer of the Commissioner) requiring him within a time specified in the notice–

- (a) to deliver to it such particulars as it may require for the purposes of determining the appeal; and
- (b) to make available for inspection by it, or by any officer of the Commissioner, all such books, accounts or other documents in his possession or power as may be specified or described in the notice, being books, accounts or other documents which, in the opinion of the Tribunal issuing the notice, contain or may contain information relating to the subject matter of the proceedings.

(2) Any officer of the Commissioner may, at all reasonable times, inspect and take copies of, or extracts from, any particulars delivered under sub-paragraph (1)(a) above; and any officer of the Commissioner may take copies of, or extracts from, any books, accounts, or other documents made available for his inspection under sub-paragraph (1)(b) above.

(3) If any person fails to comply with a notice served under this paragraph, the Tribunal may summarily determine a penalty against him not exceeding £500 and, if the failure continues after the determination of such penalty, a further penalty or penalties not exceeding £50 for each day on which the failure continues after the day on which the penalty was determined (but excluding any day for which a further penalty has already been determined).

Power to summons witnesses.

- 15.(1) (a) Subject to (b) below, the Tribunal may summon any person (other than the appellant) to appear before them and give evidence.
- (b) Any agent or servant of the appellant, and any other person confidentially employed in the affairs of the appellant, may refuse to give evidence under oath or affirmation or to answer any questions to which he objects.
- (2) Subject to (1)(b) above, a person who after being duly summoned—
- (a) neglects or refuses to appear before the Tribunal at the time and place appointed for that purpose; or
- (b) appears, but refuses to be sworn; or
- (c) refuses to answer without good cause questions concerning the matter under consideration,

shall incur a penalty not exceeding £100.

PART IV.

APPEAL TO THE SUPREME COURT.

Appeal to Supreme Court.

16.(1) Within twenty one days after the final determination of any proceedings, any party to the proceedings, if dissatisfied with the determination or decision as being erroneous in point of law, may by notice served on the Clerk and on payment of a fee of £100 to the Clerk require the Tribunal to state and sign a case for the opinion of the Supreme Court.

(2) If the Tribunal is not satisfied that the question identified is a question of law or if the fee has not been paid, it may refuse to state a case.

(3) The case stated in accordance with this paragraph shall be prepared and brought in accordance with rules 29 to 34 of the Supreme Court Rules.

(4) The Supreme Court shall hear and determine any question of law arising on a case stated and transmitted to it under rule 32 of the Supreme Court Rules and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Tribunal with the opinion of the Court thereon, or make such other order in relation to the matter as the Court may see fit.

(5) Where a party to an appeal against an assessment has required a case to be stated then despite the fact that a case is required to be stated or is

pending before the Supreme Court tax shall be paid in accordance with the determination of the Tribunal.

PART V.
MISCELLANEOUS.

Irregularity.

17. Any irregularity resulting from any failure to comply with any provision of this Schedule or with any direction given by the Tribunal before the Tribunal has reached its final determination shall not of itself render the proceedings void.

Form of Notices.

18. Every notice required by this Schedule shall be in writing unless the Members of the Tribunal authorise it to be given orally.

Service of notices etc.

19. Any notice or document required or authorised by this Schedule to be sent, delivered to or served on any person shall be duly sent, delivered or served in accordance with section 5.

Penalties.

20.(1) Any penalty determined by the Tribunal under this Schedule shall for all purposes be treated as if it were tax charged in an assessment and due and payable.

(2) An appeal against the summary determination of any penalty under this Schedule shall lie to the Supreme Court.

PART VI.
INTERPRETATION.

Interpretation.

21. In this Schedule unless the context otherwise requires—

“the Clerk” in relation to any proceedings, means the Clerk to the Tribunal.

“party” means a party to any proceedings.

“proceedings” means –

- (a) any appeal to the Tribunal under the Income Tax Act;
- (b) any proceedings before the Tribunal which under the Income Tax Act are to be heard and determined in the same way as such an appeal; and
- (c) any proceedings which relate to the summary determination of a penalty within the power of the Tribunal.

“Tribunal” in relation to any proceedings, means, subject to paragraph 5(3) two or more, but not more than five, Members of the Income Tax Act Tribunal before whom the proceedings are brought.

SCHEDULE 2

Sections 47A and 47F

PART 1**ARTICLE 3(a) of DIRECTIVE 2003/49/EC**

For the purposes of this Directive—

- (a) the term “company of a Member State” means any company:
- (i) taking one of the forms listed in the Annex hereto; and
 - (ii) which in accordance with the tax laws of a Member State is considered to be resident in that Member State and is not, within the meaning of a Double Taxation Convention on Income concluded with a third state, considered to be resident for tax purposes outside the Community; and
 - (iii) which is subject to one of the following taxes without being exempt, or to a tax which is identical or substantially similar and which is imposed after the date of entry into force of this Directive in addition to, or in place of, those existing taxes—

- impôt des sociétés/vennootschapsbelasting in Belgium;
- selskabsskat in Denmark;
- Körperschaftsteuer in Germany;
 - Φόρος εισοδήματος νομικών προσώπων in Greece,
- impuesto sobre sociedades in Spain;
- impôt sur les sociétés in France;
- corporation tax in Ireland;
- imposta sul reddito delle persone giuridiche in Italy;
- impôt sur le revenu des collectivités in Luxembourg;
- vennootschapsbelasting in the Netherlands;
- Körperschaftsteuer in Austria;

- imposto sobre o rendimento da pessoas colectivas in Portugal;
- yhteisöjen tulovero/inkomstskatten för samfund in Finland;
- statlig inkomstskatt in Sweden;
- corporation tax in the United Kingdom;
- Daň z příjmů právnických osob in the Czech Republic,
- Tulumaks in Estonia,
- φόρος εισοδήματος in Cyprus,
- Uzņēmumu ienākuma nodoklis in Latvia,
- Pelno mokestis in Lithuania,
- Társasági adó in Hungary,
- Taxxa fuq l-income in Malta,
- Podatek dochodowy od osób prawnych in Poland,
- Davek od dobička pravnih oseb in Slovenia,
- Daň z príjmov právnických osôb in Slovakia,
- корпоративен данък in Bulgaria,
- impozit pe profit, impozitul pe veniturile obținute din România de nerezidenți in Romania.

PART 2

ANNEX TO DIRECTIVE 2003/49

ANNEX

List of companies covered by Article 3(a) of the Directive

- (a) Companies under Belgian law known as: 'naamloze vennootschap/société anonyme, commanditaire vennootschap op aandelen/société en commandite par actions, besloten vennootschap met beperkte aansprakelijkheid/société privée à responsabilité limitée' and those public law bodies that operate under private law;
- (b) companies under Danish law known as: 'aktieselskab' and 'anpartsselskab';
- (c) companies under German law known as: 'Aktiengesellschaft, Kommanditgesellschaft auf Aktien, Gesellschaft mit beschränkter Haftung' and 'bergrechtliche Gewerkschaft';
- (d) companies under Greek law known as: 'ωνόμητο εταιρία';
- (e) companies under Spanish law known as: 'sociedad anónima, sociedad comanditaria por acciones, sociedad de responsabilidad limitada' and those public law bodies which operate under private law;
- (f) companies under French law known as: 'société anonyme, société en commandite par actions, société à responsabilité limitée' and industrial and commercial public establishments and undertakings;
- (g) companies in Irish law known as public companies limited by shares or by guarantee, private companies limited by shares or by guarantee, bodies registered under the Industrial and Provident Societies Acts or building societies registered under the Building Societies Acts;
- (h) companies under Italian law known as: 'società per azioni, società in accomandita per azioni, società a responsabilità limitata' and public and private entities carrying on industrial and commercial activities;
- (i) companies under Luxembourg law known as: 'société anonyme, société en commandite par actions and société à responsabilité limitée';
- (j) companies under Dutch law known as: 'naamloze vennootschap' and 'besloten vennootschap met beperkte aansprakelijkheid';
- (k) companies under Austrian law known as: 'Aktiengesellschaft' and 'Gesellschaft mit beschränkter Haftung';
- (l) commercial companies or civil law companies having a commercial form, cooperatives and public undertakings incorporated in accordance with Portuguese law;
- (m) companies under Finnish law known as: 'osakeyhtiö/aktiebolag, osuuskunta/andelslag, säästöpankki/sparbank' and 'vakuutusyhtiö/försäkringsbolag';
- (n) companies under Swedish law known as: 'aktiebolag' and 'försäkringsaktiebolag';
- (o) companies incorporated under the law of the United Kingdom.

companies under Czech law known as: "akciová společnost", "společnost s ručením omezeným", "veřejná obchodní společnost", "komanditní společnost", "družstvo";

companies under Estonian law known as: "täisühing", "usaldusühing", "osaühing", "aktsiaselts", "tulundusühistu";

companies under Cypriot law known as: companies in accordance with the Company's Law, Public Corporate Bodies as well as any other Body which is considered as a company in accordance with the Income tax Laws;

companies under Latvian law known as: "akciju sabiedrība", "sabiedrība ar ierobežotu atbildību";

companies incorporated under the law of Lithuania;

companies under Hungarian law known as: "közkereseti társaság", "betéti társaság", "közös vállalat", "korlátolt felelősségű társaság", "részvénytársaság", "egyesülés", "közhasznú társaság", "szövetkezet";

companies under Maltese law known as: "Kumpaniji ta' Responsabilita' Limitata", "Soċjetajiet in akkomandita li l-kapital tagħhom maqsum f'azzjonijiet";

companies under Polish law known as: “spółka akcyjna”, “spółka z ograniczoną odpowiedzialnością”;

companies under Slovenian law known as: “delniška družba”, “komanditna delniška družba”, “komanditna družba”, “družba z omejeno odgovornostjo”, “družba z neomejeno odgovornostjo”;

companies under Slovak law known as: “akciová spoločnosť”, “spoločnosť s ručením obmedzeným”, “komanditná spoločnosť”, “verejná obchodná spoločnosť”, “družstvo”;

companies under Bulgarian law known as: “събирателното дружество”, “командитното дружество”, “дружеството с ограничена отговорност”, “акционерното дружество”, “командитното дружество с акции”, “кооперации”, “кооперативни съюзи”, “държавни предприятия” constituted under Bulgarian law and carrying on commercial activities;

companies under Romanian law known as: “societăți pe acțiuni”, “societăți în comandită pe acțiuni”, “societăți cu răspundere limitată”.