Income Tax Act 2010

This version is out of date

Principal Act

Act. No. 2010-21	*Commencement (LN.2010/180)*	1.1.2011
	Assent	1.11.2010

Amending enactments	Relevant current provisions	Commencement date
Act. 2015-23	ss. 25A, Sch. 3	1.1.2011
2011-11	s. 27	5.5.2011
2012-04	s. 14A	28.6.2012
2012-14	ss. 39(3), (4)(a), Sch. 9	1.7.2012
LN. 2012/129	ss. 71, Schs. 5, 9	4.10.2012
2013/005[1]	ss. 4-5, 5A-5F	1.1.2013
2013/081	s. 74(a)-(b), Sch. 1	1.7.2013
2013/108	Sch. 5	1.7.2013
Act. 2015-23	ss. 29, 30(1)(b), (ba)-(bb), (c), Sch. 3	1.7.2013
2013-28	Sch. 1	1.1.2014
2015-23	ss. 13(1), Schs. 3, 7	1.7.2014
2014-24	ss.14A(2), (3)(a), (5), 14B	10.7.2014
2015-23	ss. 77-78	22.6.2015
"	ss. 30(1)(b), (bb), Sch. 3	1.7.2015
"	ss. 6, 6A, 18A, 19, 30(1)(ca), (cb), (f), 31, 31A, 32, 32A, 33-34, 39(1)(b), (2), (4)-(6), (8), 41(10), 56A, 59, 59A, 60, 63, 63A, 64(1)(b)-(c), 65, 65A-65F, 67(2), 68, 74, Schs. 1, 3, 9-10	6.8.2015
LN. 2015/229	Sch. 5	31.12.2015
Act. 2015-23	ss. 16, 29(1), (3)-(4), Sch. 3	1.1.2016
LN. 2015/239	ss. 5A(3), (5), (5A), 5D(5), 5F,	1.1.2016
Act. 2015-23	ss. 28(1), Sch. 4	1.7.2016
2024-21	ss. 77(1A)-(1B), 77(2), 78(1), (1A), Schs. 3, 6	1.7.2016
LN. 2016/253	ss. 5D(5), 5F	22.12.2016
2016/246	ss. 5A(6)(b), 5B(2A), 5E(8), 5F(1), (2)(b), (3), 10A-10K	1.1.2017
Act. 2017-04	ss. 12A, 13A, 28(1), (8)-(12), 74, Schs. 1, 4	11.4.2017[2]
LN. 2017/101	ss. 5E(8), 5F(1), (2)(b), 10L-10ZD	5.6.2017
2017/253	s. 6B	1.1.2018
Act. 2024-21	ss. 20(5), 20A	1.7.2018
LN. 2018/228	s. 74	25.10.2018
2018/261	Sch. 1	22.11.2018
2018/287	Sch. 4	1.1.2019

[1] *Notice of corrigendum see LN. 2013/011*
[2] *Notice of Commencement see LN. 2017/069*

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2019/025	Sch. 1	7.2.2019
2020/056	Sch. 4	1.1.2020
2020/057	Sch. 4	1.1.2020
Act. 2020-06	Long Title, ss. 3(1), 3A-3E, 6C, 30A, 37(8A), 65G, 74, Sch.12	23.3.2020
LN. 2020/128	Sch.12	23.3.2020
2020/176	ss. 10L, 10O(1)(b)	7.5.2020
2020/055	ss. 5F(1), (2)(b), 10ZE-10ZL, Sch. 11	1.7.2020
2020/256	ss. 10ZI(1), (1A), (3), (3A), (9)(b), 10ZJ(2A), (7)(b), 10ZK(7)	10.7.2020
2020/472	Schs. 4-5	1.1.2021
2021/078	ss. 10ZE-10ZL, Sch. 11	1.1.2021
2022/188	Sch.3	1.1.2021
Act. 2021-01	s. 3A(4A)	9.2.2021
LN. 2021/158	Sch. 12	26.2.2021
Act. 2021-22	Sch. 3	1.7.2021
2024-21	ss. 30(1)(b), (bb), (cb)(ii)-(iii), 79, Sch. 3	1.7.2022
"	Sch. 3, 13	1.7.2023
2024-07	Sch. 3	26.3.2024
2024-21	s. 30(1)(b), (bb)	1.7.2024
2024-22	s. 20(6)-(11)	31.7.2024
2024-21	s. 30(3)	23.12.2024
2024-35	s. 3(6A), (9)	23.12.2024
2024-21	s. 65	1.1.2025
2024-35	Sch. 1	1.1.2025

Transposing:
Directive 2011/16/EU
Directive 2011/96/EU
Directive 2013/13/EU
Directive 2014/86/EU
Directive 2014/107/EU
Directive (EU) 2015/121
Directive (EU) 2015/2376
Directive (EU) 2016/881
Directive 2016/1164
Directive (EU) 2016/2258
Directive (EU) 2017/952
Directive (EU) 2018/822
Directive (EU) 2020/876

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AN ACT TO IMPOSE TAXATION ON INCOME AND TO REGULATE THE COLLECTION THEREOF, AND TO PROVIDE FOR THE IMPLEMENTATION OF INTERNATIONAL AGREEMENTS ON TAXATION MATTERS

Short title and commencement.

1. This Act may be cited as the Income Tax Act 2010 and shall come into effect on such day as the Minister may by notice in the Gazette appoint and different days may so be appointed for different purposes.

PART 1

ADMINISTRATION

Administration.

2.(1) For the due administration of this Act the Minister may designate a public officer as Commissioner of Income Tax ("the Commissioner").

(2) The Commissioner shall be responsible for the assessment and collection of Income Tax and shall pay all amounts collected in respect thereof into the Treasury for the credit of the Consolidated Fund.

(3) (a) The Minister may by notice in the Gazette or in writing authorise any public officer to perform any of the duties imposed on the Commissioner by this Act.

(b) The Commissioner may, in writing, authorise any other public officer to assist in the performance of any of the duties imposed on him by this Act.

(4) Subject to such conditions as the Minister may specify, the Minister 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 public officer authorised by (3) as the Minister may direct.

Confidentiality.

3.(1) Save as provided in this or any Act, 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, return, assessment list, or a copy thereof but this section shall not apply to prevent the Commissioner giving information from, or giving access to, documents in his possession to any person who has made a lawful request for such information or access, whether by warrant or under any statutory provision enabling a request for such giving of information or giving of access to such information or documentation.

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

(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 save as may be necessary for the purposes of carrying into effect the provisions of this Act, any other Act or for the purpose of establishing the facts necessary to prove or defend a criminal prosecution.

(4) Where under any law in force in any country, territory or jurisdiction 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 authorised officers of the Government of that country, territory or jurisdiction 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 tax of a similar nature in that other country, territory or jurisdiction.

(5) Despite anything contained in this section, the Commissioner shall permit the Financial Secretary, the Principal Auditor or any officer properly authorised on his behalf to have such access to any records or documents as may be necessary for the performance of his official duties and for the purposes of this section the Financial Secretary, Principal Auditor or authorised person shall be deemed to be employed in carrying out the provisions of this Act.

(6) Despite anything contained in this section, the Commissioner shall, at the request of the Minister, provide such information as has come into his control or possession in carrying out his duties under this Act as the Government may reasonably require for the purposes of formulating the economic and fiscal policies of the Government.

(6A) Where the Gibraltar Financial Intelligence Unit makes a lawful request to the Commissioner to provide it with information in the Commissioner's possession, nothing in this section prevents the Commissioner from disclosing that information to the Gibraltar Financial Intelligence Unit.

(7) A person guilty of an offence under this section is liable on conviction to a fine at level 3 on the standard scale.

(8) No prosecution in respect of an offence against this section may be commenced except at the instance of or with the sanction of the Commissioner or of the Attorney General.

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(9) In subsection (6A) "Gibraltar Financial Intelligence Unit" means the financial intelligence unit established under section 1B of the Proceeds of Crime Act 2015;

International agreements on taxation matters.

3A.(1) This section applies to International Tax Agreements.

(2) The Minister must, by notice in the Gazette, publish the texts of International Tax Agreements.

(3) The Minister must specify in Schedule 12 in relation to every International Tax Agreement –

(a) the name of the country, territory or international organisation with whom the International Tax Agreement has been concluded;

(b) the date of signature of the International Tax Agreement;

(c) the number and date of the Legal Notice in the Gazette in which the International Tax Agreement is published; and

(d) once it is known, the date on which the International Agreement becomes operative.

(4) The Minister may, by notice in the Gazette, amend, add to, delete from, revoke or replace Schedule 12.

(4A) A notice made under subsection (4) must be laid before Parliament at least 14 days prior to its approval by Motion or Resolution and publication in the Gazette.

(5) This Act shall apply to an International Tax Agreement with the effect from the date on which both of subsections (2) and (3) shall have been complied with in respect of that International Tax Agreement.

(6) Where the termination provisions contained in an International Tax Agreement have been exercised, the Minister must give public notice of that termination by notice in the Gazette.

Giving effect to International Tax Agreement.

3B.(1) This section applies for the purposes of enabling the Commissioner to give effect to the terms of any International Tax Agreement.

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(2) Where any provision of an International Tax Agreement purports to affect how a tax in Gibraltar is to be charged, determined, calculated, assessed or collected or any matter is to be determined under this Act (a "Relevant Provision") –

(a) if this Act does not contain a provision dealing with the subject matter of a Relevant Provision, that Relevant Provision shall have direct legal effect as if it were set out in this Act; and

(b) if this Act contains a provision to a contrary or different effect to a Relevant Provision (an "Existing Provision"), that Relevant Provision shall have direct legal effect by way of modification of the Existing Provision in so far as (but only in so far as) is required to implement or comply with that Relevant Provision in respect of that International Tax Agreement.

(3) The Commissioner shall have the rights, powers, functions and duties required to enable him to implement and comply with an International Tax Agreement.

Appointment of members of bodies established by an International Agreement.

3C. Where an International Tax Agreement provides for the establishment of a co-ordination committee, liaison body or any other committee or body for the purposes of performing any functions or duties under an International Agreement, the members of all such bodies to be appointed on behalf of Gibraltar shall be appointed by the Minister by notice in the Gazette and such notice may include such duties or other conditions, including but not limited to the term of appointment, as the Minister deems appropriate.

Power to make regulations for carrying out an International Tax Agreement.

3D.(1) The Minister may from time to time make regulations generally for carrying out the provisions of an International Tax Agreement.

(2) Without prejudice to the generality of the foregoing, regulations made by the Minister under this section may make provision –

(a) for any power, procedure, process or other matter which, in the opinion of the Minister, is necessary or desirable to implement or give effect to the provisions of an International Tax Agreement;

(b) for matters relevant to the administration and enforcement of tax laws including the determination, calculation, collection or assessment of a tax referred to in an International Tax Agreement, or for matters incidental thereto, or to the investigation or prosecution of criminal tax matters, or any other matter provided for in an International Tax Agreement;

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(c) to require any person to make to the Commissioner and/or as the Minister may otherwise specify a full and complete return of any information relating to any matter provided for in an International Tax Agreement at times and in a manner and form specified by the Minister by notice in the Gazette;

(d) for the purpose of enabling the members of the bodies mentioned in section 3C to perform their functions or duties under any International Agreement and in relation to any matter contained therein;

(e) adding to, deleting from, modifying or replacing Schedule 12;

(f) constituting offences in respect of the breach of any obligation imposed on any person under regulations made under this section, and providing penalties for committing any such offences;

(g) for any other matter required to be specified, prescribed or provided for in this Act to enable implementation of and compliance with an International Tax Agreement or in connection with the operation thereof.

3E. Save as may be expressly provided for in this Act, nothing is this Act shall authorise or empower any person to carry out in Gibraltar any duty or function or exercise any power in relation to the implementation or operation of an International Tax Agreement.

Information requests from or to Member States.

4.(1) The Commissioner shall comply with any request from the competent authority of a Member State to provide any tax compliance information which the Commissioner has or can obtain through administrative enquiries under section 5.

(2) The Commissioner shall comply with a request as soon as reasonably practicable and in any event within the period of–

(a) two months beginning with the date on which the request is received, where the Commissioner has the information at that date, or

(b) six months beginning with the date on which the request is received, where the Commissioner obtains the information through administrative enquiries.

(3) The Commissioner and the requesting authority may vary a limit in subsection (2)(a) or (b) where they think it appropriate by reason of special circumstances.

(4) If the Commissioner cannot comply with a request within the limit set by subsection (2) he shall–

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(a) inform the requesting authority as soon as reasonably practicable and in any event within the period of three months beginning with the date on which the request is received, and

(b) set a period within which he expects to be able to comply with the request.

(5) The Commissioner shall acknowledge a request as soon as reasonably practicable and in any event within the period of seven working days beginning with the date on which the request is received; and an acknowledgment must be made electronically if possible.

(6) If the Commissioner considers that a request cannot be complied with unless additional background information is provided by the requesting authority−

(a) he shall notify the requesting authority within the period of one month beginning with the date on which the request is received, and

(b) subsection (2) shall then apply as if the request had been received when the additional information is received.

(7) The Commissioner need not comply with a request if in his opinion the requesting authority has not exhausted the usual sources of information which it could have used in the circumstances for obtaining the information requested, without running the risk of jeopardising the achievement of its objectives.

(8) If the Commissioner is unable to comply with a request, or declines to comply on grounds falling within section 5E(3), he shall inform the requesting authority, with his reasons, as soon as reasonably practicable and in any event within the period of one month beginning with the date on which the request is received.

(9) The Commissioner may make a request for information to the competent authority of a Member State in accordance with Article 5 of the Cooperation Directive.

Administrative enquiries.

5.(1) The Commissioner shall make any necessary administrative enquiries to obtain tax compliance information requested by a competent authority in accordance with section 4.

(2) The Commissioner shall comply with any reasoned request by a competent authority for a specific administrative inquiry unless the Commissioner decides that the enquiry is unnecessary, in which case he shall inform the requesting authority of his reasons.

(3) In conducting an administrative enquiry the Commissioner−

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(a) has all the powers that he has under this Act for any enforcement or investigative purposes, and

(b) must follow the same procedures as he would when acting on his own initiative or at the request of another public authority in Gibraltar (and must, in particular, comply with any condition or restriction imposed on those powers under this Act).

(4) The Commissioner shall provide original documents requested by a requesting authority, unless the Commissioner considers that it would be contrary to this Act or any other enactment to do so.

Exchange of information about foreign residents.

5A.(1) The Commissioner shall provide to the competent authority of a Member State relevant tax compliance information concerning residents in that Member State, in respect of−

(a) income from employment;

(b) directors' fees;

(c) life insurance products on which information is not required to be communicated in accordance with any other European Union legislation;

(d) pensions; and

(e) ownership of and income from immovable property.

(2) Tax compliance information is relevant for the purposes of subsection (1) if it is in the Commissioner's tax files and is retrievable in accordance with the procedures for gathering and processing information in Gibraltar.

(3) The Commissioner may indicate to the competent authority of a Member State and the European Commission−

(a) that he does not wish to receive information of a kind listed in subsection (1).

(b) *Deleted*

(4) The Commissioner shall comply with subsection (1) in respect of the tax year beginning on 1 July 2014 and in respect of taxable periods in Member States beginning on or after 1 January 2014.

(5) Compliance shall be effected at least once a year, during the period of six months beginning with the end of the tax year during which the information becomes available.

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(5A) The Commissioner must ensure the European Commission is informed of those areas listed in subsection (1) for which information is relevant as defined in subsection (2).

(6) The Commissioner shall ensure that the European Commission is informed about the volume of information provided under this section, or received from Member States in accordance with Article 8 of the Cooperation Directive; and the Commissioner's information must−

(a) include information about the costs and benefits, both for the Government and for other persons, of the exchange of information, and

(b) be provided before 1 January 2018 and thereafter at not more than yearly intervals.

(7) This section comes into operation on 1 January 2015 in relation to the tax years and periods specified herein.

Other exchange of information with Member States.

5B.(1) The Commissioner shall provide to the competent authority of a Member State tax compliance information if in his opinion−

(a) it may be relevant to a loss of tax in that State;

(b) a reduction of or exemption from tax in Gibraltar may lead to or increase a liability to tax in that State;

(c) business dealings between a person liable to tax in one Member State and a person liable to tax in the other Member State are conducted through Gibraltar in such a way that a saving in tax may result in one or both of those Member States;

(c) a saving of tax may result from artificial transfers of profits within groups of enterprises;

(d) information provided to the Commissioner by the competent authority of a Member State has enabled information to be obtained which may be relevant in assessing liability to tax in that Member State.

(2) The Commissioner may provide to the competent authority of a Member State any tax compliance information which may be useful to the competent authority of that Member State.

(2A) The Commissioner shall provide tax compliance information to the competent authority of a Member State on a bilateral or multilateral advance pricing arrangement excluded under section 10E if-

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(a) the international tax agreement under which the advance pricing arrangement was negotiated permits its disclosure;

(b) the competent authority of the relevant third country gives permission for the information to be disclosed; and

(c) the Commissioner considers the information meets the requirements of this section.

(3) The Commissioner shall comply with subsection (1) as soon as reasonably practicable and in any event within the period of one month beginning with the date on which the information comes to the Commissioner's knowledge.

(4) The Commissioner shall acknowledge information received from the competent authority of a Member State in accordance with Article 9 of the Cooperation Directive as soon as reasonably practicable and in any event within the period of seven working days beginning with the date on which the information is received; and an acknowledgment must be made electronically if possible.

Administrative cooperation with tax authorities of Member States.

5C.(1) The Commissioner shall, with the prior approval of the Minister, make such arrangements as appear to him to be necessary for the purpose of giving effect to agreements between Gibraltar and Member States under Article 11 of the Cooperation Directive (involvement of foreign tax officials).

(2) For the purpose of subsection (1)–

(a) the Commissioner may arrange for officials of a Member State to be present in the offices where staff or agents of the Commissioner are carrying out their duties;

(b) the Commissioner may arrange for officials of a Member State to be present during administrative enquiries carried out in Gibraltar;

(c) the Commissioner may provide information to officials of a Member State;

(d) officials of a Member State may, in the presence of staff or agents of the Commissioner, interview persons and examine records to the same extent as the Commissioner could do in relation to the tax affairs of Gibraltar;

(e) enforcement powers available to the Commissioner in respect of failure to cooperate with enquiries or investigations may be exercised by the Commissioner where a person fails to cooperate with officials of a Member State;

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(f) powers may be exercised by or on behalf of officials of a Member State only if they produce on request written authority stating their identity and official capacity.

(3) The Commissioner may participate in simultaneous controls proposed by one or more Member States, under Article 12 of the Cooperation Directive, relating to one or more persons of common or complementary interest, with a view to exchanging information obtained.

(4) The Commissioner may propose to the competent authority of one or more Member States the establishment of simultaneous controls under that Article, giving reasons for the choice of persons to be the subject of the controls and specifying a timetable for the controls.

(5) Where the Commissioner decides not to participate in simultaneous controls proposed by a Member State he shall inform the competent authority of that State, giving his reasons.

(6) In respect of each simultaneous control operation proposed by the Commissioner or in which he agrees to participate, the Commissioner shall appoint a representative with responsibility for supervising and coordinating the control operation.

(7) The Commissioner shall comply with any request of the competent authority of a Member State to make arrangements to notify a specified person of an instrument or decision which emanates from the administrative authorities of that State and relates to the application in that State of tax legislation.

(8) The Commissioner's duty under subsection (7)−

(a) is confined to a duty to make arrangements of a kind normally made by the Commissioner;

(b) is subject to compliance by the requesting competent authority with the requirements of Article 13(2) and (4) of the Cooperation Directive; and

(c) includes a duty to respond to the requesting competent authority as soon as reasonably practicable and to inform that authority of the date on which any notification arrangements are effected.

(9) The Commissioner may−

(a) make a request to the competent authority of a Member State for a person in that State to be notified of an instrument or decision relating to tax in Gibraltar;

(b) effect notification, to a person in a Member State, of an instrument or document relating to tax in Gibraltar by registered mail or electronic means, notwithstanding

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any provision of the law of Gibraltar as to the method of notification, if the Commissioner's inability to use registered mail or electronic means would result in the competent authority of that State not being required to comply with a request by the Commissioner under Article 13 of the Cooperation Directive.

(10) Where the Commissioner provides information to the competent authority of a Member State in accordance with the Cooperation Directive and the competent authority requests permission to use the information for purposes other than the administration and enforcement of tax, the Commissioner shall grant the request if the information could be used for those additional purposes by the Commissioner in accordance with the law of Gibraltar.

Sharing experience of tax cooperation with Member States.

5D.(1) Where the Commissioner receives information from the competent authority of a Member State in accordance with exchange of information on request or spontaneous exchange he shall comply with any request of that competent authority to provide feedback about the information in accordance with arrangements made by the European Commission pursuant to Article 14(1) of the Cooperation Directive.

(2) The Commissioner shall comply with subsection (1) as soon as reasonably practicable and in any event within the period of three months beginning with the date on which the necessary information is available to him.

(3) The Commissioner shall provide feedback to Member States on the receipt or provision of information by way of automatic exchange in accordance with arrangements agreed with Member States pursuant to Article 14(2) of the Cooperation Directive.

(4) The Commissioner shall participate in arrangements operated by the European Commission for the sharing of experience, and the development of guidelines, in accordance with Article 15 of the Cooperation Directive.

(5) In subsection (3), the term "automatic exchange" includes a relevant exchange of information under the International Co-operation (Improvement of International Tax Compliance) Regulations 2016.

Cooperation Directive: supplemental.

5E.(1) In this section and sections 4 to 5D−

"administrative enquiries" means enquiries addressed to any Government department or other public authority in Gibraltar and any other controls, checks or action taken by the Commissioner in the performance of his duties with a view to ensuring the proper application of tax legislation;

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"automatic exchange" means the communication of information in accordance with section 5A;

"competent authority" in relation to a Member State means the authority which has been designated as such by that Member State for the purposes of the Cooperation Directive, and includes a central liaison office, liaison department or competent official (all of which have the meaning given by Article 3 of the Cooperation Directive) acting pursuant to delegation under the Directive in accordance with Article 4;

"the Cooperation Directive" means Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, as amended from time to time;

"exchange of information on request" means the communication of information in accordance with sections 4 and 5;

"information" includes documents;

"spontaneous exchange" means the communication of information in accordance with section 5B;

"tax" means income tax and any other tax to which the Cooperation Directive applies in accordance with Article 2;

"tax compliance information" means information that is foreseeably relevant to the administration or enforcement of the law of any Member State concerning tax; and

"third country" means a country that is not a Member State.

(2) Information received by the Commissioner under sections 4 to 5D−

(a) may be provided or used for any purpose of the Cooperation Directive (including further disclosure in accordance with Article 16(3));

(b) may be used for the administration and enforcement of tax;

(c) may be used for the assessment and enforcement of other taxes and duties covered by section 25 of the Mutual Assistance (European Union) Act 2005;

(d) may be used for the assessment and enforcement of compulsory social security contributions;

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(e) may be used in connection with judicial and administrative proceedings that may involve penalties, initiated as a result of infringements of tax law (subject to any general rule or provision governing the rights of defendants and witnesses in such proceedings);

(f) subject to paragraphs (a) to (e), is to be treated for the purposes of the law of Gibraltar relating to admissibility, authentication, confidentiality or other protection in the same way as other information received by the Commissioner (and is, in particular, to be subject to relevant law on data protection in accordance with Article 25 of the Cooperation Directive); and

(g) may be used for other purposes with the permission of the competent authority which provided the information, subject to paragraph (f).

(3) Sections 4 to 5D do not require or permit the Commissioner–

(a) to make enquiries or to provide information if the law of Gibraltar would prohibit the Commissioner from making enquiries of that kind, or obtaining information of that kind, for the purposes of the exercise of his other functions under this Act,

(b) to provide information to a Member State which is unable, for legal reasons, to provide similar information to the Commissioner, or

(c) to provide information where in the Commissioner's opinion it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy;

and where the Commissioner relies on this subsection in declining to take action he shall inform any requesting authority of his reasons.

(4) Subsection (3) does not permit the Commissioner to decline–

(a) to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person; except that the Commissioner may refuse the transmission of requested information where such information concerns taxable periods prior to 1 January 2011 and where the transmission of such information could have been refused on the basis of Article 8(1) of Directive 77/799/EEC if it had been requested before 11 March 2011;

(b) to cooperate with a Member State to as wide an extent as the Commissioner cooperates with a third country.

(5) Sections 4 to 5D–

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(a) do not affect the application of any enactment or rule of law relating to mutual assistance between countries in relation to criminal matters, and

(b) are without prejudice to any obligations of Gibraltar under any Convention or bilateral or multilateral agreements with one or more countries in relation to wider administrative cooperation.

(6) For the purposes of obtaining information in accordance with sections 4 to 5D the Commissioner may apply any power or duty (including any related enforcement provision) that would be available to him if he required the information for the purposes of any of his other functions under this Act (and the Commissioner must use his powers aimed at gathering information even though he does not need the information for the purpose of the exercise of his other functions).

(7) In complying with sections 4 to 5D the Commissioner shall−

(a) so far as reasonably practicable, use any relevant standard forms adopted by the European Commission in accordance with Articles 20 and 26 of the Cooperation Directive;

(b) so far as reasonably practicable, use the electronic means and common platform described in Articles 3 (12), (13) and 21 of the Cooperation Directive;

(c) conduct operations in any language agreed between him and the competent authorities of the Member States, using translations where the Commissioner or another competent authority gives reasons why a translation is necessary having regard to special circumstances.

(8) The Commissioner's obligations in respect of information under sections 4 to 5D , Part 1A and Part 1B extend to information obtained by him from a third country only to the extent that further disclosure of that information is allowed pursuant to the agreement with that third country.

(9) The Commissioner may communicate to a third country information obtained in accordance with the Cooperation Directive, provided that−

(a) the communication is made in accordance with a provision of the law of Gibraltar, or administrative arrangements, permitting the communication of personal data to third countries,

(b) the competent authority of the Member State from which the information originates has consented to the communication, and

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(c) the third country has given an undertaking to provide the cooperation required to gather evidence of the irregular or illegal nature of transactions which appear to contravene or constitute an abuse of tax legislation.

(10) The Commissioner is the competent authority in Gibraltar for the purposes of the Cooperation Directive.

(11) Where sections 4 to 5D impose obligations on the Commissioner in relation to matters that do not relate to income tax and are not within the Commissioner's general responsibilities−

(a) the Minister shall make arrangements for compliance with the obligations by the relevant public authority in Gibraltar, and

(b) that public authority shall comply with arrangements made by the Minister;

and references to the Commissioner include (except where the context otherwise requires) references to such other public authority as well as to any central liaison office, liaison department or competent official (within the meaning of Article 3 of the Cooperation Directive) acting pursuant to delegation made by the Commissioner in accordance with Article 4 of the Cooperation Directive.

(12) The Minister, in consultation with the Commissioner, shall take all measures necessary to−

(a) ensure effective internal coordination between the bodies referred to in subsection (11) ;

(b) establish direct cooperation with the competent authorities of the Member States; and

(c) ensure the smooth operation of the administrative cooperation arrangements provided for in the Cooperation Directive.

Review of operation of exchange of information.

5F.(1) The Minister shall from time to time review the operation of sections 4 to 5E, Part 1A, Part 1B, Part 1C and the International Co-operation (Improvement of International Tax Compliance) Regulations 2016 as it relates to the Cooperation Directive.

(2) The Minister shall ensure that the European Commission is provided with−

(a) any relevant information necessary for the evaluation of the effectiveness of administrative cooperation in accordance with the Cooperation Directive in combating tax evasion and tax avoidance, and

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(b) a yearly assessment of the effectiveness of the automatic exchange of information referred to in section 5A, Part 1A, Part 1B, Part 1C and the International Co-operation (Improvement of International Tax Compliance) Regulations 2016 as it relates to the Cooperation Directive as well as the practical results achieved.

(3) Where the Commissioner receives a report or document produced by the European Commission using information transmitted under Article 23 of the Cooperation Directive-

(a) that information may only be used for analytical purposes; and

(b) must not be published or made available to any person or body without the express agreement of the European Commission.

Information Powers.

6.(1) Subject to this section, the Commissioner may by notice in writing require a person to deliver to him information relevant to the tax liability to which the person is or may be subject to.

(2) Subject to this section, the Commissioner may, for the purpose of enquiring into the tax liability of any person, by notice in writing require any other person to deliver to the Commissioner, or if the Commissioner agrees, to make available for inspection within such time as may be specified in the notice, information relevant to the tax liability of the person whose liability the Commissioner is enquiring into.

(3) For the purposes of a notice issued under subsections (1) and (2)–

(a) the time to be specified in the notice shall not be less than 30 days; and

(b) the person whose liability the Commissioner is enquiring into shall be named, unless the criteria set out in subsection (6) is met.

(4) If the Commissioner agrees, the person to whom a notice under subsections (1) or (2) is given may deliver extracts of the information requested in a form and manner agreed by the Commissioner.

(5) The Commissioner retains the right to examine all or a sample of the information from which the extract delivered under subsection (4) has been extracted, provided that such right is exercised within 6 months of the date of the delivery of that extract.

(6) The Commissioner may issue a notice under subsection (2) without naming the person whose liability he is enquiring into, provided he is satisfied that all of the following criteria are met–

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(a) the notice relates to a person whose identity is not known to the Commissioner or to a class of persons whose individual identities are not so known;

(b) the person or any of the class of persons to whom the notice relates may have failed or may fail to comply with the provisions of the Act and that any such failure is likely to have prejudiced the proper assessment or collection of tax;

(c) the information requested in the notice is not readily available from another source.

(7) Subject to subsection (6), the Commissioner when giving a notice under subsections (1) or (2) shall provide to–

(a) in the case of a notice under subsection (1) above, the person to whom the notice applies; or

(b) in the case of a notice under subsection (2) above, the person whose liability the Commissioner is enquiring into,

a written summary of the reasons for the notice to the extent that such summary does not identify any person who has provided the Commissioner with information which he took into account in deciding to issue the notice.

(8) A person on whom a notice under subsections (1) or (2) is given may, by notice in writing given to the Commissioner within 30 days of the date of issue of the notice, object to that notice on the grounds that it would be onerous for him to comply with it; and if the matter is not resolved by agreement it shall be referred to the Tribunal who may confirm, vary or cancel that notice.

(9) For the purposes of this section the term "information" does not include anything which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are–

(a) produced for the purposes of seeking or providing legal advice; or

(b) produced for the purposes of use in existing or contemplated legal proceedings.

(10) To the extent specified in section 7 below the provisions of this section are subject to the restrictions of that section.

Information Powers: International obligations under exchange of information agreements.

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6A.(1) (a) Subject to this section, the Commissioner may by notice in writing require a person to deliver to him information relevant to the compliance of any obligation imposed on, or accepted by the Government under any agreement for the exchange of information or the assistance for the recovery of taxes with another country, territory or jurisdiction.

(b) For the purposes of (a) above, the Minister may by regulations prescribe which international exchange of information agreements are relevant.

(2) For the purposes of a notice issued under subsection (1) the time to be specified shall not be less than 30 days.

(3) A person on whom a notice under subsection (1) is given may, by notice in writing given to the Commissioner within 30 days of the date of issue of the notice, object to that notice on the grounds that it would be onerous for him to comply with it; and if the matter is not resolved by agreement it shall be referred to the Tribunal who may confirm, vary or cancel that notice.

(4) For the purposes of this section the term "information" does not include anything which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are–

(a) produced for the purposes of seeking or providing legal advice; or

(b) produced for the purposes of use in existing or contemplated legal proceedings.

Information Powers: Implementation and enforcement of the Cooperation Directive.

6B.(1) For the purpose of the implementation and enforcement of the Cooperation Directive and to ensure the functioning of the administrative cooperation it establishes, the Commissioner must be granted access to the mechanisms, procedures, documents and information referred to in Articles 13, 30, 31 and 40 of Directive (EU) 2015/849.

(2) For the purposes of subsection (1) the Commissioner-

(a) may access any register of beneficial ownership established in Gibraltar pursuant to Articles 30 and 31 of Directive (EU) 2015/849;

(b) may by notice in writing require a relevant financial business to deliver to him, within a specified time, information relevant to the compliance of any obligation imposed on the relevant financial business by sections 10, 10A, 11, 12 or 13 of the Proceeds of Crime Act 2015 and consequently retained under sections 25 or 25ZA of that Act.

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(3) For the purposes of a notice issued under subsection (2)(b) the time to be specified shall not be less than 30 days.

(4) A person on whom a notice under subsection (2)(b) is issued may, by notice in writing given to the Commissioner within 30 days of the date of issue of the notice, object to that notice on the grounds that it would be onerous for him to comply with it; and if the matter is not resolved by agreement it shall be referred to the Tribunal who may confirm, vary or cancel that notice.

(5) For the purposes of this section the term "information" does not include anything which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are–

(a) produced for the purposes of seeking or providing legal advice; or

(b) produced for the purposes of use in existing or contemplated legal proceedings.

(6) In this section-

"the Cooperation Directive" has the meaning given in section 5E;

"Directive (EU) 2015/849" means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC;

"relevant financial business" has the meaning given in the Proceeds of Crime Act 2015.

Information Powers: Implementation of International Tax Agreement.

6C.(1) Notwithstanding any other provision of this or any other Act to the contrary the Commissioner, and every person authorised by him to do so, may –

(a) require any person to provide him, at the times, in the manner and in the form specified by him, with any information that he requires to comply with or implement an International Tax Agreement; and

(b) provide any information obtained by him under this or any other Act to -

(i) any body referred to in section 3C and any person who is a member of any such body; and

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(ii) any other person or entity to whom he is required to provide that information under an International Tax Agreement.

(2) Notwithstanding any other provision of this or any other Act to the contrary any body referred to in section 3C and any person who is a member of any such body may provide information obtained by it or him to any other person or entity to whom he is required to provide that information under an International Tax Agreement.

Restrictions on Powers.

7.(1) (a) A notice under section 6(1) does not oblige a person to deliver documents or furnish particulars relating to the conduct of any pending appeal by him;

(b) a notice under section 6(2) does not oblige a person to deliver or make available documents relating to the conduct of a pending appeal by the Taxpayer.

(2) A notice under Section 6 in relation to a taxpayer who has died cannot be given if more than 6 years have elapsed since the death.

(3) Subject to subsections (5) and (6) below, a notice under section 6(2) does not oblige a tax adviser being an attorney, solicitor or barrister appointed to give advice about the tax affairs of another person (whether appointed directly by that other person or by another tax adviser of his) to deliver or make available documents which are his property and consist of relevant communications.

(4) In subsection (3) above "relevant communications" means communications between the tax adviser and-

(a) a person in relation to whose tax affairs he has been appointed, or

(b) any other tax adviser of such a person,

other than communications or information held with the intention of furthering an offence, the purpose of which is the giving or obtaining of advice about any of those tax affairs or giving advice for the purposes of use in existing or contemplated legal proceedings.

(5) Nothing in this section shall prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.

(6) Subsection (3) above shall not have effect in relation to any document which contains information explaining any information, return, accounts or other document which the person to whom the notice is given has, as tax accountant, assisted any client of his in preparing for, or delivering to the Commissioner.

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Falsification, etc. of documents.

8.(1) Subject to subsections (2) and (3) below, a person shall be guilty of an offence if he intentionally falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, a document which he has been required to produce by a notice under section 6.

(2) A person does not commit an offence under subsection (1) above if he acts-

(a) with the written permission of the Commissioner;

(b) after the document has been delivered; or

(c) after a copy has been delivered in accordance with section 6(3) above and the original has been inspected.

(3) A person does not commit an offence under subsection (1) above if he acts after the end of the period of two years beginning with the date on which the notice is given or the order is made, unless before the end of that period the Commissioner has notified the person in writing that the notice or order has not been complied with to his satisfaction.

(4) A person guilty of an offence under subsection (1) above shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months and to a fine or either; and

(b) on conviction on indictment, to imprisonment for a term not exceeding five years and to a fine or either;

(c) in addition to any custodial sentence or fine imposed by (a) or (b) above, the person will be liable to a fine equivalent to-

(i) in the case of a person who is guilty in respect of an offence arising from a notice under section 6(1), the amount of the tax which would have been or was evaded by him by the offence;

(ii) in the case of a person who is guilty in respect of an offence arising from a notice under section 6(2), the amount of tax which the court estimates may have been lost by the offence through the tax evasion of the third parties in respect of whom the notice was given.

Entry with warrant to obtain documents.

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9.(1) (a) If a judge of the Supreme Court is satisfied on information on oath given by or on behalf of the Commissioner that there is reasonable ground for suspecting that an offence involving serious fraud in connection with, or in relation to tax is being, has been or is about to be committed and that evidence of it is to be found on premises specified in the information; the judge may issue a warrant in writing authorising the Commissioner or any person authorised under section 2(3) to enter the premises, if necessary by force, at any time within 14 days from the time of issue of the warrant, and search them.

(b) For the purposes of this section and without prejudice to the generality of the concept of serious fraud-

(i) any offence which involves fraud is for the purposes of this section an offence involving serious fraud if its commission had led, or is intended or likely to lead, either to substantial financial gain to any person or to serious prejudice to the proper assessment or collection of tax; and

(ii) an offence which, if considered alone, would not be regarded as involving serious fraud may nevertheless be so regarded if there is reasonable ground for suspecting that it forms part of a course of conduct which is, or but for its detection would be, likely to result in serious prejudice to the proper assessment or collection of tax.

(2) The powers conferred by a warrant under this section shall not be exercisable–

(a) by more than such number of officers of the Commissioner as may be specified in the warrant;

(b) outside such times of day as may be so specified;

(c) if the warrant so provides, otherwise than in the presence of a constable in uniform.

(3) The Commissioner when entering or having entered the premises under the authority of a warrant under this section may–

(a) take with him such other persons as appear to him to be necessary or desirable;

(b) seize and remove any things whatsoever found there which he believes-

(i) may be required as evidence for the purposes of proceedings in respect of such an offence as is mentioned in subsection (1) above; or

(ii) may be used in the process of investigating the suspected offences; and

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(c) search or cause to be searched any person found on the premises whom he believes to be in possession of any such things;

but no person shall be searched except by a person of the same sex.

(4) In the case of any information stored in any electronic form which is information that–

(a) the Commissioner when entering or having entered the premises as mentioned in subsection (3) above believes may be required as evidence for the purposes mentioned in paragraph (b) of that subsection; and

(b) is accessible from the premises,

the power of seizure under that subsection shall include a power to require the information to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(5) Nothing in subsection (3) above authorises the seizure and removal of items subject to legal privilege.

(6) In subsection (5) "items subject to legal privilege" means–

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made–

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(7) Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

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(8) The Commissioner seeking to exercise the powers conferred by a warrant under this section–

(a) if the occupier of the premises concerned is present at the time the search is to begin, shall supply a copy of the warrant endorsed with his name to the occupier;

(b) if at that time the occupier is not present but a person who appears to the officer to be in charge of the premises is present, shall supply such a copy to that person; and

(c) if neither paragraph (a) nor paragraph (b) above applies, shall leave such a copy in a prominent place on the premises.

(9) Where entry to premises has been made with a warrant under this section, and the Commissioner has seized any things under the authority of the warrant, he shall endorse on or attach to the warrant a list of the things seized.

(10) The Commissioner when he removes anything in the exercise of the power conferred by this section above shall, if so requested by a person showing himself–

(a) to be the occupier of premises from which it was removed, or

(b) to have had custody or control of it immediately before the removal,

provide that person with a record of what he removed.

(11) The Commissioner shall provide the record within a reasonable time from the making of the request for it.

(12) Where anything which has been removed by the Commissioner is of such a nature that a photograph or copy of it would be sufficient–

(a) for use as evidence at a trial for an offence, or

(b) for forensic examination or for investigation in connection with an offence,

it shall not be retained longer than is necessary to establish that fact and to obtain the photograph or copy.

(13) Subject to subsection (17) below, if a request for permission to be granted access to anything which–

(a) has been removed by the Commissioner, and

(b) is retained by the Commissioner for the purpose of investigating an offence,

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is made to the Commissioner by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of any such person, the Commissioner shall allow the person who made the request access to it under the supervision of any officer of the Commissioner.

(14) Subject to subsection (17) below, if a request for a photograph or copy of any such thing is made to the Commissioner by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of any such person, the Commissioner shall–

(a) allow the person who made the request access to it under the supervision of an officer of the Commissioner for the purpose of photographing it or copying it, or

(b) photograph or copy it, or cause it to be photographed or copied.

(15) Where anything is photographed or copied under subsection (14)(b) above the photograph or copy shall be supplied to the person who made the request.

(16) The photograph or copy shall be supplied within a reasonable time from the making of the request.

(17) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the Commissioner has grounds for believing that to do so would prejudice–

(a) that investigation;

(b) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed; or

(c) any criminal proceedings which may be brought as a result of–

(i) the investigation conducted by the Commissioner; or

(ii) any such investigation as is mentioned in paragraph (b) above.

Service of notices.

10.(1) Any notice, assessment, demand or other document required to be served in accordance with the provisions of this Act may be served personally, by post, by fax or by electronic mail.

(2) Where service has been by fax or electronic mail a copy of the notice, assessment, demand or other document shall be sent on the same day by post to confirm the original service and its date.

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(3) Service by fax or electronic mail shall require neither the agreement nor consent of the person served.

(4) Service shall be-

(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-

(i) to the individual authorised to accept service of process under the Companies Act at the address filed with the Registrar of companies;

(ii) to the registered office of the company wherever it may be situated; or

(iii) to any place of business of the company in Gibraltar.

(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.

(5) Service shall be deemed to have taken place-

(a) in the case of service by post, on the seventh day after posting,

(b) in the case of service by fax or electronic mail, on the day of sending unless the fax or electronic mail was sent after 5.30 p.m. in which case service will be deemed to have taken place on the day following sending,

(c) in the case of personal delivery, on the day of delivery.

PART IA

ADVANCE CROSS-BORDER RULINGS AND PRICING ARRANGEMENTS

Interpretation.

10A.(1) In this Part-

"advance cross-border ruling" means an agreement, communication or other instrument or action with similar effect including one issued, amended or renewed in the context of a tax audit which-

(a) is issued, amended or renewed by, or on behalf of-

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(i) the Government or the Commissioner; or

(ii) in the case of a communication made by a Member State under Article 8a of the Cooperation Directive, the Government or tax authority of a Member State, or the Member State's territorial or administrative subdivisions including local authorities,

irrespective of whether it is effectively used;

(b) is issued, amended or renewed to a particular person or a group of persons, and upon which that person or group of persons is entitled to rely;

(c) concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of-

(i) Gibraltar laws relating to Gibraltar taxes; or

(ii) in the case of a communication made by a Member State under Article 8a of the Cooperation Directive, the national law of a Member State relating to taxes of the Member State or the Member State's territorial or administrative subdivisions, including local authorities;

(d) relates to a cross-border transaction or to the question of whether or not activities carried on by a person in another jurisdiction create a permanent establishment; and

(e) is made in advance of the transactions or of the activities in another jurisdiction potentially creating a permanent establishment or in advance of the filing of a tax return covering the period in which the transaction or series of transactions or activities took place,

and for the purposes of this definition, a cross-border transaction may involve, but is not restricted to, the making of investments, the provision of goods, services, finance or the use of tangible or intangible assets and does not have to directly involve the person receiving the advance cross-border ruling;

"advance pricing arrangement" means any agreement, communication or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which-

(a) is issued, amended or renewed by, or on behalf of-

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(i) the Government or the Commissioner alone or with the Government or tax authority of a Member State including any territory or administrative subdivision thereof, including local authorities, or

(ii) in the case of a communication made by a Member State under Article 8a of the Cooperation Directive, the government or tax authority of one or more Member States including any territory or administrative subdivision thereof, including local authorities,

irrespective of whether it is effectively used;

(b) is issued, amended or renewed to a particular person or a group of persons, and upon which that person or group of persons is entitled to rely; and

(c) determines in advance of cross-border transactions between associated enterprises, an appropriate set of criteria for the determination of the transfer pricing for those transactions or determines the attribution of profits to a permanent establishment;

"the Cooperation Directive" means Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, as amended from time to time;

"enterprise" means any form of conducting business;

"Member State" means a Member State of the European Union;

"transfer prices" means the prices at which an enterprise transfers physical goods and intangible property or provides services to associated enterprises, and "transfer pricing" is to be construed accordingly;

"working day" means a day other than-

(a) Saturdays and Sundays;

(b) any day that is a bank holiday or public holiday in Gibraltar under the Banking and Financial Dealings Act or the Interpretation and General Clauses Act;

(c) any day appointed in Gibraltar as a day of public thanksgiving or mourning.

(2) An enterprise is an associated enterprise when-

(a) it participates directly or indirectly in the management, control or capital or another enterprise; or

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(b) the same persons participate directly or indirectly in the management, control or capital of two or more enterprises.

Meaning of cross-border transaction.

10B. In this Part, a "cross-border transaction" means-

(a) in relation to an advance cross-border ruling, a transaction or series of transactions where-

(i) not all of the parties to the transaction or series of transactions are resident for tax purposes in Gibraltar, or in the case of a communication made by a Member State under Article 8a of the Cooperation Directive, in the Member State issuing, amending or renewing the advance cross border ruling;

(ii) any of the parties to the transaction or series of transactions is simultaneously resident for tax purposes in more than one jurisdiction;

(iii) one of the parties to the transaction or series of transactions carries on business in another jurisdiction through a permanent establishment and the transaction or series of transactions forms part or the whole of the business of the permanent establishment;

(iv) the transaction or series of transactions include arrangements made by a person in respect of business activities in another jurisdiction which that person carries on through a permanent establishment; or

(v) the transaction or transactions have a cross border impact;

(b) in relation to an advance pricing arrangement, a transaction or series of transactions-

(i) involving associated enterprises which are not all resident for tax purposes in the territory of a single jurisdiction; or

(ii) a transaction or series of transactions which have a cross border impact.

Obligation to exchange information.

10C.(1) The Commissioner shall ensure that the information set out in section 10D in respect of relevant advance cross-border rulings and relevant advance pricing arrangements is provided to the competent authorities of Member States and the European Commission in

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accordance with section 10K and the practical arrangements adopted under Article 21 of the Cooperation Directive.

(2) An advance cross-border ruling or advance pricing arrangement is relevant if it was issued, amended or renewed-

(a) after 31 December 2013; or

(b) between 1 January 2012 and 31 December 2013 and were valid on 1 January 2014.

(3) An advance cross-border ruling is not relevant if it exclusively concerns and involves the tax affairs of one or more natural persons.

(4) An advance cross-border ruling and advance pricing arrangement is not relevant if it was issued, amended or renewed-

(a) before 1 April 2016; and

(b) to a person or group of persons-

(i) not conducting mainly financial or investment activity; and

(ii) with group-wide annual net turnover (as defined in Schedule 9 of the Companies Act 2014) of less than €40,000,000 or its Sterling equivalent in the fiscal year preceding the date of issuance, amendment or renewal of those advance cross-border rulings or advance pricing arrangement.

(5) The Commissioner shall ensure information is provided under this section-

(a) where an advance cross-border ruling or advance pricing arrangement was issued, amended or renewed after 31 December 2016, within three months following the end of the calendar year during which that issuance, amendment or renewal took place;

(b) before 1 January 2018 where the cross-border ruling or pricing arrangement was issued, amended or renewed before 31 December 2016.

Information to be exchanged.

10D.(1) For the purposes of section 10C, and subject to subsection (2), the information to be provided to competent authorities of Member States and the European Commission is-

(a) the dates of issuance, amendment or renewal of the advance cross-border ruling or advance pricing arrangement;

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(b) the start date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;

(c) the end date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;

(d) the type of the advance cross-border ruling or advance pricing arrangement;

(e) the amount of the transaction or series of transactions of the advance cross-border ruling or advance pricing arrangement if such amount is referred to in the advance cross-border ruling or advance pricing arrangement;

(f) the identification of the method used for determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;

(g) the identification of Member States, if any, likely to be concerned by the advance cross-border ruling or advance pricing arrangement; and

(h) the indication whether the information communicated is based upon the advance cross-border ruling or advance pricing arrangement itself or upon the request referred to in section 10E(2).

(2) In addition to the information set out in subsection (1), the competent authorities of Member States shall be provided with-

(a) identification of the person, other than a natural person, and where appropriate the group of persons to which the advance cross-border ruling or advance pricing arrangement belongs;

(b) a summary of the content of the advance cross-border ruling or advance pricing arrangement including a description of the relevant business activities or transactions or series of transactions provided in abstract terms without leading to the disclosure of-

(i) a commercial, industrial or professional secret;

(ii) a commercial process; or

(iii) information whose disclosure would be contrary to public policy;

(c) a description of the set of criteria used for the determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;

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(d) the identification of any person other than a natural person in a Member State, if any, likely to be affected by the advance cross-border ruling or advance pricing arrangement and indicating to which Member States the affected persons are linked.

Exclusion.

10E.(1) Subject to subsection (2), information on bilateral or multilateral advance pricing arrangements with countries outside of the European Union may not be provided under this Part where they were negotiated under an international tax agreement that does not permit disclosure to third parties.

(2) Where information on advance pricing arrangements is excluded under subsection (1), the Commissioner shall ensure that information is provided in respect of those arrangements where-

(a) it would otherwise be provided under sections 10C and 10D; and

(b) that information is contained in the request that lead to the issuance of the excluded bilateral or multilateral advance pricing arrangement.

Confirmation of Receipt.

10F.(1) Where Gibraltar is identified by a Member State as likely to be concerned by the advance cross-border ruling or advance pricing arrangement in a communication made under Article 8a of the Cooperation Directive, the Commissioner shall ensure that receipt of the information is confirmed to the competent authority of that Member State within 7 working days of receipt.

(2) Where the central directory on administrative cooperation in the field of taxation developed and provided by the European Commission under Article 21(5) of the Cooperation Directive is operational, the confirmation under subsection (1) shall not be provided.

Additional Information.

10G. The Commissioner may make a request under section 4(9) for additional information on an advance cross-border ruling or advance pricing arrangement communicated by a competent authority of a Member State, including the full text of such ruling or arrangement.

Statistics.

10H.(1) The Commissioner shall ensure the European Commission is-

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(a) informed of the volume of information provided under this Part and received from Member States in accordance with Article 8a of the Cooperation Directive; and

(b) is provided, as far as possible, with information on costs and benefits relating to-

(i) exchanges of information referred to in paragraph (a); and

(ii) any potential changes;

for the Government and for other persons.

(2) Information under this section must be provided before 1 January 2018, and thereafter at not more than yearly intervals.

Feedback.

10I. The Commissioner shall provide feedback to Member States on the receipt or provision of information under this Part or Article 8a of the Cooperation Directive, in accordance with arrangements agreed with those Member States pursuant to Article 14(2) of that Directive.

Use of Information.

10J. Section 5E(2) and (3)(c) shall apply to information obtained and provided under this Part.

Method of exchange.

10K.(1) In complying with this Part, the Commissioner shall-

(a) use the standard form adopted by the European Commission under Article 20(5) and 26 of the Cooperation Directive;

(b) use the central directory on administrative cooperation in the field of taxation developed and provided by the European Commission under Article 21(5) of the Cooperation Directive; and

(c) ensure information is provided in an official and working language of the European Union.

(2) Until the central directory mentioned in subsection (1)(b) is operational, the Commissioner shall ensure the information is exchanged using the electronic means and common platform described in Articles 3(12), (13) and 21 of the Cooperation Directive and the applicable practical arrangements.

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PART IB

COUNTRY BY COUNTRY REPORTING

Interpretation.

10L. In this Part-

"consolidated financial statements" means the financial statements of an MNE group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the constituent entities are presented as those of a single economic entity;

"constituent entity" means any of the following-

(a) a separate business unit of an MNE group that is included in the consolidated financial statements of the MNE group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE group were traded on a public security exchange;

(b) any business unit prescribed under paragraph (a) that is excluded from the MNE group's consolidated financial statements solely on size or materiality grounds;

(c) a permanent establishment of any separate business unit of the MNE group included in paragraph (a) or (b) provided the business unit prepares a separate financial statement for the permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

"Cooperation Directive" means Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, as amended from time to time;

"country by country report" means a report that contains the information set out in section 10Q;

"enterprise" means any form of conducting business by a person referred to in points (b), (c) and (d) of Article 3, point (11) of the Cooperation Directive;

"fiscal year" means an annual accounting period with respect to which the ultimate parent entity of the MNE group prepares its financial statements;

"group" means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on in public securities exchange;

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"international agreement" means the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral tax convention, or any tax information exchange agreement to which Gibraltar is party, or which has been extended to Gibraltar, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information;

"Member State" means a Member State of the European Union;

"MNE group" means a group that includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and is not excluded under section 10M;

"qualifying competent authority agreement" means an agreement that is between authorised representatives of Gibraltar and a non-European Union jurisdiction that are parties to an international agreement and that requires the automatic exchange of country by country reports;

"reporting fiscal year" means the fiscal year, the financial and operational results of which are reflected in the country-by country report;

"surrogate parent entity" means one constituent entity of the MNE group that has been appointed by such MNE group as a sole substitute for the ultimate parent entity, to file the country by country report in that constituent entity's jurisdiction of tax residence, on behalf of the MNE group in accordance with section 10P;

"systemic failure" with respect to a jurisdiction means-

(a) the jurisdiction has a qualifying competent authority agreement in effect but has suspended automatic exchange for reasons other than those allowed in accordance with the terms of that agreement; or

(b) the jurisdiction otherwise persistently failed to provide the competent authority in Gibraltar with country by country reports in its possession of MNE groups that have constituent entities in Gibraltar;

"ultimate parent entity" means a constituent entity of an MNE group that meets the following criteria-

(a) it owns directly or indirectly a sufficient interest in one or more other constituent entities of such MNE group such that it is required to prepare consolidated

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financial statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence;

(b) there is no other constituent entity of such MNE group that owns directly or indirectly an interest described in paragraph (a) in the entity.

Excluded MNE group.

10M. An MNE group is excluded under this Part with respect to any fiscal year of the group if the group has a total consolidated group revenue of less than EUR 750 000 000 during the fiscal year immediately preceding the reporting fiscal year as reflected in its consolidated financial statements for that fiscal year.

Ultimate parent entity reporting.

10N. Where an ultimate parent entity is resident in Gibraltar for tax purposes, that ultimate parent entity must provide the Commissioner with a country by country report for each fiscal year.

Constituent entity reporting.

10O.(1) Subject to section 10P(3), a constituent entity resident for tax purposes in Gibraltar that is not an ultimate parent entity must provide the Commissioner with a country by country report for each fiscal year where-

(a) the ultimate parent entity of the MNE group is not required to provide a country by country report in its jurisdiction of tax residence;

(b) the jurisdiction in which the ultimate parent entity is resident for tax purposes has a current international agreement to which Gibraltar is party, or which has been extended to Gibraltar, but does not have a qualifying competent authority agreement in effect with Gibraltar on the date on which the constituent entity must provide the report under section 10T; or

(c) there has been a systemic failure by the jurisdiction of tax residence of the ultimate parent entity and the Commissioner has notified the constituent entity resident in Gibraltar that such a failure has occurred.

(2) Where a constituent entity is required to provide a country by country report under subsection (1), that constituent entity must request its ultimate parent entity to provide it with all information necessary to prepare a country by country report with respect to each fiscal year.

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(3) Where the constituent entity makes a request under subsection (2), but is unable to obtain or acquire all necessary information to prepare a complete country by country report, it must-

(a) notify the Commissioner that the ultimate parent entity has refused to make the necessary information available; and

(b) provide the Commissioner with all the relevant information in its possession that it would include in a country by country report.

(4) A notification under subsection (1)(c) shall be made in such manner or form as the Commissioner by determine from time to time.

(5) Where the Commissioner receives a notification under subsection (3)(a), he shall inform all Member States of the refusal notified.

(6) Where a constituent entity fails to make a request in accordance with subsection (2), or to provide all relevant information in its possession in accordance with subsection (3), section 10U shall apply as if the failure were a failure to provide a country by country report under subsection (1).

(7) For the purposes of subsection (3)(a), the ultimate parent entity is deemed to have refused to provide information if the relevant information is not provided to the requesting constituent entity before the day of notification under section 10R(4).

Surrogate parent entity reporting.

10P. (1) An MNE group may designate a constituent entity as a surrogate parent entity if-

(a) more than one constituent entity of the same MNE group is resident for tax purposes in the European Union;

(b) one or more of the conditions set out in section 10O(1)(a), (b) and (c) or point (b) of the first paragraph of Section II to Annex III of the Cooperation Directive apply; and

(c) the constituent entity designated can obtain or acquire all the information required to file a country by country report for each fiscal year.

(2) Where an MNE group designates a surrogate parent entity in Gibraltar, that entity must-

(a) provide the Commissioner with a country by country report for each fiscal year; and

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(b) notify the Commissioner that the report provided in accordance with paragraph (a) is intended to satisfy the requirement on all constituent entities of the MNE group resident for tax purposes in the European Union.

(3) Where a constituent entity would otherwise be required to provide a country by country report under section 10O, that section shall not apply if-

(a) the MNE group of which it is a constituent entity has provided a country by country report in respect of that fiscal year through a surrogate parent entity;

(b) the country by country report has been provided on or before the date specified in section 10T to the competent authority of the jurisdiction of tax residence of the surrogate parent entity; and

(c) where the surrogate parent entity is resident for tax purposes outside the European Union,

(i) the jurisdiction of tax residence of the surrogate parent entity-

(A) requires the filing of country by country reports conforming to the requirements of section 10Q(1);

(B) has a qualifying competent authority agreement in effect to which Gibraltar is a party at the date specified for the provision of the country by country report in section 10T;

(C) has not notified the Commissioner that there has been a systemic failure;

(ii) the surrogate parent entity has notified the competent authority of its jurisdiction, by no later the last day of the reporting fiscal year, that it is the surrogate parent entity; and

(iii) the Commissioner has received a notification in accordance with section 10R(2).

Country by country report.

10Q.(1) A country by country report provided under this Part shall contain the following information in respect of the MNE group concerned-

(a) with regard to each jurisdiction in which the MNE group concerned operates, aggregate information relating to the amount of its-

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(i) revenue,

(ii) profit or loss before income tax,

(iii) income tax paid,

(iv) income tax accrued,

(v) stated capital,

(vi) accumulated earnings,

(vii) number of employees, and

(viii) tangible assets other than cash or cash equivalents;

(b) identification of each constituent entity of the MNE group setting out-

(i) the jurisdiction of tax residence of that constituent entity; and,

(ii) where different from that jurisdiction of tax residence, the jurisdiction under the laws of which that constituent entity is organized; and

(iii) the nature of the main business activity of that constituent entity.

(2) The country by country report must specify the currency of the amounts referred to in that report.

Notification obligations.

10R.(1) A constituent entity resident for tax purposes in Gibraltar must notify the Commissioner if it is-

(a) an ultimate parent entity;

(b) a surrogate parent entity; or

(c) required to provide a report under section 10O.

(2) Where a constituent entity resident for tax purposes in Gibraltar does not fall within the categories prescribed in subsection (1), it must notify the Commissioner of the-

(a) identity; and

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(b) jurisdiction of tax residence,

of the constituent entity required to file the country by country report on behalf of its MNE group.

(3) A notification under subsections (1) and (2) must be made in writing no later than the last day for filing of the tax return of the notifying constituent entity for the preceding fiscal year.

(4) A notification under section 10O(3)(a) or 10P(2)(b) must be made in writing and not later than 12 months after the last day of the fiscal year to which the country by country report relates.

Form and manner of delivery.

10S.(1) Reports provided or notifications made to the Commissioner under this Part shall be delivered in such form and manner, including by electronic means, as may be specified by the Commissioner from time to time.

(2) Reports provided or notifications made otherwise than in the form and manner specified by the Commissioner are to be treated as not having been provided or made.

Time by which country by country reports are to be provided.

10T.(1) Country by country reports required to be provided under this Part shall be provided to the Commissioner no later than 12 months after the last day of the fiscal year to which the country by country report relates.

(2) The first country by country report shall be provided-

(a) by an ultimate parent entity or its surrogate parent entity for the fiscal year commencing on or after 1 January 2016; and

(b) by a constituent entity providing a report under section 10O for the fiscal year commencing on or after 1 January 2017.

Penalties for failure to comply with Part.

10U.(1) A person is liable to a penalty of £300 if he fails to-

(a) provide a country by country report; or

(b) make a notification,

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as required in accordance with this Part.

(2) If-

(a) a penalty under subsection (1) is assessed; and

(b) the failure in question continues after the person has been notified of the assessment,

the person is liable to a further penalty, for each subsequent day on which the failure continues, of an amount, subject to section 10Z, not exceeding £60 for each such day.

Penalties for failure to comply with Part.

10V.(1) Where-

(a) a person provides inaccurate information when-

(i) providing a country by country report; or

(ii) making a notification; and

(b) the conditions set out in subsection (2) are met,

the person is liable to a penalty not exceeding £3,000 in respect of the report or notification to which the inaccuracy relates.

(2) The conditions are-

(a) the person knows of the inaccuracy at the time the report is provided or notification is made; or

(b) the person discovers the inaccuracy after the report is provided or notification is made and fails to take reasonable steps to inform the Commissioner of that discovery.

Matters to be disregarded in relation to liability to penalties.

10W.(1) Liability to a penalty under sections 10U and 10V does not arise if the person otherwise liable to the penalty satisfies the Commissioner that there is reasonable excuse for the failure or the provision of inaccurate information.

(2) For the purposes of this section, it is not a reasonable excuse-

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(a) that there are insufficient funds to do something; or

(b) that a person relies on another person to do something.

(3) If a person has a reasonable excuse for a failure but the excuse ceases, the person is to be treated as continuing to have the excuse if the failure is remedied without unreasonable delay after the excuse ceases.

Assessment of penalties.

10X.(1) If a person becomes liable to a penalty under this Part, the Commissioner may assess the penalty.

(2) If the Commissioner does so, he must notify the person.

(3) An assessment of the penalty under section 10U must be made within the period of-

(a) 6 years in respect of a failure to provide a country by country report; or

(b) 12 months in respect of a failure to make a notification,

beginning on the date on which the person became liable to the penalty.

(4) An assessment of a penalty under section 10V must be made within the earlier of-

(a) 12 months beginning with the date on which the inaccuracy first came to the attention of the Commissioner; or

(b) 6 years beginning with the date on which the person became liable to the penalty.

Appeals against penalty.

10Y.(1) A person may by notice appeal against the assessment of a penalty notified to that person-

(a) on the grounds that liability to the penalty does not arise; or

(b) as to the amount of a penalty.

(2) Notice of an appeal under subsection (1) must be given-

(a) in writing;

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(b) before the end of the period of 30 days beginning with the date on which notification under section 10X was given; and

(c) to the Commissioner and the Tribunal.

(3) The notice must state the grounds of appeal.

(4) On an appeal under subsection (1)(a), the Tribunal may confirm or cancel the assessment.

(5) On an appeal under subsection (1)(b), the Tribunal may-

(a) confirm the assessment; or

(b) substitute another assessment that the Commissioner had power to make.

Application for increased daily default penalty.

10Z.(1) Subsection (2) applies if-

(a) a person is liable to a penalty under section 10U and a penalty is assessed under section 10X; and

(b) the failure in respect of which that assessment is made continues for more than 30 days beginning with the date on which the notification of that assessment is given.

(2) Where this section applies, the Commissioner may make an application to the Tribunal for permission to assess an increased daily penalty under section 10U but must notify the person liable to the penalty of the application at the time of making it.

(3) If the Tribunal determines that an increased daily penalty may be assessed then for each applicable day on which the failure continues, the person's liability to a penalty under section 10U shall be for the increased amount determined by the Tribunal.

(4) The Tribunal may not determine an amount exceeding £1000 for each applicable day.

(5) If the Tribunal determines an increased daily penalty, the Commissioner must notify the person.

(6) The notification under subsection (5) must specify the future day from which the increased penalty is to apply.

(7) That day and any subsequent day is an "applicable day" for the purposes of subsection (3) and (4).

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Enforcement of penalties.

10ZA.(1) A penalty under this Part must be paid before the end of the period of 30 days beginning with the date mentioned in subsection (2).

(2) The date is the date on which notification is given in respect of a penalty under section 10X, or if a notice of appeal is given, the date on which the appeal is finally determined or withdrawn.

(3) A penalty due under this Part is a debt due to Government and recoverable as a civil debt.

Exchange of information by Commissioner.

10ZB.(1) Where the Commissioner receives a country by country report under this Part, he shall communicate that report to any Member State in which, on the basis of the information in that report, one or more constituent entities of the MNE group are either resident for tax purposes or subject to tax with respect to the business carried out through a permanent establishment.

(2) Subject to subsection (3), the communication under subsection (1) must take place within 15 months of the last day of the fiscal year of the MNE group to which the report relates.

(3) The first communication under subsection (1) shall be in relation to the fiscal year of the MNE group commencing on or after 1 January 2016 and must take place within 18 months of the last day of that fiscal year.

(4) Communication by the Commissioner under subsection (1) shall be carried out-

(a) using the standard form provided in Tables 1, 2 and 3 of Section III of Annex III of the Cooperation Directive; and

(b) by electronic means using the common platform described in Articles 3(12), (13) and 21(6) of the Cooperation Directive; and

(c) adopting the linguistic arrangements provided for in Article 20(6) of that Directive.

Feedback.

10ZC. The Commissioner shall provide feedback to Member States on the receipt or provision under this Part or Article 8aa of the Cooperation Directive, in accordance with arrangements agreed with those Member States pursuant to Article 14(2) of that Directive.

Use of information.

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10ZD.(1) Section 5E(3)(c) shall apply to information communicated under this Part or Article 8aa of the Cooperation Directive.

(2) Information received by the Commissioner under this Part or Article 8aa of the Cooperation Directive is to be treated for the purposes of the law of Gibraltar relating to admissibility, authentification, confidentiality or other protection in the same way as other information received by the Commissioner (and is, in particular, to be subject to relevant law on data protection in accordance with Article 25 of the Cooperation Directive).

(3) Information communicated under this Part or Article 8aa of the Cooperation Directive shall be used for-

(a) assessing high-level transfer-pricing risks and other risks related to base erosion and profit shifting, including assessing the risk of non-compliance by members of the MNE group with applicable transfer-pricing rules; and

(b) economic and statistical analysis where appropriate.

(4) The Commissioner may not base transfer-pricing adjustments on information communicated pursuant to this Part or Article 8aa of the Cooperation Directive.

(5) Subsections (3) and (4) do not prohibit the use of information communicated pursuant to this Part or Article 8aa of the Cooperation Directive as the basis for making-

(a) further enquiry into an MNE group's transfer-pricing arrangement or other tax matters in the course of a tax audit; or

(b) appropriate adjustments to the taxable income of a constituent entity.

PART 1C

REPORTABLE CROSS-BORDER ARRANGEMENTS

Interpretation.

10ZE.(1) In this Part-

"associated enterprise" has the meaning given by section 10ZF;

"bespoke arrangement" means any cross-border arrangement that is not a marketable arrangement;

"cross-border arrangement" has the meaning given by section 10ZG;

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"hallmark" means a characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance, as listed in Schedule 11;

"intermediary" has the meaning given in section 10ZH;

"marketable arrangement" means a cross-border arrangement that is designed, marketed, ready for implementation or made available for implementation without a need to be substantially customised;

"relevant taxpayer" means any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has implemented the first step of such an arrangement; and

"relevant State" means-

(a) a Member State of the European Union; or

(b) Gibraltar; or

(c) the United Kingdom;

"reportable cross-border arrangement" means any cross-border arrangement that contains at least one of the hallmarks set out in Schedule 11.

(2) Other expressions have the same meaning in this Part as in Part 1B.

Associated enterprise.

10ZF.(1) In this Part "associated enterprise" means a person who is related to another person in at least one of the following ways-

(a) a person participates in the management of another person by being in a position to exercise a significant influence over the other person;

(b) a person participates in the control of another person through a holding that exceeds 25 % of the voting rights;

(c) a person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds 25% of the capital;

(d) a person is entitled to 25% or more of the profits of another person.

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(2) If more than one person participates, as referred to in subsection (1)(a) to (d), in the management, control, capital or profits of the same person, all persons concerned shall be regarded as associated enterprises.

(3) If the same persons participate, as referred to in subsection (1)(a) to (d), in the management, control, capital or profits of more than one person, all persons concerned shall be regarded as associated enterprises.

(4) A person who acts together with another person in respect of the voting rights or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person.

(5) In indirect participations-

(a) the fulfilment of requirements under subsection (1)(c) shall be determined by multiplying the rates of holding through the successive tiers; and

(b) a person holding more than 50% of the voting rights shall be deemed to hold 100%.

(6) An individual, his or her spouse and his or her lineal ascendants or descendants shall be treated as a single person.

Cross-border arrangement.

10ZG.(1) In this Part "cross-border arrangement" means an arrangement concerning more than one relevant State or a relevant State and another country where at least one of conditions in subsection (2) is met.

(2) Those conditions are that-

(a) not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;

(b) one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;

(c) one or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of that permanent establishment;

(d) one or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction;

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(e) such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

(3) For the purposes of this Part, an arrangement also includes a series of arrangements.

(4) An arrangement may comprise more than one step or part.

Intermediary.

10ZH.(1) In this Part "intermediary"-

(a) means any person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement; and

(b) also means any person that, having regard to the relevant facts and circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement.

(2) For the purpose of subsection (1)(b)-

(a) any person has the right to provide evidence that such person did not know and could not reasonably be expected to know that that person was involved in a reportable cross-border arrangement; and

(b) for that purpose, that person may refer to all relevant facts and circumstances as well as available information and their relevant expertise and understanding.

(3) In order to be an intermediary, a person shall meet at least one of the following additional conditions (and the previous subsections of this section are subject to this subsection): the intermediary must-

(a) be resident for tax purposes in a relevant State;

(b) have a permanent establishment in a relevant State through which the services with respect to the arrangement are provided;

(c) be incorporated in, or governed by the laws of, a relevant State; and

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(d) be registered with a professional association related to legal, taxation or consultancy services in a relevant State.

Reportable cross-border arrangements: exchange of information by intermediaries.

10ZI.(1) Intermediaries must, subject to subsection (1A), file information that is within their knowledge, possession or control on reportable cross-border arrangements with the Commissioner within the period of 30 days beginning-

(a) on the day after the reportable cross-border arrangement is made available for implementation; or

(b) on the day after the reportable cross-border arrangement is ready for implementation; or

(c) when the first step in the implementation of the reportable cross-border arrangement has been made, whichever occurs first.

(1A) The period of 30 days for filing information referred to in subsection (1) begins by 1 January 2021 where-

(a) a reportable cross-border arrangement is made available for implementation or is ready for implementation, or where the first step in its implementation has been made between 1 July 2020 and 31 December 2020; or

(b) intermediaries within the meaning of section 10ZH(1)(b) provide, directly or by means of another person, aid, assistance or advice between 1 July 2020 and 31 December 2020.

(2) Notwithstanding subsection (1), intermediaries referred to in section 10ZH(1)(b) must also file information within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice.

(3) In the case of marketable arrangements, a periodic report must, subject to subsection (3A), be made by the intermediary every 3 months providing an update which contains new reportable information as referred to in section 10ZK(2)(a), (d), (g) and (h) that has become available since the last report was filed.

(3A) The first periodic report under subsection (3) must be made by intermediaries by 30 April 2021.

(4) Where the intermediary is liable to file information on reportable cross-border arrangements with the competent authorities of more than one relevant State, such information is to be filed in Gibraltar only if Gibraltar features first in the list below-

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(a) the jurisdiction where the intermediary is resident for tax purposes;

(b) the jurisdiction where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided;

(c) the jurisdiction which the intermediary is incorporated in or governed by the laws of;

(d) the jurisdiction where the intermediary is registered with a professional association related to legal, taxation or consultancy services.

(5) Where, pursuant to subsection (4), there is a multiple reporting obligation, the intermediary is exempt from filing the information in Gibraltar if it has proof, in accordance with any relevant national law, that the same information has been filed in a relevant State other than Gibraltar.

(6) Intermediaries have the right to a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach the legal professional privilege under the law of Gibraltar, and-

(a) where this subsection applies, intermediaries must notify, without delay, any other intermediary or, if there is no such intermediary, the relevant taxpayer of their reporting obligations under section 10ZJ; and

(b) intermediaries are only entitled to a waiver to the extent that they operate within the limits of the relevant law of Gibraltar in respect of their professions.

(7) Where there is more than one intermediary, the obligation to file information on the reportable cross-border arrangement lies with all intermediaries involved in the same reportable cross-border arrangement.

(8) An intermediary is exempt from filing the information only to the extent that it has proof, in accordance with any relevant national law, that the same information referred to in section 10ZK(2) has already been filed by another intermediary.

(9) Intermediaries-

(a) must file information on reportable cross-border arrangements the first step of which was implemented between the 25 June 2018 and 1 July 2020, and

(b) must file information on those reportable cross-border arrangements by 28 February 2021.

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Reportable cross-border arrangements: exchange of information by relevant taxpayers.

10ZJ.(1) Where there is no intermediary or the intermediary notifies the relevant taxpayer or another intermediary of the application of a waiver under section 10ZI(6), the obligation to file information on a reportable cross-border arrangement lies with-

(a) the other notified intermediary, or

(b) if there is no such intermediary, the relevant taxpayer.

(2) The relevant taxpayer with whom the reporting obligation lies must, subject to subsection 2A), file the information within 30 days, beginning-

(a) on the day after the reportable cross-border arrangement is made available for implementation to that relevant taxpayer, or is ready for implementation by the relevant taxpayer, or

(b) when the first step in its implementation has been made in relation to the relevant taxpayer, whichever occurs first.

(2A) The period of 30 days for filing information referred to in subsection (2) begins by 1 January 2021 where-

(a) a reportable cross-border arrangement is made available for implementation or is ready for implementation, or where the first step in its implementation has been made between 1 July 2020 and 31 December 2020; or

(b) intermediaries within the meaning of section 10ZH(1)(b) provide, directly or by means of another person, aid, assistance or advice between 1 July 2020 and 31 December 2020.

(3) Where the relevant taxpayer has an obligation to file information on the reportable cross-border arrangement with the competent authorities of more than one relevant State, such information is to be filed in Gibraltar only if Gibraltar features first in the list below-

(a) the jurisdiction where the relevant taxpayer is resident for tax purposes;

(b) the jurisdiction where the relevant taxpayer has a permanent establishment benefiting from the arrangement;

(c) the jurisdiction where the relevant taxpayer receives income or generates profits, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any relevant State;

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(d) the jurisdiction where the relevant taxpayer carries on an activity, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any relevant State.

(4) Where, pursuant to subsection (3), there is a multiple reporting obligation, the relevant taxpayer is exempt from filing the information if it has proof, in accordance with any relevant national law, that the same information has been filed in a relevant State other than Gibraltar.

(5) Where the reporting obligation lies with the relevant taxpayer and where there is more than one relevant taxpayer, the relevant taxpayer that is to file information in accordance with subsection (1) is the one that features first in the list below-

(a) the relevant taxpayer that agreed the reportable cross-border arrangement with the intermediary;

(b) the relevant taxpayer that manages the implementation of the arrangement.

(6) Any relevant taxpayer shall only be exempt from filing the information to the extent that it has proof, in accordance with any relevant national law, that the same information referred to in section 10ZK(2) has already been filed by another relevant taxpayer.

(7) Relevant taxpayers-

(a) must file information on reportable cross-border arrangements the first step of which was implemented between the 25 June 2018 and 1 July 2020; and

(b) must file information on those reportable cross-border arrangements by 28 February 2021.

Communication of information by Commissioner.

10ZK.(1) The Commissioner where the information was filed pursuant to this Part shall, by means of exchange, communicate the information specified in subsection (2) to the competent authorities of all other relevant States.

(2) The information to be communicated by the Commissioner under subsection (1) must contain the following, as applicable-

(a) the identification of intermediaries and relevant taxpayers, including their name, date and place of birth (in the case of an individual), residence for tax purposes, TIN and, where appropriate, the persons that are associated enterprises to the relevant taxpayer;

(b) details of the hallmarks that make the cross-border arrangement reportable;

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(c) a summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information the disclosure of which would be contrary to public policy;

(d) the date on which the first step in implementing the reportable cross-border arrangement has been made or will be made;

(e) details of the national provisions that form the basis of the reportable cross-border arrangement;

(f) the value of the reportable cross-border arrangement;

(g) the identification of the relevant taxpayer or taxpayers' jurisdiction, and any jurisdictions which are likely to be concerned by the reportable cross-border arrangement, where the term "jurisdiction" means any relevant State; and

(h) the identification of any other person in a jurisdiction likely to be affected by the reportable cross-border arrangement, indicating to which such person is linked, where the term "jurisdiction" means any relevant State.

(3) The fact that a tax administration does not react to a reportable cross-border arrangement shall not imply any acceptance of the validity or tax treatment of that arrangement.

(4) The exchange of information must take place within one month of the end of the quarter in which the information was filed.

(5) The first information must be communicated by 30 April 2021.

Penalties.

10ZL. The provisions of sections 10U to 10ZA apply in relation to a failure to comply with a provision of this Part, and in relation to the provision of inaccurate information when purporting to comply with a provision of this Part, as they apply in relation to failing to comply with a provision of Part 1B or providing inaccurate information when purporting to comply with a provision of that Part.

PART II

CHARGE TO TAX

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The Charge to Taxation.

11.(1) Tax shall, subject to the provisions of this Act and of the Rules, be payable at the rate or rates specified from time to time for each year of assessment or accounting period upon the income specified in tables A to C inclusive of Schedule 1 accruing in or derived from Gibraltar of any person.

(2) Tax shall, subject to the provisions of this Act and of the Rules, be payable at the rate or rates specified from time to time for each year of assessment upon the income specified in table B and table C of Schedule 1 accruing in, derived from or received in any place other than Gibraltar of any person ordinarily resident in Gibraltar other than a company.

(3) For the purposes of subsection (2) 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.

(4) For the purposes of this Act the chargeable profits of a company not ordinarily resident in Gibraltar but carrying on a trade here through a branch or agency shall be calculated by reference to any trading income arising through or from the branch or agency, and, in so far is chargeable to tax, any income from property or rights used by, or held by or for, the branch or agency.

(5) (a) In the case of a company registered under the Protected Cell Companies Act 2001, the protected cell company and each of its cells shall, for the purposes of ascertaining any taxation due under this Act, be considered as if each cell were a separate company.

(b) The aggregate of the taxation liabilities of each of the cells shall be recoverable from the protected cell company in accordance with the provisions of the Protected Cell Companies Act 2001.

Taxation of beneficiaries.

12.(1) Tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereafter for each year of assessment or accounting period upon the income of any person ordinarily resident in Gibraltar received from a trust by him as a beneficiary of that trust which can be matched with the taxable income of the trust of the year or period in which it was received by it or any previous or future year or period.

(2) For the purposes of (1) above income received by the beneficiary shall include-

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(a) (i) in the case of a discretionary or accumulation trust, any distribution of income of a trust made to, on the directions of, or for the benefit of a beneficiary;

(ii) in the case of any other trust, any income of the trust to which a beneficiary is entitled;

(b) for the purposes of (a)(i) and (ii) above a distribution from a trust shall whilst the trust has any income or accumulated undistributed income be treated as having been made out of that income or accumulated income before it is made out of the capital of the trust;

(c) any benefit derived by the beneficiary of a trust from the use of assets owned or leased by the trust or any person substantially controlled by the trust except the benefit derived by a husband or wife from the occupation, under a life interest created under the will of either one or the other, of the principal matrimonial home occupied by both prior to the death of either one of them;

(d) any loan made by the trust to a beneficiary of that trust or to any person connected (which has the meaning given in paragraph 9 of Schedule 4) with the beneficiary; and

(e) for the purpose of this subsection-

(i) the benefit derived from the use of assets owned by a trust or any body substantially controlled by the trust shall be deemed to be, the amount it would cost the trust on the open market to provide the assets for the use of the beneficiary for the year if it did not already own them;

(ii) the benefit of the use of an asset leased by a trust or any body substantially controlled by the trust, shall be the cost to the trust or body controlled of the provision of the asset;

(iii) where the Commissioner believes that any benefit derived by a beneficiary of a trust who is a minor is so derived by the minor rather than the parent or guardian of the minor for the purpose of the avoiding of taxation on the parent or guardian, then that benefit shall be deemed to be derived by the parent or guardian of the minor.

(3) For the purpose of subsection (1)–

(a) the income of a trust which is to be matched with income received by a beneficiary in computing the charge to tax of the beneficiary shall be limited to income which is or was chargeable to tax in Gibraltar on the trust.

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(b) the income received by a beneficiary, or, if more than one beneficiary receives income in a year of assessment, the aggregate of the income received by the beneficiaries in the year of assessment-

(i) shall first be matched against the income chargeable to tax on the trust in that year of assessment;

(ii) any excess of the income of the beneficiary or beneficiaries over the income chargeable to tax on the trust for the year will be matched with any income chargeable to tax on the trust from previous years commencing with the year in which this section came into effect on a first in first out basis;

(iii) the matching of income between current year and previous year income chargeable to tax on the trust will be established on a pro rata basis between each beneficiary who receives income in the year of assessment; and

(iv) income chargeable to tax on the trust which has been used for matching in accordance with (i) to (iii) above shall not be used again for matching but any income chargeable to tax on the trust which is not used for matching in the year of assessment or any income chargeable to tax on the trust for previous years which is not used for matching in the year of assessment, will be available for matching in future years of assessment.

(c) a beneficiary who is assessed to tax by virtue of subsection (1) above will be entitled to set off against his liability any tax paid by or credited to the trust in Gibraltar in respect of the matched income.

(4) For the purposes of this section,-

(a) "trust" shall include any disposition, agreement or arrangement of like nature save a bare trust where the Commissioner is satisfied that the beneficiary of the bare trust has either made a return under section 28 or 29 of this Act or has no income chargeable to tax under this Act;

(b) "substantially controlled" shall have the same meaning as those words are given in Schedule 4;

(c) "taxable income" means income which is or has been subject to tax in Gibraltar or would be subject to tax in Gibraltar if the trust was ordinarily resident in Gibraltar for the purposes of this Act.

Taxation of Foundation Beneficiaries.

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12A.(1) Tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereafter for each year of assessment or accounting period upon the income of any person ordinarily resident in Gibraltar received from a foundation by him as a beneficiary of that foundation which can be matched with the taxable income of the foundation of the year or period in which it was received by it or any previous or future year or period.

(2) For the purposes of subsection (1) income received by the beneficiary shall include-

(a) any distribution of income of a foundation made to, on the directions of, or for the benefit of a beneficiary;

(b) any benefit derived by the beneficiary of a foundation from the use of assets owned or leased by the foundation or any person substantially controlled by the foundation;

(c) any loan made by the foundation to a beneficiary of that foundation or to any person connected (which has the meaning given in paragraph 9 of Schedule 4) with the beneficiary;

and for the purposes of this subsection-

(i) a distribution from a foundation shall whilst the foundation has any income or accumulated undistributed income be treated as having been made out of that income or accumulated income before it is made out of the capital of the foundation;

(ii) the benefit derived from the use of assets owned by a foundation or any body substantially controlled by the foundation shall be deemed to be the amount it would cost the foundation on the open market to provide the assets for the use of the beneficiary for the year if it did not already own them;

(iii) the benefit of the use of an asset leased by a foundation or any body substantially controlled by the foundation shall be the cost to the foundation or the body substantially controlled by the foundation of the provision of the asset;

(iv) where the Commissioner believes that any benefit derived by a beneficiary of a foundation who is a minor is so derived by the minor rather than the parent or guardian of the minor for the purpose of the avoiding of taxation on the parent or guardian then that benefit shall be deemed to be derived by the parent or guardian of the minor.

(3) For the purpose of subsection (1)–

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(a) the income of a foundation which is to be matched with income received by a beneficiary in computing the charge to tax of the beneficiary shall be limited to income which is or was chargeable to tax in Gibraltar on the foundation;

(b) the income received by a beneficiary, or, if more than one beneficiary receives income in a year of assessment, the aggregate of the income received by the beneficiaries in the year of assessment shall first be matched against the income chargeable to tax on the foundation in that year of assessment;

(c) any excess of the income of the beneficiary or beneficiaries over the income chargeable to tax on the foundation for the year will be matched with any income chargeable to tax on the foundation from previous years commencing with the year in which this section came into effect on a first in first out basis;

(d) the matching of income between current year and previous year income chargeable to tax on the foundation will be established on a pro rata basis between each beneficiary who receives income in the year of assessment;

(e) income chargeable to tax on the foundation which has been used for matching in accordance with (b) to (d) above shall not be used again for matching but any income chargeable to tax on the foundation which is not used for matching in the year of assessment or any income chargeable to tax on the foundation for previous years which is not used for matching in the year of assessment, will be available for matching in future years of assessment;

(f) a beneficiary who is assessed to tax by virtue of subsection (1) will be entitled to set off against his liability any tax paid by or credited to the foundation in Gibraltar in respect of the matched income.

(4) For the purposes of this section-

(a) "substantially controlled" shall have the same meaning as those words are given in Schedule 4;

(b) "taxable income" means income which is or has been subject to tax in Gibraltar or would be subject to tax in Gibraltar if the foundation was ordinarily resident in Gibraltar for the purposes of this Act.

Taxation of Trusts.

13.(1) The trustees of a trust resident in Gibraltar shall be charged to tax at the rate set out in the Rates of Tax Rules, 1989, in respect of income taxable in accordance with section 11.

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(2) For the purposes of the taxation of trusts, a trust shall be resident in Gibraltar where it has one or more beneficiary who is ordinarily resident for the purposes of this Act or where the class of beneficiaries, other than persons irrevocably excluded from benefit, may include a person who is ordinarily resident in Gibraltar or the issue of such a person.

(3) For the purposes of this section and section 12, an individual who has Category 2 Status in accordance with the Qualifying (Category 2) Individuals Rules 2004 or the spouse or a child of that individual in respect of whom an election has been made under rule 11 of those Rules which has not been withdrawn or become invalid shall be deemed to be not tax resident in Gibraltar.

(4) Where a trust that is not resident in Gibraltar receives income from a source which accrued in or derived from Gibraltar and which has suffered tax under this Act the trust shall not be liable to further tax on that income.

Taxation of Foundations.

13A.(1) A foundation resident in Gibraltar shall be charged to tax at the rate set out in the Rates of Tax Rules, 1989, in respect of income taxable in accordance with section 11.

(2) For the purposes of the taxation of foundations, a foundation shall be resident in Gibraltar unless persons who are ordinarily resident in Gibraltar and the issue of such persons have been irrevocably excluded from benefit.

(3) For the purposes of this section and section 12A, an individual who has Category 2 Status in accordance with the Qualifying (Category 2) Individuals Rules 2004 or the spouse or a child of that individual in respect of whom an election has been made under rule 11 of those Rules which has not been withdrawn or become invalid shall be deemed to be not tax resident in Gibraltar.

(4) Where a foundation that is not resident in Gibraltar receives income from a source which accrued in or derived from Gibraltar and which has suffered tax under this Act the foundation shall not be liable to further tax on that income.

Refunds of certain contributions.

14.(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 rule 5(1)(h) or 21 of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992, as the case may be, that the 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.

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(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 l July l987;

(b) the widow, widower or a dependent child or relative of an individual; and

(c) a non-resident individual (other than a permitted individual) on the termination of employment with an exempt company or a company which was at 31 December 2010, an exempt company.

Pensions imported from another country, territory or jurisdiction.

14A. (1) Notwithstanding any other provision of the Act and the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 to the contrary, any income such as is described in rule 3A of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 and which derives from a source specified in subsection (2) shall form part of the assessable income of the individual and shall be taxed at the rate of 2.5% insofar as it forms part of the taxable income of that individual.

(2) The source of income referred to in subsection (1) is a statutory pension scheme or provident or other fund (for the purposes of this section, "a Pension Fund") approved by the Commissioner to which the funds or benefits entitlement from which the income is derived were transferred from a pension scheme in a country, territory or jurisdiction of the European Union.

(3) For the purpose of this section approval will only be given by the Commissioner to a Pension Fund where the rules which irrevocably bind the Pension Fund prevent−

(a) the commutation of more than 30% of the value of the assets comprising the funds or benefits entitlement for any particular person (such figure to be varied by the Commissioner to a greater or lesser percentage as appropriate having regard to the legislation of the jurisdiction from where the funds or benefits entitlement originate);

(b) payment of any part of the benefit entitlement provided by the Pension Fund before the normal minimum retirement age of 55 save where the retirement occurs on the grounds of ill health; and

(c) the transfer of any part of the assets of the Pension Fund relating to any beneficiary of that Pension Fund to any pension fund which is not approved in accordance with

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this subsection or does not contain irrevocable provisions which have the same effect as those required to receive approval in accordance with this subsection.

(4) For the purposes of subsection (3)(b) the Commissioner will consider retirement to be on the grounds of ill health where the administrator of the Pension Fund receives evidence from a registered medical practitioner to the effect that the person is incapable of carrying on their occupation because of either mental or physical illness.

(5) For the purposes of this section the term "country, territory or jurisdiction of the European Union" means the United Kingdom.

(6) This section shall be deemed to have come into effect on the 6th day of April 2006.

Pensions in connection with a statutory instrument.

14B.(1) Notwithstanding any other provision of the Act and the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 to the contrary, any income such as is described in rule 3A of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 and which derives from a source specified in subsection (2) shall form part of the assessable income of the individual and shall be taxed at the rate of 2.5% insofar as it forms part of the taxable income of that individual.

(2) The source of income referred to in subsection (1) is a statutory pension scheme or provident or other fund (for the purposes of this section, "a Pension Fund") approved by the Commissioner and conforming to the requirements of a statutory instrument.

(3) For the purpose of this section approval will only be given by the Commissioner to a Pension Fund conforming to the requirements of a statutory instrument and, moreover, where the rules which irrevocably bind the Pension Fund prevent−

(a) the commutation of more than 30% of the value of the assets comprising the funds or benefits entitlement for any particular person (such figure to be varied by the Commissioner to a greater or lesser percentage as appropriate having regard to the legislation of the jurisdiction from where the funds or benefits entitlement originate);

(b) payment of any part of the benefit entitlement provided by the Pension Fund before the normal minimum retirement age of 55 save where the retirement occurs on the grounds of ill health; and

(c) the transfer of any part of the assets of the Pension Fund relating to any beneficiary of that Pension Fund to any pension fund which is not approved in accordance with this subsection or does not contain irrevocable provisions which have the same effect as those required to receive approval in accordance with this subsection,

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(4) For the purposes of subsection (3)(b) the Commissioner will consider retirement to be on the grounds of ill health where the administrator of the Pension Fund receives evidence from a registered medical practitioner to the effect that the person is incapable of carrying on their occupation because of either mental or physical illness.

(5) For the purposes of this section the term "a statutory instrument" means the statutory instrument in force in the United Kingdom in exercise of the powers conferred by section 271A of the Inheritance Tax Act 1984.

(6) This section shall be deemed to have come into effect on the 6th day of April 2006.

PART III

COMPUTATION OF ASESSMENTS

Basis of assessment - persons other than companies.

15.(l) The assessable profits or gains of any person other than a company for each year of assessment shall be the profits or gains, computed in accordance with the provisions of this Act, of that year of assessment.

(2) For the purposes of (1) above, with the exception of the year in which the source of income ceases, any accounts or financial statements required to be submitted with a tax return shall be made up from 1 July or the date of commencement of the source of income if later to 30 June in the year of assessment.

(3) In the year of assessment in which a source of income ceases, any accounts or financial statements required to be submitted with a tax return shall be from 1 July in the year of assessment until the date the source of income ceases.

Basis of assessment – companies.

16.(1) Subject to the provisions of this Act , the assessable profits or gains of a company for an accounting period shall be the full amount of the profits or gains of the company for that accounting period.

(2) An accounting period of a company shall begin for the purpose of this Act whenever-

(a) that company is first registered in Gibraltar; or

(b) a previous accounting period ends.

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(3) An accounting period of a company shall end for the purposes of this Act on the first occurrence of any of the following –

(a) the expiration of 12 months from the beginning of the accounting period; or

(b) an accounting date of the company.

(4) Subject to subsections (1) to (3) above, where a company is wound up, an accounting period shall end and a new one begin with the commencement of the winding up, and thereafter each accounting period shall end on the expiration of each 12 month period save for the last accounting period which ends on completion of the winding up.

(5) Where it appears to the Commissioner that the beginning or end of any accounting period of a company is uncertain, he may to the best of his judgement make an assessment on that company for a period, not exceeding 12 months and that period shall be treated for all purposes as an accounting period for the purposes of the Act unless–

(a) it is revised by the Commissioner on consideration of further facts not previously made available; or

(b) an appeal is made against the assessment under which the proper accounting periods of the company are revealed.

(6) Where a company makes up its accounts for a period exceeding 12 months (an "extended accounting period"), the Commissioner shall, to obtain the measure of profits for the purposes of this Act, deem the profits to have accrued evenly over this extended accounting period and apportion by reference to time such profits so as to ascertain an initial accounting period ending on the company's accounting date and a subsequent accounting period comprising the remaining 12 months.

(7) If the Commissioner believes that any delaying of the accounting date of a company to a period beyond 12 months under subsection (6) above has been effected to reduce the amount of tax which would otherwise be payable, he shall ascertain the profits for assessment for the accounting periods comprised in the accounts presented in whichever way as he shall, in his discretion, think fit for the purposes of assessment to tax.

Gains or profits of employments.

17. Subject to section 19 below, 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.

Partnerships.

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18. Where a trade, business or profession is carried on by two or more persons jointly-

(a) the profits or gains of any person from the partnership for any period shall be deemed to be the share to which the person was entitled during that period in the profits or gains of the partnership, such profits or gains being ascertained in accordance with the provisions of this Act; and

(b) the assessable profits or gains of any person from the partnership shall be computed in accordance with the provisions of sections 15 and 16 by treating the person's share of the divisible profits or gains of the partnership as though it were profits or gains of a trade, business or profession.

Entities: power to make regulations.

18A. The Minister may by regulations prescribe how the tax liability of those entities described in the regulations are to be assessed for the purposes of this Act.

Income from occasional presence in Gibraltar.

19. No tax shall be charged on or payable on-

(a) emoluments from any office or employment, other than as specified in (b) below, where the duties of an office or employment other than duties ancillary to the office or employment are performed exclusively outside of Gibraltar other than as provided in paragraph 6 of Schedule 4;

(b) fees in respect of the office of director of a company; or

(c) remuneration from any trade, profession, business or vocation where the trade, service, consultation or advice other than activities ancillary to the trade, profession, business or vocation is performed, provided or given exclusively outside of Gibraltar other than as provided in Schedule 1 Table B,

paid to any person who is not ordinarily resident provided that such person receiving the payment is present in Gibraltar on less than 30 days in aggregate in any year of assessment.

Allowance of trade losses.

20.(1) Subject to subsection (2), the amount of a loss incurred in any period which forms the basis period for any year of assessment or any accounting period shall, except as is hereafter provided, be set off against what would otherwise have been assessable profits or gains for subsequent years of assessment or accounting periods.

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(2) (a) The amount of any such loss allowed to be set off in computing the assessable profits or gains of any year or accounting period shall not be set off in computing the assessable profits or gains of any other year or accounting period; and

(b) 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 taxation under this Act.

(3) In the case of a company, if within any period of three years there is both a change in the ownership of the 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 profits or gains of a basis period ending after the change of ownership.

(4) To be allowable under this section the loss claimed must be made in respect of a period for which an assessment could be made at the time of claim if the loss were to be a profit.

(5) For the purposes of this section, a change in ownership means a change in effective control, whether by virtue of a change in direct or indirect ownership of voting shares together with a change in beneficial ownership.

(6) In relation to accounting periods ending on or after 31 July 2024, the amount of loss which may be set off under subsection (1) by a Designated Person shall be limited to 50 percent of the measure of profits or gains computed in accordance with the provision of Schedule 3.

(7) For the purposes of this section-

"Designated Person" means-

(a) any person carrying on any regulated activity within the meaning of section 5 of the Financial Services Act 2019;

(b) any person carrying on any activity that would be licensable in accordance with section 3(1) of the Gambling Act;

(c) a connected person of the person referred to in (a) or (b).

"Connected person" has the meaning given in paragraph 9 of Schedule 4.

(8) Subsection (6) will not apply to companies defined under Section 3 of the Insolvency Act 2011 that are subject to insolvency proceedings and which are deemed to be Designated Persons under this Act.

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(9) Subsection (6) will not apply to the amount of loss incurred in any accounting period, or year of assessment, as the case may be, ending in the period extending from 1 July 2021 to 30 June 2023.

(10) A Designated Person shall set off losses incurred in any accounting period, or year of assessment, as the case may be, ending in the period extending from 1 July 2021 to 30 June 2023, before setting off losses incurred in other accounting periods, or years of assessment, as the case may be.

(11) The Minister may from time to time make regulations to-

(a) alter the percentage in subsection (6);

(b) designate any person as a "Designated Person" for the purposes of subsection (7); and

(c) determine the treatment of any relief, allowance or exemption under-

(i) this Act;

(ii) any other Act deemed to be part of this Act; and

(iii) any subsidiary legislation thereto.

Transfer of allowable trade losses.

20A.(1) Subject to the provisions of this section, where a trade or business is transferred to a separate legal entity and is part of a group restructure, any corresponding unrelieved tax losses arising previously in relation to that trade or business may be available to be set off against future profits of that separate legal entity.

(2) The transferred unrelieved tax losses referred to in subsection (1) above, shall only be available to set off against future profits if that trade or business would have been taxable under the provisions of this Act had it given rise to taxable profits.

(3) No set off shall be given under subsection (1) above, if within any period of three years from the date of transfer, there is a–

(a) change in the ultimate ownership of the company; and

(b) major change in the nature or conduct of that trade or business.

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(4) The unrelieved tax losses available for set off under subsection (1) above, shall be restricted proportionally, on the basis of income attributable to each share of the trade, to that part of the trade or business transferred.

(5) For the purposes of this section, a change in ownership means a change in effective control, whether by virtue of a change in direct or indirect ownership of voting shares together with a change in beneficial ownership.

(6) For the purposes of this section "group restructure" includes a re-organisation, take-over, merger or sale of a trade or business.

Valuation of trading stock on discontinuance of trade, etc.

21.(1) In computing for the purposes of this Act the profits or gains 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 follows-

(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 or the Previous Act, the assessable income or profits or gains 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) For the purposes of this section, the expression "trading stock", in relation to any person,

(a) means property of any description, whether real or personal, being either–

(i) 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

(ii) materials such as are used in the manufacture, preparation or construction of any such property as is referred to in subsection (i) above; and

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(b) includes any services, article or material which would, if the trade were a profession, be treated as work in progress of the profession and references to the sale or transfer of trading stock shall be construed accordingly.

Loans to shareholders or connected persons.

22.(1) If any amounts, which are not subject to a charge to tax under Chapter 6 of Schedule 7, are advanced or any assets are distributed by a company to any of its shareholders or persons, other than another company, who, in accordance with the definition in paragraph 9 of Schedule 4, are connected to that shareholder and who are ordinarily resident by way of advances or loans, or any payment is made by the company on behalf of or for the benefit of any of such 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 in the year of assessment in which the advance, distribution or payment is made and so be assessable accordingly.

(2) In forming his opinion for the purposes of subsection (1) above, the Commissioner shall be able to rely on the presumption that, unless it can demonstrate otherwise to the satisfaction of the Commissioner, a company in making a distribution is more likely to distribute its income before its capital and the income is distributed in the order it arose historically.

(3) 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.

Assessment of purchased life annuities.

23.(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-

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(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.

PART IV

RATE OF TAXATION AND ASSESSMENT

Rate of taxation.

24.(1) 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;

(b) different bandings of taxable income; and

(c) different descriptions of income.

(2) Schedule 6 shall apply to charge to tax at the higher rate specified therein companies engaged in certain activities in respect of the profits and gains arising from those activities.

Reliefs, allowances, etc.

25.(1) Subject to the provisions of this Act, the amount of profits or gains of a person for any basis period, shall be ascertained in accordance with the provisions of Schedule 3, together with such other deductions, exemptions, allowances and disallowances as the Minister may by rules prescribe.

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

(3) Subject to Section 26 for the purpose of ascertaining the amount of profits, gains or income chargeable to tax, there shall be such reliefs (personal or otherwise), exemptions, allowances, disallowances and deductions as the Minister may by rules prescribe.

Gifts to charity by individuals.

25A. The Minister may by rules make provision for the paying to charities of amounts equal to the tax paid by individuals making a donation to charity on such terms and conditions as the Minister may deem appropriate.

Tabling of Rules before Parliament and effects of annulment.

26.(l) Any rule made in pursuance of section 25, shall be laid before Parliament at the meeting thereof next ensuing after such rule has been made.

(2) If any such rule is annulled by 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 authorised but for that rule, shall be deemed to be an unauthorised 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.

(3) A delay in laying a rule made in pursuance of section 25 before Parliament shall not invalidate that rule.

Retrospective Effect.

27. Subject to proviso (b) to section 24 of the Interpretation and General Clauses Act, the rules made in pursuance of sections 24 or 25 may be given retrospective effect.

Taxpayers other than companies to make returns.

28.(1) Subject to subsections (2) to (12), every person other than a company who is liable to tax or has income assessable in accordance with this Act for a year of assessment shall make

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a full and complete return of his income for that year by 30th November immediately following the end of that year of assessment.

(2) Where the Commissioner is satisfied that given the circumstances of an individual and the fact that the tax due on any income accrued and derived outside Gibraltar will be reduced to nil through the granting of unilateral tax relief under Section 37, the Commissioner may, in his discretion, issue that individual confirmation to the above effect and that there is no requirement for the individual to make a return of that income for the purposes of this section.

(3) In the case of a trust-

(a) at least one of whose trustees is a professional trustee being either-

(i) a trustee licensed under the Financial Services (Investment and Fiduciary Services) Act 1989; or

(ii) a person who under the Financial Services (Investment and Fiduciary Services) Act 1989 is exempted from the requirement to obtain a licence to act as a trustee;

(b) has no liability to tax under this Act; and

(c) its beneficiaries have no liability to tax under this Act ,

subsection (4) shall apply.

(4) The trustees of a trust referred to in subsection (3) shall not be required to make a return in accordance with subsection (1), and subsection (5) shall apply to such a trust.

(5) Every trustee referred to in subsection (3)(a) shall make a declaration to the Commissioner that he is not trustee of any trust to which subsection (3) does not apply, except the trusts identified in that declaration.

(6) The declaration referred to in subsection (5) shall be made to the Commissioner not later than the 30th November each year in respect of the year of assessment ending in that year.

(7) An incorrect declaration made by a trustee in accordance with subsection (5) above shall be an offence for the purposes of section 66 of this Act.

(8) In the case of a foundation–

(a) at least one of whose councillors is a Gibraltar resident body corporate holding a licence issued under Section 8 of the Financial Services (Investment and Fiduciary

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Services) Act and classified as a Class VII licence under Schedule 1 to the Financial Services (Licensing) Regulations 1991;

(b) which has no liability to tax under this Act; and

(c) whose beneficiaries (if any) have no liability to tax under this Act,

subsection (9) shall apply.

(9) The councillors of a foundation referred to in subsection (8) shall not be required to make a return in accordance with subsection (1), and subsection (10) shall apply to such a foundation.

(10) Every councillor referred to in subsection (8)(a) shall make a declaration to the Commissioner that he is not councillor of any foundation to which subsection (8) does not apply, except the foundations identified in that declaration.

(11) The declaration referred to in subsection (10) shall be made to the Commissioner not later than the 30th November each year in respect of the year of assessment ending in that year.

(12) An incorrect declaration made by a councillor in accordance with subsection (10) above shall be an offence for the purposes of section 66 of this Act.

Companies to make returns.

29.(1) Subject to subsection (2) below, a company that is registered in Gibraltar or has assessable income under the provisions of this Act shall make a full and complete return of its income.

(2) A branch of a company situated in Gibraltar that has assessable income under the provisions of this Act shall, with effect from 1 January 2016, make a full and complete return in respect of the income of that branch.

(3) A company, or as the case may be, a branch that is obliged to file a return under this section shall do so within 9 months after the end of the month in which the accounting period ends.

(4) In the case of an extended accounting period in accordance with this Act, any return required under this section shall be filed within the 9 months immediately following the month in which the extended accounting period ends.

Returns- supplementary.

30.(1) A return made in accordance with sections 28 and 29 above shall–

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(a) be in a form specified by the Minister by notice in the Gazette;

(b) in the case of a company or, as the case may be, a branch with an assessable income of at least £1,750,000 in relation to an accounting period which does not exceed twelve months or the appropriate proportion of £1,750,000 computed on the basis of the number of months comprising the accounting period in relation to an accounting period which is less than twelve months, be accompanied by audited accounts;

(ba) in the case of a branch, paragraph (b) applies with effect from 1 January 2016;

(bb) in the case of a company or, as the case may be, a branch with an assessable income of less than £1,750,000 in relation to an accounting period which does not exceed twelve months or the appropriate proportion of £1,750,000 computed on the basis of the number of months comprising the accounting period in relation to an accounting period which is less than twelve months, be accompanied by accounts together with an independent accountant's report;

(c) in the case of a branch, paragraph (bb) applies with effect from 1 January 2016;

(ca) for the purposes of paragraph (bb) the following shall apply–

(i) the Minister may by regulations prescribe the applicable standards on which the independent accountant's report shall be based;

(ii) accounts shall be signed on behalf of the board by two directors of the company, or, if there is only one director, by that director;

(cb) in relation to paragraph (bb) above, an "independent accountant" means an individual who is approved in accordance with this Act to issue an independent accountant's report and is one that is-

(i) independent with respect to the entity on which he is issuing an independent accountant's report, and the Commissioner may make reference to the definition of connected persons specified in paragraph 9 of Schedule 4 for the purposes of satisfying himself as to the independence of any person; and

(ii) appropriately qualified by virtue of holding a practising certificate issued by a recognised international accountancy body;

(d) be accompanied by such information or documentation as is specified in the form or any notes accompanying the form published by the Minister in the Gazette;

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(e) subject to (f) below, be accompanied by payment of the tax due in accordance with the computation of liability which forms part of the return;

(f) in the case of any individual who has income which has been subject to deduction and withholding in accordance with the Income Tax (Pay As You Earn) Regulations 1989 ("the PAYE Regulations"), that part of any tax due which relates to the income subject to the PAYE Regulations calculated in accordance with (g) below will be due and payable in accordance with section 39(9);

(g) for the purpose of paragraph (f) the part of the tax due which is treated as relating to the income subject to the PAYE Regulations shall be calculated on the basis that the income subject to the PAYE Regulations is charged to tax before the income other than that subject to the PAYE Regulations.

(2) Although the Commissioner may issue returns in the specified form to persons who he believes may be subject to a liability at the end of each tax year, the obligation under subsection (1) is independent of the issue of a return by the Commissioner and the failure of the Commissioner to issue a return does not diminish the obligation of any person to comply with subsection (1).

(3) The Minister may by regulations increase or decrease the level of assessable income below which a return made in accordance with section 29 is to be accompanied by an independent accountant's report.

Returns required for the purposes of International Tax Agreements.

30A.(1) Notwithstanding the provisions of sections 28, 29 and 30 of this Act, the Minister may make regulations to enable the Commissioner to issue to any person a return of information required for complying with an International Tax Agreement.

(2) The return referred to in subsection (1) must be in the form specified by the Minister by notice in the Gazette.

Assessing procedure.

31.(1) Subject to the provisions of this Act and to paragraph (d) below, assessments to tax shall be made by the Commissioner, and–

(a) if the Commissioner is satisfied that any return made under the Act affords correct and complete information concerning income in respect of which tax is chargeable, he shall make an assessment accordingly;

(b) if it appears to the Commissioner that there is any income in respect of which tax is chargeable and which has not been included in a return made under section 28

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or, as the case may be, section 29 or if the Commissioner is dissatisfied with any such return, he may make an assessment to tax to the best of his judgment;

(c) in relation to paragraph (b) above, where tax is chargeable for a year of assessment in respect of income arising in that year, the Commissioner may make an assessment during that year of assessment to the best of his judgment, by reference to actual income or estimated income (whether from any particular source or generally) or partly by reference to one and partly by reference to the other;

(d) where the Commissioner has reason to believe that a person ceases to have any source of income in a year of assessment, he may make an assessment on that person at any time during that year of assessment notwithstanding the provisions of sections 28 to 30.

(2) Where the Commissioner is dissatisfied with a return he may give notice under this subsection to any person of his intention to enquire into–

(a) the return on the basis of which the person whose tax liability is being assessed ("the Taxpayer") has made a statement in accordance with the requirements of sections 28 and 30 or, as the case may be, sections 29 and 30; or

(b) any amendment made to that return on the basis of which that statement has been amended by the Taxpayer.

(3) For the purpose of enquiring into the return or an amendment made to the return, the Commissioner may at the same or at any subsequent time issue to the Taxpayer a notice or notices under section 32.

(4) An enquiry under this section may be made at any time not later than one year after the date of the receipt of any return required to be delivered under section 28 or, as the case may be, section 29.

(5) Subsection (4) above shall not apply if the Taxpayer, or any person acting on behalf of the Taxpayer, has committed any form of fraudulent or wilful default or negligent conduct in the failure to comply with any notice issued in relation to this section.

Ordinary time limit of six years for making assessments.

31A. Subject to the provisions of this Act, an assessment to tax may be made at any time not later than six years after the end of the year of assessment or, as the case may be, accounting period to which the assessment relates.

Power to make enquiries on return.

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32.(1) This section applies where the Commissioner has given notice of his intention to enquire under section 31 to the Taxpayer.

(2) For the purposes of an enquiry under section 31(2), the Commissioner may by notice in writing require the Taxpayer, within such time (which shall not be less than 30 days) as may be specified in the notice–

(a) to produce to the Commissioner such documents as are in the Taxpayer's possession or power and as the Commissioner may require for the purpose of determining whether and, if so, the extent to which the return is incorrect or incomplete or the amendment is incorrect; and

(b) to furnish to the Commissioner such accounts or audited accounts or particulars as he may require.

(3) For the purposes of complying with a notice under subsection (2) above, copies of documents may be produced instead of originals, but–

(a) the copies must be photographic or otherwise by way of facsimile or portable document format; and

(b) if the Commissioner so requires, he may by giving notice in writing demand that the original of a document be produced in relation to any document specified in the notice within such time (which shall not be less than 30 days) as may be specified.

(4) The Commissioner may take copies of, or make extracts from, any document produced to him under subsection (2) or (3) above.

(5) An appeal may be made by the Taxpayer to the Tribunal in respect of any requirement imposed by a notice under subsection (2) above;

(6) An appeal under subsection (5) above must be brought within the period of 30 days beginning with the date on which the notice under subsection (2) above is given and shall be made in writing addressed to the Commissioner.

(7) A notice under subsection (2) above does not oblige the Taxpayer to produce documents or furnish accounts or particulars relating to the conduct of any pending appeal by that Taxpayer.

(8) Subject to subsection (9) below, the provisions of Schedule 2 relating to appeals shall have effect in relation to an appeal under subsection (5) above as they have effect in relation to an appeal against an assessment to tax.

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(9) On an appeal under subsection (5) above, paragraph 13 of Schedule 2 shall not apply but the Tribunal may–

(a) if it appears to it that the production of the document or the furnishing of the accounts, audited accounts or particulars are required by the Commissioner for the purposes mentioned in subsection (2) above, confirm the notice issued under that subsection; or

(b) if it appears to it that the production of the document or the furnishing of the accounts, audited accounts or particulars are not required by the Commissioner for the purposes mentioned in subsection (2) above, set aside the notice to such extent as it considers necessary.

(10) For the purposes of this section, "document" includes books, contracts, vouchers and receipts.

Offence of falsification etc. of documents in relation to a notice under section 32.

32A.(1) A person shall be guilty of an offence if he intentionally falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, a document which he has been required by notice under section 32 to deliver or make available for inspection.

(2) A person guilty of an offence under subsection (1) above shall be liable–

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

Assessing procedure where no return is delivered.

33.(1) Where–

(a) a return is required under section 28 or, as the case may be, section 29; and

(b) the required return is not delivered on or before the date specified in section 28 or, as the case may be, section 29,

the Commissioner may to the best of his judgment make an assessment on the person named in the return during that year of assessment or, as the case may be, accounting period by reference to actual income or estimated income (whether from any particular source or generally), or partly by reference to one and partly by reference to the other.

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Additional, amended and discovery assessments.

34.(l) If the Commissioner discovers–

(a) that any income which ought to have been assessed to tax has not been assessed; or

(b) that an assessment to tax is or has been insufficient,

the Commissioner may make an assessment or assessments in the amount or further amounts which ought in the opinion of the Commissioner to be charged.

(2) Subject to the provisions of this section, any assessment to tax made under this Act may be amended at any time by the Commissioner in the amount which ought in the opinion of the Commissioner to be charged.

(3) Amendments to an assessment to tax may be made at any time not later than six years after the end of the year of assessment or, as the case may be, accounting period to which the assessment relates.

(4) Notwithstanding the provisions of section 38, where any form of fraud, wilful default or neglect has been committed by or on behalf of any person in connection with or in relation to taxation for any year of assessment, or, as the case may be, accounting period, assessments or additional assessments may be made on that person at any time not later than twenty years after the end of the year of assessment or, as the case may be, the accounting period to which the assessment relates.

Service of assessments and appeals.

35.(1) An assessment served in accordance with this Act shall be by a notice served in accordance with section 10 stating the amount of profits or gains of the person assessed, the taxation payable by that person, the place at which such payment should be made, and shall inform the person of the rights under subsection (2).

(2) (a) If any person disputes an assessment, that person may appeal against that assessment by notice in writing addressed to the Commissioner within twenty eight days from the date of the service of the notice of assessment.

(b) Any appeal under (a) above shall be to the Tribunal.

(3) The notice of appeal against any assessment shall state the grounds of the appeal, in such reasonable detail as to enable all parties to the appeal to be aware of the issues to be contested

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and no grounds of which the Commissioner has not been given notice at least 14 days prior to the hearing of the appeal shall be contested in the appeal.

(4) If the person disputing the assessment was prevented from making the appeal within the specified period owing to any reasonable cause, that person may apply to the Commissioner for the appeal to be brought out of time.

(a) 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.

(b) Where the Commissioner is not so satisfied he shall refer the application to the Tribunal for their decision on the admission of the late appeal.

(5) Where a person, who has appealed against an assessment, agrees with the Commissioner as to the amount to which that person 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.

(6) Notice of any amended assessment as determined on appeal shall be served by the Commissioner on the appellant, and any further taxation shall be due and payable immediately and the provisions of section 64 will apply on the basis that the due and payable date of the further taxation is that stated in section 39.

(7) Nothing in subsection (6) shall require payment of taxation to be made earlier than would be required under section 39 had no appeal been brought.

Application for postponement of taxation payable.

36.(1) Any person other than a company who, having complied with section 28 or any company who having complied with section 29, has been assessed in accordance with section 31(2)(a) and who has appealed against the amount of the profits or gains assessed may submit an application to the Commissioner to have postponed collection of all or part of the taxation shown as payable on the assessment other than that part of the taxation which is not in dispute.

(2) An application under subsection (1) shall be made in writing to the Commissioner within twenty eight 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) The Commissioner on receipt of an application under subsection (2) above may at his discretion allow the postponement of part or all of the tax assessed for whatever period he considers appropriate up to three months in aggregate.

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(4) A decision made in accordance with subsection (3) above shall be communicated to the person applying for postponement by notice in writing.

(5) If the person applying for postponement does not pay the part of the tax assessed which the Commissioner decides is not to be postponed within 30 days of the issue of the notice under subsection (4) then the Commissioner's decision under subsection (3) will be null and void and all the tax assessed will be payable immediately and remain to be treated as due and payable on its original due and payable date.

(6) If in the course of the Commissioner's enquiries into the liability relating to the notice of assessment subject to postponement, the Commissioner believes that the tax ultimately due will exceed that left payable following the decision under subsection (3) to allow postponement, he may, by notice in writing to the applicant revise his original decision and reduce the amount of the tax postponed.

(7) If the person who made the application does not pay any payment due following a reduction in the amount to be postponed in accordance with subsection (6) within 30 days of the issue of the notice in writing by the Commissioner, the original decision of the Commissioner under subsection (3) will be null and void and all the tax assessed will be payable immediately and remain to be treated as due and payable on its original due and payable date.

(8) If in the course of the Commissioner's enquiries into the liability under the notice of assessment the Commissioner believes that it would be just and fair to extend the period of postponement of tax previously given under subsection (3) he may do so by notification to the applicant in writing, save that the Commissioner may only extend the total period of postponement to a maximum of 4 months.

(9) Nothing in this section shall require payment of taxation to be made earlier than would be required under section 39 had no application been made.

(10) For the purposes of calculating any surcharge due under section 64, the postponement of collection of taxation under this section shall not affect the due and payable date of any taxation which is ultimately found to be due.

(11) (a) If, following an application under this section, the tax ultimately found due to be payable on the assessment is less than the amount postponed and paid, then the difference shall be repaid to the applicant together with interest from the date the tax was paid until the date the difference is repaid.

(b) The interest due under subsection (11)(a) above shall be calculated in accordance with the "Interest rates on tax overpaid" to be published by the Minister in the Gazette from time to time.

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Relief in respect of foreign tax paid.

37.(1) Subject to subsections (2) and (8), any person who has paid, by deduction or otherwise, or is liable to pay, taxation under this Act in respect of any profits or gains derived from sources within Gibraltar or within any other country, territory or jurisdiction and who proves to the satisfaction of the Commissioner that he or it has paid by deduction or otherwise, or is liable to pay income tax in the other country, territory or jurisdiction in respect of the same profits or gains, shall be entitled to relief from taxation under this Act paid or payable by him in respect of those profits or gains of an amount equal to the lesser of the two following amounts-

(a) the taxation under this Act in respect of the said profits or gains, or

(b) the income tax in the other country, territory or jurisdiction in respect of that income.

(2) Where any relief from income tax, profits tax, or excess profits levy in the other country, territory or jurisdiction is allowable under the legislation for the purpose of giving unilateral relief from double taxation in the other country, territory or jurisdiction in respect of taxation paid under this Act in respect of the said profits or gains, the amount of the relief under this rule shall be reduced by the amount of that relief in the other country, territory or jurisdiction.

(3) For the purposes of this rule the amount of the income tax in the other country, territory or jurisdiction in respect of any profits or gains shall be calculated without any reduction on account of any relief allowable under the legislation for the purpose of giving unilateral relief from double taxation in the other country, territory or jurisdiction, in respect of taxation paid under this Act and a certificate issued in any particular case by or on behalf of the equivalent in that country, territory or jurisdiction of the Commissioner shall be receivable in evidence to show the said amount or the amount of any relief from income tax or corporation tax which is allowable in the other country, territory or jurisdiction under the said provisions.

(4) For the purposes of this rule the amount of the taxation under this Act in respect of any profits or gains for any year of assessment or accounting period shall be taken to be an amount which bears the same relation to the total amount of the taxation paid or payable under this Act for that year (before the deduction of any relief granted under this rule) as the amount of the said profits or gains charged to taxation for that year or accounting period bears to the total amount of the profits or gains in respect of which the taxation paid or payable has been charged.

(5) Any claim to relief under this rule shall be made not later than 6 years after the end of the year of assessment or accounting period to which it relates.

(6) Where the amount of any relief given under this rule is rendered excessive or insufficient by reason of any adjustment of the taxation paid or payable under this Act, or of the amount

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of the income tax in the other country, territory or jurisdiction, or of the amount of any relief from income tax or corporation tax in the other country, territory or jurisdiction in respect of taxation paid under this Act, nothing in this Act limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than 6 years from the time when all such assessments, adjustments and other determinations have been made, whether in Gibraltar or in the other country, territory or jurisdiction, as are material in determining whether any, and if so what relief falls to be given.

(7) For the purpose of this section "Income Tax" shall include any tax calculated on a similar basis or of a similar nature to the taxation imposed by this Act levied in another country, territory or jurisdiction.

(8) This section shall apply only to tax paid in a country in, or from, which the revenue generated by the underlying business activity which has given rise to the profits or gains referred to in subsection (1) has arisen.

(8A) This section shall not apply to tax paid or payable under this Act by any person on income accruing in or derived from Gibraltar to which this section would otherwise apply only by virtue of the fact that the country in which he is resident for tax purposes charges that income to tax on the basis of his residence in that country.

(9) The Minister may from time to time make regulations for the carrying out of the provisions of this section and the circumstances in which relief may be granted under this section.

Assessments to be final and conclusive.

38.(1) Subject to subsection (2) and section 34, except as expressly provided in this Act, where no valid appeal has been lodged within the time limited as provided in section 35 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 35(5) 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 and-

(a) subject to (b), any repayment of tax paid in advance of the making of the assessment, the agreement of the liability, or its determination or confirmation on appeal, which is due shall be made within 30 days immediately after the finality of the assessment, the agreement of the tax liability or its determination or confirmation, as the case may be;

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(b) the making of a repayment under (a) above shall be subject to the right of the Commissioner to first set any amount repayable against any arrears of payment of tax deducted under the Income Tax (Pay As You Earn) Regulations 1989 or social insurance.

(2) Nothing in this section shall prevent the Commissioner from making any refund under the provisions of section 61 or any assessment or additional assessment for any year of assessment or accounting period which does not involve re-opening any matter which has been determined on appeal for the year or period.

PART V

PAYMENT OF TAXATION

Time within which payment is to be made.

39.(1) Subject to subsections (2) to (9) the taxation for any year of assessment or accounting period shall be due and payable-

(a) in the case of a person other than a company, no later than 30 November in the year following the year of assessment;

(b) in the case of a company, no later than 9 months after the end of the month in which the accounting period ends.

(2) (a) Any person other than a company (the "Taxpayer") shall make two payments on account towards their liability for a year of assessment each of which shall be of an amount equal to 50 per cent of the tax liability in respect of the immediately preceding year of assessment, subject to (b) below;

(b) for the purposes of (a) above–

(i) the liability used in determining the basis for the payment on account shall be any income falling within paragraph (2) of Table A of Schedule 1 and paragraph (2) of Table B of Schedule 1 assessed in the preceding year of assessment; and

(ii) in calculating the liability to be used for the purposes of this subsection the amounts set out in (i) above are deemed to be charged to tax immediately after any income which has been subject to deduction and withholding in accordance with the Income Tax (Pay As You Earn) Regulations 1989 on the basis that such income is charged to tax before any other income chargeable in accordance with this Act.

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(3) The payments referred to in subsection (2) above shall be made on or before 31st January and 30th June in the year of assessment and shall be set off against the amount to be paid on the submission of the return for the relevant year of assessment for the purposes of calculating any amount due to be paid by or repaid to the taxpayer at the date of submission of the return.

(4) (a) A company shall make a payment on account of its future liabilities on or before 28 February and 30 September in each accounting period;

(b) in accordance with the Table in Schedule 10, the payments on account payable in accordance with paragraph (a) shall be in two equal instalments of 50 per cent of the tax payable for the relevant accounting period;

(c) for the purposes of paragraph (b) the "relevant accounting period" means the accounting period used as a basis in determining the payments on account and is the accounting period whose due and payable date precedes the date of the first payment on account in accordance with the Table in Schedule 10;

(d) the Table in Schedule 10 shall apply for the purposes of determining the relevant accounting period;

(e) the payments on account made in an accounting period shall be set off against the tax due for that accounting period and any excess of the payments on account made for the accounting period over the tax due for that accounting period shall be repayable;

(f) where a company has changed its accounting date, the relevant accounting period for the purposes of paragraph (b) shall continue to be determined by reference to the previous accounting date until such time as there is an accounting period, determined in accordance with this Act, made up to the new accounting date of the company;

(g) where the relevant accounting period contained in the Table in Schedule 10 is derived from an extended accounting period ending on or after 1 January 2016 and determined under section 16(6) of this Act, the corresponding tax payable for such an extended accounting period shall be deemed to have accrued evenly over that period and shall for the purposes of this section be apportioned by reference to time to an equivalent period of 12 months;

(h) where the relevant accounting period contained in the Table in Schedule 10 is an accounting period of less than 12 months, the corresponding tax payable for such a period shall be deemed to have accrued evenly over that period and shall for the purposes of this section be grossed up by reference to time to an equivalent period of 12 months.

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(5) Where the Taxpayer believes that the payment on account required under subsection (3) or (4) will exceed the liability payable for the year of assessment or accounting period an application may be made to the Commissioner for discharge in whole or in part from the obligation to make the payment on account.

(6) On receipt of an application under subsection (5) above where the Commissioner is satisfied that the required payment on account will exceed the liability payable, he may discharge the taxpayer from the obligation to make the payment on account or modify the obligation to a reduced amount, as he may consider appropriate in the circumstances.

(7) For the avoidance of doubt a payment on account due under this section will be subject to surcharge under section 64 in the same manner as tax payable on the due and payable date and any excess over the tax which would have been paid on account had there been no application for discharge and the tax which is paid on account subsequent to an application for discharge which is later found to be payable shall be treated as due for the purposes of section 64 on the date the payment on account was originally due as if no application for discharge had been made and the surcharge shall be levied accordingly.

(8) The Minister may make regulations for the purposes of the administration or interpretation of this section.

(9) Any tax charged under an assessment made in accordance with section 33(1)(b) shall be due and payable 60 days after the date the assessment is made.

PART VI

ANTI AVOIDANCE

Anti-avoidance.

40.(1) Where the Commissioner believes that a person who is or would otherwise be chargeable to taxation in accordance with this Act has entered into an arrangement which eliminates, reduces or would eliminate or reduce the amount of the taxation payable and that arrangement is artificial, is fictitious or has elements which are artificial or fictitious, he may disregard the arrangement or those parts of it which eliminate or reduce the taxation payable and assess the person on the amount of the taxation due in the absence of the arrangement or those parts of the arrangement which the Commissioner disregards.

(2) The Minister may make regulations for the purposes of preventing the avoidance of liability to tax by any fictitious or artificial arrangements or any other arrangements which have as their aim or effect the elimination or reduction of tax which would otherwise be due or payable.

(3) This section shall be construed in such manner as best secures consistency between-

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(a) subsection (1) above;

(b) internationally accepted principles for the determination of profit in respect of activities within a multinational group of companies, notably the rules which, at the date this Act came into effect, were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development;

(c) all the documents published by the Organisation for Economic Co-operation and Development, at any time before the date this Act came into effect, as part of their Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, together with such documents issued by that Organisation on or after the date this Act came into effect which are designated by an order made by the Minister and published in the Gazette as comprised in the transfer pricing guidelines.

(4) The provisions of this Part and Schedule 4 shall apply in addition to subsection (1).

(5) The Minister may make regulations to prevent the avoidance or deferral of tax by the shareholders of a company by the accumulation in the company of income profits arising after the commencement of this Act or by the voluntary liquidation of the company.

Notification of arrangements.

41.(1) Meaning of "notifiable arrangements" and "notifiable proposal".

(a) In this Section "notifiable arrangements" means any arrangements which–

(i) fall within any description prescribed by the Minister by regulations; or

(ii) enable, or might be expected to enable, any person to obtain an advantage in relation to any tax under this Act that is so prescribed in relation to arrangements of that description; or

(iii) are such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that advantage.

(b) In this section "notifiable proposal" means a proposal for arrangements which, if entered into, would be notifiable arrangements (whether the proposal relates to a particular person or to any person who may seek to take advantage of it).

(2) Meaning of "promoter"-

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(a) For the purposes of this Section a person is a promoter–

(i) in relation to a notifiable proposal, if, in the course of a relevant business–

(aa) he is to any extent responsible for the design of the proposed arrangements;

(bb) he makes the notifiable proposal available for implementation by other persons;

(cc) he advises or recommends to any person the construction or implementation of the proposed arrangements; or

(dd) he otherwise howsoever assists any person in becoming aware of or accessing the proposed arrangement; or

(ee) he otherwise howsoever assists any person in becoming aware of, contacting or introducing any other person for any purpose connected with or relating to the proposed arrangements,

and

(ii) in relation to notifiable arrangements, if he is by virtue of paragraph (i) (bb) a promoter in relation to a notifiable proposal which is implemented by those arrangements or if, in the course of a relevant business, he is to any extent responsible for-

(aa) the design of the arrangements;

(bb) the organisation or management of the arrangements; or

(cc) the tendering of advice on, marketing or in any way participating in the implementation of any notifiable proposal.

(b) In this section "relevant business" means any trade, profession or business which–

(i) involves the provision to other persons of services relating to taxation including advice relating to taxation;

(ii) is carried on by a bank, being an institution licensed to take deposits under the Financial Services (Banking) Act or any similar legislation in any other country, territory or jurisdiction; or

(iii) involves the provision of financial products which are capable of reducing the incidence of taxation.

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(c) Subject to (d) below for the purposes of this section anything done by a company is to be taken to be done in the course of a relevant business if it is done for the purposes of a relevant business falling within subsection (b) carried on by another company which is a member of the same group.

(d) For the purposes of (c) above two companies shall be deemed to be members of the same group of companies, if one is the 50 or more per cent subsidiary of the other or both are 50 or more per cent subsidiaries of a third company.

(e) A person is not to be treated as a promoter for the purposes of this Section by reason of anything done in prescribed circumstances.

(3) Duties of promoter-

(a) The promoter must, within the thirty days after the relevant date, provide the Commissioner with prescribed information relating to any notifiable proposal.

(b) In subsection (a), "the relevant date" means the earlier of the following–

(i) the date on which the promoter makes a notifiable proposal available for implementation by any other person, or

(ii) the date on which the promoter first becomes aware of any transaction forming part of notifiable arrangements implementing the notifiable proposal.

(c) The promoter must, within the prescribed period after the date on which he first becomes aware of any transaction forming part of any notifiable arrangements, provide the Commissioner with prescribed information relating to those arrangements, unless those arrangements implement a proposal in respect of which notice has been given under subsection (a).

(d) Where two or more persons are promoters in relation to the same notifiable proposal or notifiable arrangements, compliance by any of them with subsection (a) or (c) discharges the duty under either of those subsections of the other or others.

(e) Where a person is a promoter in relation to two or more notifiable proposals or sets of notifiable arrangements which are substantially the same (whether they relate to the same parties or different parties), he need not provide information under subsection (a) or (c) if he has already provided information under either of those subsections in relation to any of the other proposals or arrangements.

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(4) Duty of person dealing with promoter outside Gibraltar-

(a) Any person ("the client") who enters into any transaction forming part of any notifiable arrangements in relation to which–

(i) a promoter is resident outside Gibraltar, and

(ii) no promoter is resident in Gibraltar

must, within the prescribed period after doing so, provide the Commissioner with prescribed information relating to the notifiable arrangements.

(b) Compliance with subsection (3) by any promoter in relation to the notifiable arrangements discharges the duty of the client under subsection (a).

(5) Duty of parties to notifiable arrangements not involving promoter-

Any person who enters into any transaction forming part of notifiable arrangements as respects which neither he nor any other person in Gibraltar is liable to comply with subsection (3) (duties of promoter) or subsection (4) (duty of person dealing with promoter outside Gibraltar) must within 30 days of entering into the transaction provide the Commissioner with prescribed information relating to the notifiable arrangements.

(6) Arrangements to be given reference number-

(a) Where a person complies with this section in relation to any notifiable proposal or notifiable arrangements, the Commissioner may within 30 days–

(i) allocate a reference number to the notifiable arrangements or, in the case of a notifiable proposal, to the proposed notifiable arrangements, and

(ii) if he does so, notify the person of that number.

(b) The allocation of a reference number to any notifiable arrangements (or proposed notifiable arrangements) is not to be regarded as constituting any indication by the Commissioner that the arrangements could as a matter of law result in the obtaining by any person of a tax advantage.

(c) In this Section "reference number", in relation to any notifiable arrangements, means the reference number allocated under this subsection.

(7) Duty of promoter to notify client of number-

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(a) Any promoter who is providing services to any person ("the client") in connection with notifiable arrangements must, within 30 days after the relevant date, provide the client with prescribed information relating to any reference number that has been notified to the promoter by the Commissioner–

(i) in relation to those arrangements, or

(ii) in relation to arrangements which are substantially the same as those arrangements (whether made between the same parties or different parties).

(b) In subsection (a) "the relevant date" means–

(i) the date on which the promoter first becomes aware of any transaction forming part of the notifiable arrangements; or

(ii) if later, the date on which the number is notified to the promoter under subsection (6).

(8) Duty of parties to notifiable arrangements to notify Commissioner of number, etc.-

(a) Any person who is a party to any notifiable arrangements must provide the Commissioner with prescribed information relating to–

(i) any reference number notified to him under subsection (6) by the Commissioner or under subsection (7) by the promoter; and

(ii) the time when he obtains or expects to obtain by virtue of the arrangements any advantage in relation to any relevant tax.

(b) For the purposes of subsection (a) a tax is a "relevant tax" in relation to any notifiable arrangements if it is prescribed in relation to arrangements of that description by regulations under this section.

(c) Regulations under subsection (11) may–

(i) in prescribed cases, require the number and other information to be included in any return or account which the person is required by or under any enactment to deliver to the Commissioner; and

(ii) in prescribed cases, require the number and other information to be provided separately to the Commissioner at the prescribed time or times.

(9) Legal professional privilege-

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(a) Nothing in this Section requires any person to provide information which would reveal confidential communications between a client and an attorney, solicitor or barrister where such communications are-

(i) produced for the purposes of seeking or providing legal advice; or

(ii) produced for the purposes of use in existing or contemplated legal proceedings.

(b) Information held with the intention of furthering an offence is not subject to legal privilege and nothing in (a) above shall prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.

(10) The information required under this section must be provided at the place and in the form and manner as the Commissioner may specify by notice in writing.

(11) Regulations-

The Minister may make regulations for the purposes of the effective operation of this section.

(12) Interpretation of this Section-

(a) In this Section–

"advantage", in relation to any tax imposed under this Act, means–

(i) relief or increased relief from, or repayment or increased repayment of, that tax, or the avoidance or reduction of a charge to that tax or an assessment to that tax or the avoidance of a possible assessment to that tax,

(ii) the deferral of any payment of tax or the advancement of any repayment of tax, or

(iii) the avoidance of any obligation to deduct or account for any tax;

"arrangements" includes any scheme, transaction or series of transactions;

"prescribed", means prescribed by regulations made by the Minister.

Procedures for clearance in advance.

42.(1) Where a person (for the purposes of this section "the Applicant")-

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(a) seeks confirmation from the Commissioner that a transaction, transactions, arrangement or arrangements effected or to be effected by the Applicant (for the purpose of this section "the Arrangement") is not taxable in accordance with Section 40 or Schedule 4; and

(b) agrees that the Commissioner may publish a description of the Arrangement and his decision in relation to the Arrangement redacted in such a way that the taxpayer will remain anonymous,

the Applicant shall furnish to the Commissioner full particulars of the Arrangement in writing.

(2) If the Commissioner is of the opinion that the particulars, or any further information furnished in pursuance of this section, are not sufficient for the purposes of making a decision under this section, he shall within 21 days of the receipt thereof notify the Applicant what further information he requires for those purposes.

(3) If the Applicant fails to furnish the information requested under subsection (2) to the Commissioner within 21 days from the notification, or such further time as the Commissioner may allow, the Commissioner shall not be required to proceed further under this Section.

(4) The Commissioner shall within 21 days of the receipt of the particulars, or, where subsection (2) has effect of all further information required, notify the Applicant that-

(a) he is satisfied that the Arrangement as described in the particulars were or will be such that either or both of Section 40 or Schedule 4 will apply;

(b) he is satisfied that the Arrangement as described were or will be such that neither Section 40 nor Schedule 4 nor both will apply; or

(c) he requires a further 21 days to consider the information received and make a decision.

(5) If the Commissioner notifies the Applicant that he is satisfied, in accordance with subsection (4)(b) the provisions of Section 40 or Schedule 4 shall not apply to the Applicant in respect of that Arrangement.

(6) If the Commissioner has not given a decision in writing by the end of the 21 days specified in subsection (2) or (4) the Applicant may by notice in writing seek a decision from the Commissioner within 21 days of the receipt of the notice by the Commissioner.

(7) On receipt of a notice in writing under (6) above, the Commissioner may notify the Applicant that-

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(a) he is satisfied that the Arrangement as described in the particulars were or will be such that either or both of Section 40 or Schedule 4 will apply;

(b) he is satisfied that the Arrangement as described were or will be such that neither Section 40 nor Schedule 4 nor both will apply; or

(c) of any further information he requires for the purpose of making his decision under this Section and any such request will be treated as if it were a request under subsection (2) for the purposes of subsections (3) and (4).

(8) If the Commissioner fails to give a decision within the period specified by (6) above the Applicant may, without prejudice to the general powers of the Commissioner to make assessments for other reasons, rely on the failure to decide as acceptance by the Commissioner that the provisions of Section 40 or Schedule 4 shall not apply to him in respect of that Arrangement.

(9) If the particulars, and any further information given under this section with respect to any Arrangement, are not such as to be a full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the Commissioner, or if such facts and circumstances change, any notification given by the Commissioner under this section shall be void.

(10) In no event shall the giving of a notification under this section with respect to any Arrangement, prevent Section 40 or Schedule 4 applying to an Applicant in respect of transactions or arrangements which include that Arrangement or all or some of that Arrangement and also include another transaction or other transactions or another arrangement or other arrangements.

(11) Where the Commissioner gives an advance notice of his interpretation of any provision of the Act in relation to the facts of a specific situation or in relation to the treatment of an individual taxpayer which he believes is suitable for application in similar situations, he shall publish his interpretation or application, in a form which leaves the taxpayer anonymous, either as updated guidance notes or by notice in the Gazette.

(12) The Commissioner shall give no advance notice of interpretation or clearance other than under the condition that the taxpayer seeking the advanced notice or clearance is willing to accept publication in accordance with (11).

Notification of exercise of anti-avoidance provisions.

43.(1) Any decision of the Commissioner under sections 40 or Schedule 4 must be served on any person affected in writing and must identify-

(a) the person on whom the tax shall be assessed;

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(b) the parts of the arrangements which are to be disregarded or are affected;

(c) the reasons for the Commissioner's decision; and

(d) the amount of the assessment or further assessment proposed or, if an assessment has already been made and is under appeal, the amended assessment proposed.

(2) An appeal may be brought against the decision of the Commissioner under subsection (1) and subject to the provisions of subsection (3) the provisions of Section 35 relating to appeals shall have effect in relation to an appeal against such a decision as they have effect in relation to an appeal against an assessment to taxation.

(3) On an appeal against a decision of the Commissioner under subsection (2), paragraph 13 of Schedule 2 shall not apply but the Tribunal may confirm the decision of the Commissioner or remit that decision back to him for his reconsideration on their findings on the law and facts.

PART VII

CHARGEABILITY OF AND ACTS TO BE DONE BY AGENTS AND OTHERS

Chargeability of trustees and other representatives.

44.(1) Subject to subsection (2), 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.

(2) 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

45.(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, 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

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(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) 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

46. The person who is chargeable in respect of an incapacitated person, or in whose name a non-resident person 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.

Deceased persons

47.(1) Subject to subsection (2), when an individual dies, then, as respects income arising before his death, all rights and duties which would have attached to him and any liability with which he would have been charged or any liability for any tax which he would be due to pay had he 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.

(2) Any assessment or additional assessment on any income referred to in subsection (1) shall not be made later than the end of the third year of assessment following that in which the deceased died.

(3) In assessing the income of a deceased person, any deduction allowable under any of the provisions of rules 6 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.

Joint trustees

48. 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.

Managers of Companies

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49. The manager or other principal officer in Gibraltar of every company chargeable under this Act 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 and payment of taxation.

Commissioner to Appoint Agents.

50.(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 person for the purposes of this Act, and may be required to pay any taxation due from any moneys, 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 taxation shall be recoverable from him as if the taxation were a debt due from him under this Act.

(2) In respect of a company each and every director or shadow director of that company shall be deemed to be the agent of that company for the purposes of this section.

(3) 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 person.

(4) A person declared by the Commissioner to be the agent of any person under the provisions of subsection (1) who is aggrieved by that declaration may appeal against the declaration of the Commissioner and the provisions of the Act shall subject to subsection (5) have effect in relation to an appeal against such a declaration as they have effect in relation to an appeal against an assessment to tax.

(5) On an appeal against a declaration made under this section, paragraph 13 of Schedule 2 shall not apply but the Tribunal may either confirm or quash the declaration of the Commissioner.

Indemnification of agents.

51. Every person answerable under this Act for the payment of taxation on behalf of another person may retain out of any money coming into his hands on behalf of such person so much thereof as shall be sufficient to pay such taxation; 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.

Company wound up.

52.(1) Where a company is being wound up, the liquidator of that company shall not distribute any of the assets of the company to the shareholders thereof or dispose of the company or any assets of the company to any person or persons connected with (as defined in paragraph 9 of

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Schedule 4) the company or shareholders of the company unless he has made provision for the payment in full of any taxation which may be payable by that company.

(2) For the purposes of this section and section 305(1) of the Companies Act "taxation which may be payable by the company" means any sum due under this Act at the relevant date (as defined in the Companies Act) from the company.

PART VIII

ASSESSMENT AND WITHHOLDING

Assessment Record.

53.(1) All assessments made under this Act shall be made by the Commissioner who shall be responsible for keeping a record of all those assessments made.

(2) The Commissioner shall either-

(a) retain under his power and possession a copy of each assessment made other than by electronic means,

(b) where the assessment is made by electronic means, retain the contents of the document supported by an electronic signature and an accreditation certificate in the manner identified in section 21 of the Electronic Commerce Act 2001.

(3) For the purpose of any proceedings in which an assessment needs to be produced a copy originating from (2)(a) or (b) shall in the absence of manifest error be final and conclusive evidence of the making of the assessment and its contents.

Errors and Defects in Assessments, etc.

54.(l) 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 company chargeable to taxation assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) Where in cases of assessment the notice thereof shall be duly served on the person intended to be assessed and such notice shall contain in substance and effect the particulars on which the assessment is made, the assessment shall not be impeached or affected-

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

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(i) the name of the person liable;

(ii) the description of any income, profit or gain; or

(iii) the amount of taxation charged;

or

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

Pay As You Earn.

55.(1) 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 employee and, where the employer is a company, the recovery from the company, its directors or shareholders, and any other related matter.

(2) The Minister may also make regulations for the purpose of the treatment of the income of workers of subcontractors and workers supplied by agencies and the treatment of income received by workers under arrangements with intermediaries together with regulations to require the deduction of tax from such workers or subcontractors by the principal contractor, the client or clients of the agency or the intermediary to whom the services of the worker have been supplied or who benefit from the work of the subcontractors or workers.

Return to be made by employer.

56.(l) 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 period that is prescribed 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 of the company or body of persons and every director of the company or shadow director 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.

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Penalty for failure to deliver return made by employer.

56A.(1) A person who fails to comply with section 56 is liable to a penalty not exceeding an amount equivalent to level 5 on the standard scale.

(2) An appeal shall lie to the Magistrates' Court from a penalty incurred under this section, and on any such appeal the court may either confirm or set aside the penalty.

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

57.(l) 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 an individual 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 seven days 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, not less than one month before the expected date of departure, give notice in writing to the Commissioner of the expected date of departure of such individual:

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).

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(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 69.

(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 55.

Deduction from payments to construction sub-contractors.

58. 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

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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 3 of the Act;

(i) providing the circumstances in which-

(i) any person who is or who represents himself as a sub-contactor may be deemed to be an employee; and

(ii) any person who is a contactor paying a person in (i) above or paying any money which directly or indirectly result in the payment to a person in (i) above by another person may be deemed to be the employer of the person in (i) above,

for the purposes of regulations made in accordance with section 55.

Returns in respect of dividends.

59.(1) Subject to sub-section (2) every company incorporated in Gibraltar that declares a dividend shall prepare and deliver a return to the Commissioner by not later than nine months from the end of the accounting period in which the dividend was declared.

(2) Subsection (1) shall not apply to any company, the shares of which are listed on a Recognised Stock Exchange;

for the purposes of this subsection, a '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.

(3) A company shall be deemed to distribute available distributable profits proportionally from profits chargeable to tax in accordance with the provisions of this Act and profits not so chargeable to tax under this Act.

(4) For the purposes of subsection (3) above, distributable profits shall have the same meaning as in the Companies Act.

(5) A return made in accordance with subsection (1) shall be in a form specified by the Minister in the Gazette.

(6) The analysis and allocation of the available distributable profits out of which a dividend is declared shall be in accordance with any regulations which may be made by the Minister.

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Dividends: provision of particulars.

59A. Every company incorporated in Gibraltar that declares a dividend shall provide each shareholder who is either an ordinarily resident individual or is another company incorporated in Gibraltar, with particulars of the amount of the tax credit and the dividend entitlement divided between that part which has been declared out of profits chargeable to tax in accordance with the provisions of this Act and that part which has been declared out of profits not chargeable to tax in accordance with the provisions of this Act, by not later than nine months from the end of the accounting period in which the dividend was declared.

Set off of Tax Credit.

60.(1) Subject to subsection (6), dividends declared by a company incorporated in Gibraltar or payments made to any person by a company and deemed by the Commissioner to represent distributions of income as if a dividend had been paid in accordance with section 22 of this Act or Schedule 4 to this Act, shall attract a tax credit determined in accordance with subsection (2).

(2) The Minister may by regulations prescribe the basis for the calculation of the tax credit attributable to the dividends declared.

(3) The Commissioner may, to the extent available, provide any company to which this section applies with such information relating to the company as, in the opinion of the Commissioner, may aid the company in complying with the requirements of this section.

(4) In determining the assessable income of any individual chargeable to tax under this Act, the proportion of any dividends received that are derived from profits chargeable to tax in accordance with the provisions of this Act shall be grossed up by the amounts of the tax credit attributable to those dividends.

(5) Other than in respect of dividends to which paragraph (a) of Table C, Class 1 applies, a tax credit shall, to the extent that it has not been utilised to reduce any tax which is otherwise due or may become due, shall be refundable in accordance with section 61 of this Act.

(6) Other than dividends that are assessable to tax as a result of the application of rule 10(4) of the Qualifying (Category 2) Individuals Rules 2004, no tax credit shall be available to any individual taxed in accordance with the following rules-

(a) Qualifying (Category 2) Individuals Rules 2004; or

(b) High Executive Possessing Specialist Skills Rules 2008.

Repayment of tax.

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61.(1) If it be proved to the satisfaction of the Commissioner that any person for any year of assessment or accounting period 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.

(2) Every claim for repayment under this section shall be made within six years from the end of the year of assessment or accounting period to which the claim relates.

(3) The Commissioner shall certify the amount to be repaid and shall cause repayment to be made accordingly.

Recovery of tax through employers and others.

62.(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 35 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.

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(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 the 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) 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,-

(i) remit to the Commissioner the total amount of tax so deducted in the previous month;

(ii) furnish to the Commissioner 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; and

(iii) give a receipt for the total amount of tax so paid to the person in respect of whom the payment is made.

(b) 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 confirming 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

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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) Without prejudice to section 58, 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 Act 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 305 of the Companies Act are, in a winding up, to be paid in priority to all other debts.

PART IX

OFFENCES, SURCHARGES, PENALTIES AND MISCELLANEOUS

Duty to keep and preserve records and books of account.

63.(1) A person required to deliver a return under section 28, or, as the case may be, section 29 for any period must–

(a) keep such records as may be needed to enable it to deliver a full and complete return for the period; and

(b) preserve those records in accordance with this section.

(2) The records must be preserved for six years from the end of the period for which the person is required to deliver a return under section 28 or, as the case may be, section 29.

(3) If the person is required to deliver a return by notice given before the end of the six year period, the records must be preserved until any later day on which–

(a) any enquiry into the return is completed; or

(b) if there is no enquiry, the Commissioner no longer has power to enquire into the return.

(4) If the person is required to deliver a return by notice given after the end of that six year period and has in his possession at that time any records that may be needed to enable him to deliver a full and complete return, he is under a duty to preserve those records until the date on which–

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(a) any enquiry into the return is completed;

(b) if there is no enquiry, the Commissioner no longer has power to enquire into the return.

(5) The records required to be kept and preserved under this section includes books containing entries from day to day of all cash received and cash paid, statements of annual stocktaking, all goods sold and purchased showing sufficient detail to enable those goods, buyers and sellers to be identified and any contracts, invoices or other underlying documentation significant to the trade, business, profession or vocation undertaken.

(6) The duty to preserve records under this section includes a duty to preserve all supporting documents relating to the items mentioned in subsection (5).

(7) All the books of accounts kept for the purposes of this section shall be kept in the English language.

(8) For the purposes of subsection (6), "supporting documents" includes accounts, books, deeds, contracts, vouchers and receipts.

Penalty for failure to keep and preserve records.

63A.(1) A person who fails to comply with section 63 in relation to any year of assessment or, as the case may be, any accounting period, is liable to a penalty not exceeding an amount equivalent to level 5 on the standard scale.

(2) An appeal shall lie to the Magistrates' Court from a penalty incurred under this section, and on any such appeal the court may either confirm or set aside the penalty.

Statutory Surcharge on Late Payment.

64.(1) If any taxation is not paid by the date specified in this Act or such other date as the Commissioner may agree in accordance with section 36 a surcharge shall be due as follows-

(a) on the day immediately after the date the amount of the tax is due, 10 per cent of the amount of the tax unpaid;

(b) where any of the tax imposed by this Act and surcharge imposed under paragraph (a) above, is not paid within 90 days from the date when it becomes payable under that paragraph, an amount equal to 20 per cent of the tax and surcharge which remains unpaid on that date shall become immediately due and payable.

(2) A surcharge imposed under this section shall be deemed to be part of the taxation and recoverable in a similar manner in accordance with section 69.

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Penalties for failure to comply with requirements on return.

65.(1) This section applies where any person–

(a) has failed to make a full and complete return for the purposes of section 28 or 29; and

(b) has failed to deliver such return.

(2) In the event of a person failing to complete a return for the purposes of section 28–

(a) that person shall be liable to a penalty of £50;

(b) if the failure by the person to comply continues after the period of–

(i) three months beginning with the filing date on which the return should have been delivered, the person shall be liable to a further penalty of £300;

(ii) six months beginning with the filing date on which the return should have been delivered, the person shall be liable to an additional penalty of £500.

(3) In the event of a person failing to complete a return for the purposes of section 29–

(a) any person classified as a micro company or small company shall be liable to a penalty of £100 and if the failure by the person to comply continues after the period of –

(i) three months beginning with the filing date on which the return should have been delivered, the person shall be liable to a further penalty of £450;

(ii) six months beginning with the filing date on which the return should have been delivered, the person shall be liable to an additional penalty of £750;

(b) any person classified as a medium company shall be liable to a penalty of £750 and if the failure by the person to comply continues after the period of –

(i) three months beginning with the filing date on which the return should have been delivered, the person shall be liable to a further penalty of £1,250;

(ii) six months beginning with the filing date on which the return should have been delivered, the person shall be liable to an additional penalty of £2,000;

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(c) any person classified as a large company shall be liable to a penalty of £1,500 and if the failure by the person to comply continues after the period of –

(i) three months beginning with the filing date on which the return should have been delivered, the person shall be liable to a further penalty of £3,500;

(ii) six months beginning with the filing date on which the return should have been delivered, the person shall be liable to an additional penalty of £5,000;

For the purposes of this subsection, the company size classification shall have the same meaning as that contained in Schedule 9 to the Companies Act 2014.

(4) The Commissioner may, if it appears to him that throughout the period of default mentioned in subsections (2) or (3) above, the person had a reasonable excuse for not complying with the requirements of section 28 or 29, set aside–

(a) one or more of the penalties under subsection (2);

(b) the penalty under subsection (3).

(5) In this section–

"the filing date" means the applicable day for delivering the return under section 28 or, as the case may be, section 29;

"the period of default", in relation to any failure to deliver a return, means the period beginning with the filing date and ending with the day before that on which the return is delivered.

Penalties for failure to comply with requirements on certain notices.

65A.(1) This section applies where–

(a) a person has been served with a notice under section 6 or 32; and

(b) the person fails to comply with the notice.

(2) The person shall be liable to a penalty of £200.

(3) If the failure to comply with the notice continues after the end of the period of one month beginning with the submission date, the person shall be liable to a further penalty of £1,000.

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(4) An appeal shall lie to the Magistrates' Court from a penalty incurred under this section and on any such appeal the court may either confirm or set aside the penalty.

(5) In this section–

"the submission date" means the applicable day for delivering the documents mentioned in the notice issued under section 6 or, as the case may be, section 32.

Offence for failure to comply with requirements on certain notices and returns.

65B.(1) A person shall be guilty of an offence if he intentionally, or recklessly or negligently continues to fail to comply with the requirements of a notice served on him under section 6 or 32.

(2) A person guilty of an offence under subsection (1) above shall be liable–

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

(3) The court, in determining a sentence under subsection (2), must take into account any penalty which has been imposed under section 65A.

Penalties for failure to comply with requirements under section 41.

65C.(1) This section applies where any person–

(a) fails to provide the Commissioner with the information required for the purposes of section 41;

(b) fails to comply with a notice issued by the Commissioner under section 41(10); or

(c) in any other way fails to comply with the requirements of section 41.

(2) The person shall be liable to a penalty of £200.

(3) If the failure by the person to comply with any of the requirements of section 41 or a notice issued under that section continues after the end of the period of one month beginning with the submission date, the person shall be liable to a further penalty of £1,000.

(4) In this section–

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"the submission date" means the applicable day for providing the information as set out in section 41 or, as the case may be, for complying with the notice issued under section 41(10);

"person" includes the "promoter" as defined in section 41(2) of this Act.

Offence of failure to comply with requirements of section 41.

65D.(1) A person shall be guilty of an offence if he intentionally, recklessly or negligently continues to fail to comply with–

(a) the requirements of section 41; or

(b) a notice issued under section 41(10).

(2) A person guilty of an offence under subsection (1) above shall be liable–

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

(3) The court, in determining a sentence under subsection (2), must take into account any penalty which has been imposed under section 65C.

Penalties where no penalty is specifically provided by this Act.

65E.(1) A person who, under this Act or any subsidiary legislation made hereunder, fails to comply with–

(a) a requirement to submit documentation or information to the Commissioner; or

(b) a notice,

in respect of which no other penalty is specifically provided, is guilty of an offence and shall be liable to the penalties set out in subsection (2).

(2) A person who is guilty of an offence under this Act or any subsidiary legislation made hereunder, in respect of which no other penalty is specifically provided is liable–

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both;

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(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

Failure to comply with requirement or notice.

65F.(1) A person shall be guilty of an offence if, having given an opportunity to regularise matters, he intentionally, or recklessly or negligently continues to fail to comply with–

(a) the requirements of this Act;

(b) a notice served on him under or for the purposes of this Act,

in respect of which no penalty is provided for.

(2) A person guilty of an offence under subsection (1) above shall be liable–

(a) on summary conviction, to imprisonment for a term exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

Penalty for failure to comply with requirements relating to an International Tax Agreement.

65G.(1) A person who has failed to-

(a) deliver a return by the date required by the Commissioner in accordance with regulations made under section 30A;

(b) make a full and complete return as may be required by or under regulations made under section 30A; or

(c) provide to the Commissioner, or any person authorised by him, any information or document required in accordance with section 6C,

is liable to a penalty of £500.

(2) An appeal shall lie to the Tribunal from a penalty incurred under this section and on any such appeal the Tribunal may either confirm or set aside the penalty.

Penalties for False Returns, etc.

66.(1) Where a person fraudulently, recklessly or negligently-

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(a) delivers any incorrect return of a kind mentioned in section 28 or 29;

(b) submits to the Commissioner any incorrect accounts, information, statement or declaration in connection with the ascertainment of the taxation to which he is liable in response to an information notice under section 6 or section 32,

he shall where (i) exceeds (ii) be liable to a penalty up to 150 per cent of the difference between-

(i) the amount of the taxation due in the relevant year of taxation if the return, information, statement, declaration or accounts as made or submitted by it had been correct, and

(ii) the amount of the taxation due for the relevant year of taxation on the basis of the return, information, statement, declaration or accounts as originally made or submitted.

(2) The relevant year of taxation for the purposes of this section is, in relation to anything delivered, made or submitted in any year, the year of tax or taxation or accounting period for which the assessment is made being based on the thing delivered, made or submitted.

(3) A penalty imposed under this section shall be deemed to be part of the taxation and shall be additional to any fine charged on conviction under section 6.

(4) The percentage of penalty imposed shall be calculated by the Commissioner by ascertaining the sum of each of the elements in accordance with subsection (6) below applicable to the total loss of tax calculated in accordance with (1) above or the amount of tax which is paid (or payable) late due to a failure to comply in respect of which a penalty is imposed under section 65 at any one time regardless of whether the loss or deferral of tax is for one year or more.

(5) In calculating the penalty for this section and the foregoing section the Commissioner must apply the facts relating to the overall tax loss or failure to comply to each Table to ascertain the penalty percentage due under each Table rather than look at the facts in relation to the different items of tax loss or failure to comply one at a time.

(6) The Tables at Schedule 8 shall apply for the purpose of calculating any penalty due.

(7) The Commissioner shall by notice in writing notify the person subject to a penalty in accordance with this section of both the overall total percentage of the penalty and the percentage arising from each Table.

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(8) Subject to subsection (9) below, any person receiving a notice in accordance with subsection (7) above may within 28 days of the issue of the notice appeal against that notice by notice in writing to the Tribunal.

(9) Save that an appeal against a notice issued in accordance with subsection (7) will only be available against the application of the facts relating to the tax loss in allocating the tax loss to a particular category of any of the Tables, the provisions of this Act shall subject to subsections (8) and (10) have effect in relation to an appeal against a notice under subsection (7) as they have effect in relation to an appeal against an assessment to tax.

(10) On an appeal against a notice under subsection (7), paragraph 13 of Schedule 2 shall not apply but the Tribunal may-

(a) if the allocation of the loss of tax to the various categories appears to them to be appropriate, confirm the notice: or

(b) if the allocation of the loss to one or more of the categories appears to them to be inappropriate, amend the notice accordingly.

Commissioner's discretion.

66A. Notwithstanding any other provision of this Act to the contrary, the Commissioner shall have the power, in his absolute discretion, to waive, reduce or discharge any penalty imposed by this Act if he is satisfied that-

(a) there was no intention on the part of the person who has incurred the penalty to avoid, evade, delay, defer, or cause the loss of tax of that person or another or to increase a loss which may be used at any time in the future; or

(b) the act or failure to act which incurred the penalty was otherwise inadvertent; and

(c) the person committing the act or failing to act, did not intend to deny, delay, impede or howsoever else frustrate the Commissioner in collecting the tax due under this Act or in the access to information necessary to the Commissioner's carrying out his duties under this Act.

Offences.

67.(1) A person commits an offence if he is knowingly concerned in the fraudulent evasion of income tax by him or any other person.

(2) A person shall be guilty of an offence if he or a company of which he is a director or a shadow director fails to comply with–

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(a) a notice issued under section 50;

(b) a notice issued under section 57;

(c) the requirements of section 62;

(d) the requirements of regulations made under sections 55 or 58.

(3) A person guilty of an offence under this section is liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.

(4) (a) The institution of proceedings under this section shall not relieve any person from liability to payment of any tax or surcharge for which he is or may be liable or any sum withheld or collected due to the Commissioner and a person convicted under this section in respect of the evasion of income tax or the failure to pay to the Commissioner tax withheld or collected which is due to the Government by another or others shall, on conviction, become jointly and severally liable with that person or those persons for the debt due to the Government in respect of any unpaid tax which is the subject of the prosecution.

(b) For the purposes of (a) above, a person guilty of an offence under subsection (2) of this section shall also be liable for interest on the sum withheld or collected which has been paid late or not paid from the date the sum was due to be paid to the Commissioner to the date it is paid to the Commissioner at a rate to be prescribed by the Minister by notice in the Gazette compounded on a daily basis.

(5) This section applies to things done or omitted on or after the date this section comes into force.

(6) (a) Where any person has committed any offence against this section, the Commissioner may, at any time prior to the commencement of the hearing by any court of any charge in relation thereto, by notice in writing (the "Compounding Order") compound that offence and order such person to pay such a sum of money, not exceeding the amount of the tax, surcharge, fine and penalty to which such person would have been liable if he had been convicted of such offence, as he may think fit.

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(b) In the case of a person who has committed an offence under section (2), any compounding of the offence agreed by the Commissioner shall also include the interest due under subsection (4)(b).

(7) (a) The Commissioner shall not exercise his powers under subsection (6) above unless such person-

(i) in writing admits that he has committed such offence;

(ii) pays the amount of tax, penalty, surcharge and, where appropriate, interest due;

(iii) requests that the Commissioner deal with such offence under subsection (6); and

(iv) in the case of an offence relating to the evasion of tax which is or would be a preferential debt in a winding up in accordance with section 55(2) of the Companies Act the person agrees that the following may be published in the Gazette-

(aa) his name;

(bb) his business address;

(cc) details of the offence giving rise to the Compounding Order; and

(dd) details of the Compounding Order.

(8) Where the Commissioner makes a Compounding Order under subsection (6) in respect of any offence, then-

(a) the Compounding Order of the Commissioner shall be put into writing and there shall be attached to it the written admission and request referred to in subsection (7);

(b) such Compounding 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;

(c) a copy of such Compounding Order shall be given, if he so requests, to the person who committed the offence;

(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

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to prove that such offence has been the subject of a Compounding Order under this section;

(e) such Compounding Order shall be final and not subject to any appeal;

(f) such Compounding 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 Compounding Order shall, on production to any court, be treated as proof of the admission of commission of such offence.

Publication of details of failure to pay taxes.

68.(1) Subject to the provisions of this section, the Commissioner may cause to be published in the Gazette the name of any person whom he has reason to believe has failed to–

(a) pay tax due under this Act; or

(b) comply with the requirements to deduct and pay the tax due from the emoluments of employees in accordance with the Income Tax (Pay As You Earn) Regulations 1989.

(2) The Commissioner may act in accordance with subsection (1) where he believes that–

(a) any tax due to be collected or paid has not been collected or paid for a period of at least three months after the due date;

(b) the amount of the tax due exceeds £5,000; and

(c) he has, at least thirty days prior to the publication referred to in subsection (1), issued to the person a letter notifying that person of his intention to publish details of his failure to comply with the provisions specified in subsection (1) and the sums due have not been paid in full prior to the expiration of such period of thirty days.

(3) For the purposes of subsection (2), the Commissioner may estimate the amount or amounts due in accordance with the provisions of this Act.

(4) For the purposes of subsection (1), the following information may be published–

(a) the name of the person (including any trading name, previous name or pseudonym);

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(b) any other name or description used by the person in carrying on or exercising the trade, business, profession or vocation;

(c) the business address of the person (or registered office);

(d) the nature of any trade, business, profession or vocation carried on or exercised by the person;

(e) any such information as the Commissioner considers appropriate to publish in order to make clear the person's identity;

(f) the amount of tax due and the period to which it relates.

(5) Where the Commissioner is satisfied that after publication of any item of information mentioned in paragraphs (a) to (e) of subsection (4) above, any such item of information is incorrect, the Commissioner shall publish a retraction in the Gazette as soon as practicably possible.

(6) No person having any official duty or being employed in the administration of this Act shall be liable in damages for anything done or omitted in the discharge or purported discharge of any powers under this section or any regulations made under this Act unless that act or omission is made in bad faith.

(7) No action shall lie in defamation, misrepresentation or any other cause resulting in liability for damages against any person uttering, reporting or publishing any information published by the Commissioner under this section unless at the date of such utterance, report or publication the Commissioner has published a retraction under this section.

(8) The Minister may from time to time make regulations to cause and enable the Commissioner to publish information on any person for the purposes of this section.

Recovery of taxation through the courts.

69.(1) Taxation due under this Act is a debt due to Government recoverable 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 person which is the defendant and the amount of taxation due by him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for such amount.

(3) The Commissioner shall proceed for the full amount of the taxation due at the time of the suit which, for the avoidance of doubt, shall include all tax at the higher rate, surcharge, interest and penalty due from the taxpayer and the power to write off any part of the debt due to the Government prior to such suit shall be exercisable solely by the Financial Secretary.

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(4) Judgment in a suit under subsection (1) shall be for immediate payment of all amounts found to be due and only the Financial Secretary shall have the power to accept instalments in payment of the amount due following the suit.

Saving for criminal proceedings.

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

European Union legislation.

71. Schedule 5 has effect in relation to the European Union Parent/Subsidiary Directive and the Interest and Royalty Payments Directive.

Power to make rules.

72.(1) The Minister may from time to time make rules generally for carrying out the provisions of this Act and for anything which, under the provisions of this Act is required or permitted to be prescribed to give effect, notwithstanding the provisions of this or any other Act, to the application in Gibraltar of legislation of the European Union.

(2) The Commissioner may from time to time specify the form of returns, claims, statements and notices required under this Act.

(3) The Minister or, with his approval, the Commissioner may from time to time issue guidance consisting of such information and advice as he considers appropriate with respect to the operation of this Act and any legislation subsidiary to this Act.

Tabling of Rules before Parliament and effects of annulment.

73.(l) Any rule or regulation made in pursuance of sections 24, or 40 shall be laid before Parliament at the meeting thereof next ensuing after such rule has been made.

(2) If any such rule is annulled by 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 authorised but for that rule, shall be deemed to be an unauthorised 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.

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(3) A delay in laying a rule made in pursuance of this Act before Parliament shall not invalidate that rule.

Interpretation.

74. In this Act, unless the context requires otherwise-

"Accrued in and derived from" shall-

(a) be defined by reference to the location of the activities which give rise to the profits;

(b) for the purpose of (a), the activities which give rise to the profits of the business shall be deemed to take place in Gibraltar in the case of-

(i) a business whose underlying activity that results in the income requires a licence and regulation under any law of Gibraltar; or

(ii) a business which can lawfully be transacted in Gibraltar, through a branch or any form of permanent establishment, by virtue of the fact that it is licensed in another jurisdiction which enjoys passporting rights into Gibraltar and which would otherwise require such licence and regulation in Gibraltar;

(c) subsection (b) shall not apply to any branch or permanent establishment of a Gibraltar company undertaking activities outside Gibraltar to the extent of the activities so conducted outside Gibraltar;

"Artificial and fictitious" whether used conjunctively or disjunctively means –

(a) not real and not genuine; or

(b) not consistent with the international standard of the arm's length principle as defined by the Organisation for Economic Co-operation and Development as part of their Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations as amended from time to time;

"basis period" means any period on the basis of which income for any year of assessment or accounting period, as the case may be, 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;

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"Commissioner" means the Commissioner charged with the administration of this Act;

"company" means any company which is a company incorporated or registered under any law in force in Gibraltar or elsewhere;

"Court" means the Supreme Court;

"employee" means any person to whom emoluments are paid or are payable by an employer and, for the avoidance of doubt, shall include a pensioner, office holder and a company director;

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

"foundation" means a foundation registered under the Private Foundations Act 2015;

"International Tax Agreement" means an agreement–

(a) on matters relating to taxation including but not limited to co-operation and co-ordination in matters relevant to the administration and enforcement of tax laws including the determination, calculation, collection or assessment of a tax, or matters incidental thereto and the protection of financial interests and the exchange of information; or

(b) that is a double taxation agreement that follows the OECD model convention with respect to taxes on income and capital;

(c) entered into by the Government, or entered into on behalf of, or extended to, Gibraltar with the agreement of the Government; and

(d) with one or more countries, territories or international organisations.

"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;

"Minister" means the Minister responsible for public finance;

"non resident company" means any company other than an ordinarily resident company;

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"ordinarily resident" means when applied to any company-

(a) a company whose management and control is in Gibraltar; or

(b) a company the management and control of which is exercised outside Gibraltar by persons who are ordinarily resident in Gibraltar for the purposes of this Act; and

(c) 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;

"ordinarily resident" when applied to an individual means an individual who irrespective of whether such individual is domiciled in Gibraltar or otherwise who in any year of assessment–

(a) is present in Gibraltar for a period of, or periods together amounting to, at least 183 days; or

(b) is present in Gibraltar in any year of assessment which is one of three consecutive years in which the total of the days on which the individual is present in Gibraltar exceeds 300,

and for the purposes of this definition presence in Gibraltar for any part of a 24 hour period commencing at midnight shall be counted as a day of presence whether or not any accommodation is used in Gibraltar;

"pension" shall not include a pension or other periodical benefits paid on the grounds of age or widowhood granted under the social security, or equivalent, legislation of Gibraltar or a Member State of the European Union;

"person" includes any corporation either aggregate or sole and any club, society or other body, or any one or more persons of any age, and either of the male or female sex and includes any company and a body of persons, and any other entities as defined in regulations made under this Act;

"premises" has the same meaning as in the Public Health Act;

"Previous Act" means the Income Tax Act 1952;

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"Recognised Stock Exchange" means any stock exchange or market, regulated exchange or market or equivalent body as the Commissioner designates as such by Notices in the Gazette;

"shadow director" shall mean any person in accordance with whose wishes, directions or instructions the directors of a company are accustomed to act;

"Tax or taxation" means the Income Tax, tax at the higher rate, penalty, surcharge or interest imposed by this Act;

"trade business, profession or vocation" includes every trade, manufacture, adventure or concern in the nature of trade and unless the context otherwise requires the use of any one of those words shall be taken as a reference to all of those words;

"Tribunal" means the Income Tax Tribunal constituted, appointed and acting in accordance with the provisions of Schedule 2;

"year of assessment" means the period of six months commencing on the 1st day of January 2011, and each subsequent period of twelve months.

Repeals, amendments and transitional provisions.

75. Schedule 9 "Repeals, amendments and transitional provisions" shall have effect.

Disclosure opportunity.

76. The Minister shall have power to make regulations empowering the Commissioner prior to 1st July 2012 to compound, settle, reduce, modify or waive any tax liability arising prior to the date of commencement of this Act in consequence of voluntary disclosures made by a taxpayer in respect of his past affairs.

PART X -AMNESTY

Fixed penalty charge during amnesty.

77.(1) An individual who before 22 December 2015 remits to Gibraltar any money which–

(a) is held outside Gibraltar; and

(b) represents the product of income accrued and derived in Gibraltar,

shall on the payment of a penalty charge of 5% of the sum of monies so remitted, not be liable to a further charge to tax on such monies.

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(1A) An individual who between 6 July 2016 and 5 January 2017-

(a) remits to Gibraltar any money which –

(i) is held outside Gibraltar; and

(ii) represents the product of income accrued and derived in Gibraltar; or

(b) holds an asset outside Gibraltar purchased with income accrued and derived from Gibraltar,

shall on the payment of the penalty charge set out in subsection (1B), not be liable to a further charge to tax on the money remitted or the asset held.

(1B) The penalty charge for the purposes of subsection (1A) is 7.5% of the-

(a) sum of monies remitted under subsection (1A)(a); or

(b) value of the asset referred to subsection (1A)(b) on the date of purchase.

(2) A person who pays the penalty charge referred to in subsection (1) and (1B) shall not be liable to any further proceedings under this Act in relation to the same monies or assets.

Expiry of amnesty.

78.(1) Where between the period 22 December 2015 and 5 July 2016, or on or after 5 January 2017, the Commissioner receives information, pursuant to the procedures established for the exchange of information between tax authorities, that money-

(a) is held outside Gibraltar;

(b) represents the product of income accrued and derived in Gibraltar; and

(c) information regarding such monies has not been included in any return so as to allow the Commissioner to assess its chargeability to tax under this Act,

the Commissioner shall issue a penalty charge which corresponds to 100% of the tax due under this Act.

(1A) Where on or after 5 January 2017, the Commissioner receives information, pursuant to the procedures for the exchange of information between tax authorities, that an asset –

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(a) is held outside Gibraltar;

(b) was purchased with monies from income accrued and derived in Gibraltar; and

(c) information regarding such monies has not been included in any return so as to allow the Commissioner to assess its chargeability to tax under the Act,

the Commissioner shall issue a penalty charge which corresponds to 100% of the tax due under this Act.

(2) Nothing in this section shall affect the powers of the Commissioner under this Act including the Commissioners powers to proceed under any other provision in this Act.

Corporate Tax Amnesty.

79.(1) Any company that, believes they have under-declared their profits in the returns filed in relation to their 2020 and 2021 accounting periods and as a result have been assessed at a level lower than what they should have been, may, before 31 December 2022, elect to revise their position and file amended returns accordingly.

(2) Any company filing amended returns under subsection (1) above will be required to pay the taxation consequently assessed within 90 days after the date the assessment is made and shall not be liable to a further charge to tax.

(3) (a) Any company not filing amended returns under subsection (1) above but found to have under-declared their profits and as a result have been assessed at a level lower that what they should have been will be required to pay the taxation assessed and shall also be liable to a further charge equivalent to the entirety of the amount assessed to tax;

(b) any company identified from (a) above shall be required to pay the full amount of the taxation assessed and the further charge contained therein within 60 days after the date the assessment is made.

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SCHEDULE 1

HEADS OF CHARGE

PART 1

Section 11

Table A

"Trade, business, profession or vocation"

(1) The profits or gains of a company, a foundation or a trust from any trade, business, profession or vocation.

"Income from property"

(2) Any rents, premiums and any other profits arising from any interest in real property including as set out in Part 2 of this Schedule.

Table B

"Employment and self employment"

The profit or gains from-

(1) Any office or employment, including any allowances, perquisites or benefits in kind specified in Schedule 7.

(2) (a) Any trade, business, profession or vocation all or part of the activities, administration, marketing or support functions of which are performed in Gibraltar;

(b) For the purpose of (a), such a trade, business, profession or vocation shall be treated as indivisible and any activities of a similar trade, business, profession or vocation carried out in another country, territory or jurisdiction by an ordinarily resident individual either in self employment or as a member of a partnership including all receipts of employments undertaken in pursuance of the trade, business, profession or vocation shall be regarded as part of the Gibraltar activities.

Table C

"Other income"

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Class 1

"Dividends"

(a) Dividends except dividends paid or payable–

(i) by a company to another company;

(ii) to a person who for the purposes of this Act is not ordinarily resident in Gibraltar;

(iii) by a company the shares of which are listed on a Recognised Stock Exchange;

(iv) out of profits or gains on which no tax has been charged in accordance with the provisions of this Act to the extent that the amount of the dividend represents the distribution of such profits or gains,

and for the purposes of this paragraph, "a 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;

Class 1A

"Inter-company loan interest"

(a) Subject to (b) below, interest paid or payable by a company to another company arising from a loan or advance between these companies.

(b) For the purposes of (a) no interest is chargeable where–

(i) the interest received or receivable from any one company is less than £100,000 per annum; or

(ii) the interest constitutes a trading receipt as defined by Schedule 3 paragraph 15 and is taxed accordingly.

For the purposes of (a) and (b)–

(i) interest will be deemed to accrue and derive in Gibraltar where the company in receipt of the interest is a company registered in Gibraltar; and

(ii) for the purposes of determining whether the threshold in (b)(i) has been exceeded, interest received from different companies will be considered to

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be from the same company where such companies are connected persons, as defined in paragraph 9 of Schedule 4.

Class 2

"Funds income"

(a) There shall be no charge to tax under this Act on the receipt of income from a fund marketed to the general public; and

(b) In the case of a fund which is not marketed to the general public, including shares in or securities of an open-ended investment company, any income from the fund shall be chargeable to tax in accordance with the provisions of this Act which apply to the entities which form the arrangements under which the fund is structured.

Class 3

"Income from rights"

Income from any right to and interests in anything falling within Classes 1 and 2.

Class 3A
"Royalties"

(a) Subject to (b) below, royalties received or receivable by a company.

(b) For the purposes of (a) royalties will be deemed to accrue and derive in Gibraltar where the company in receipt of the royalty is a company registered in Gibraltar.

Class 3B
"Income from Movable Property"

(a) Subject to (b) below, any non-trading rental income arising from a movable property located outside of Gibraltar received or receivable by a company.

(b) For the purposes of (a) above, any non-trading rental income arising from a movable property located outside of Gibraltar will be deemed to accrue in and derive from Gibraltar where the company in receipt of that income is a company registered in Gibraltar.

Class 4

"Pension, charge or annuity income"

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Any pension, charge or annuity that is not maintenance, alimony or other payment to a husband, wife or child made in compliance with an order of court or by reason of a deed of separation or an agreement related to separation.

Class 5

Sweeping Up Class

Any profits or gains to be treated as income by virtue of section 40, and Schedule 4.

Class 6
"State Aid Recovery"

(a) In accordance with the European Commission decision of 19 December 2018 on the State Aid SA.34914 (2013/C) as regards the Gibraltar Corporate Income Tax Regime-

(i) the charge to taxation under Class 1A above shall apply in respect of the period extending from 1 January 2011 to 30 June 2013 only for the purposes of ensuring compliance with recovery procedures in that decision;

(ii) the charge to taxation under Class 3A above shall apply in respect of the period extending from 1 January 2011 to 31 December 2013 only for the purposes of ensuring compliance with recovery procedures in that decision.

(b) For the purposes of paragraph (a) above–

(i) the aid to be recovered pursuant to that decision shall include interest determined in accordance with Chapter V of Commission Regulation (EC) No. 794/2004 of 21 April 2004 implementing Council Regulation (EC) No. 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

PART 2

Section 11

PROFITS DERIVED FROM DISPOSALS OF INTEREST IN A RESIDENTIAL PROPERTY

1.(1) For the purposes of this Part of this Schedule unless the context provides otherwise –

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"entity" means a company, trust, foundation or partnership incorporated or established in accordance with the laws of Gibraltar or elsewhere.

"exempted property" means:

(a) a property which is used exclusively as the primary residence by the beneficial owner of such property in Gibraltar;

(b) a property which is subject to Part II of the Housing Act 2007 or would be subject to Part II of the Housing Act 2007 were it not for the issuance of a certificate under s49 of the Housing Act 2007;

(c) a property which is a commercial property;

(d) where a property has mixed residential and commercial use a property which is predominantly of commercial use;

(e) a hotel;

(f) subject to subparagraph (6), a property which is unfit for human habitation;

(g) subject to subparagraph (6), a property certified as being in need of substantial repair by the official surveyor;

(h) a property which is held by the Government of Gibraltar or a statutory agency in regard to residential accommodation for the purposes of said agency or the Government of Gibraltar;

(i) a property constructed prior to, and held by the owner since, 1 January 1988;

(j) any property reserved for occupancy as a retirement home by persons aged over 65 or for those unable to care for themselves independently or other form of residential care facility including whether communal or otherwise subject to the satisfaction of the Commissioner of Income Tax;

(k) any property utilised as a retreat, convent, monastery or other form of religious house whether for the benefit of a group of religious observants or of a sole minister, whatever the denomination or religion including whether communal or otherwise subject to the satisfaction of the Commissioner of Income Tax.

"off plan", in relation to a property, means the right to acquire or purchase a beneficial interest (a 'relevant interest') in a property not yet built, or if construction has commenced, which is not yet completed, through a reservation agreement, purchase agreement, assignment of such a relevant interest or other arrangement (the 'relevant

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arrangement') under which the beneficial ownership in the property which is the subject of the relevant arrangement is ultimately assigned, novated or is otherwise transferred;

"primary residence" means a residence within Gibraltar which is utilised as the only or main residence of a person at any given time including at the time of disposal;

"property" means any plot, building, apartment or other real property situate in Gibraltar, used or intended to be used for residential purposes and whether leasehold or freehold;

"property holding entity" means an entity whose principal activity in the last basis period consists of the ownership, holding or management of real property in Gibraltar;

"taxable property" means any residential property, including off-plan property, located in Gibraltar other than an exempted property.

(2) Where any person owns or holds, directly or indirectly, including through a property holding entity:

(a) five or more taxable properties, whether in whole or in part; or

(b) an aggregate in five or more taxable properties, whether in whole or in part, over five consecutive basis periods,

the following shall be chargeable to tax under the provisions of Section 11 and Schedule 1 of this Act:

(i) the profits arising from the disposal of any such property by the person or the property holding entity as though the profits arising is income of that person or entity; and

(ii) the profits arising from the disposal of shares, directly or indirectly, in a property holding entity by the person, or any nominee holding shares on behalf of the person, as though the profits arising is income of that person.

(3) Subparagraph (2) shall not apply to a disposition if this is due to either:

(a) the exercise of a power of sale pursuant to a mortgage on the residential property; or

(b) any order of a court ordering a sale of the residential property.

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(4) In determining a person's interest in a taxable property that person may be treated as being entitled to the interests of all connected persons, as defined in Schedule 4, paragraph 9 of this Act.

(5) Subparagraph (4) shall not apply to the bona fide interest of a connected person if the ownership of such interest is not for the purpose of avoidance of the charge to tax.

(6) Any property unfit for habitation or in need of substantial repair shall be treated as an exempted property if, on application to the Commissioner of Income Tax, the Commissioner is satisfied that the purchase of the property is for the purpose of development to permit resale or letting.

(7) A disposal by the estate of a deceased person shall not be charged to tax under this Part of this Schedule.

(8) The Commissioner of Income Tax shall have the power to treat any conveyancing transaction as a disposal where he is of the opinion that this transaction has as its main purpose, or one of its main purposes, the avoidance of a charge to tax.

(9) The Minister with responsibility for taxation may by order prescribe any class or category of property to be included within the definition of an exempted property, provided that no order shall be made under this paragraph unless it has been approved by resolution of the Parliament.

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SCHEDULE 2

Section 35

THE INCOME TAX TRIBUNAL

PART 1

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 constituted a Tribunal to be known as the Income Tax Tribunal consisting of, subject to paragraph 5(3) two or more, but not more than five, Members of the Income Tax Tribunal before whom the proceedings are brought.

(2) Members of the Tribunal shall be appointed by the 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) There shall be paid to the Members of the Tribunal by way of reimbursement of expenses such amounts as the Minister 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 subparagraph.

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 subparagraph shall act under the direction of the Members of the Tribunal.

(3) There shall be paid to the clerk or deputy clerk such remuneration in respect of his services as the Minister may determine.

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(4) The Members of the Tribunal may, with the consent of the 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 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 subparagraph by a Member of the Tribunal shall be made before another Member of the Tribunal, or before the Financial Secretary to the Government.

(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.

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(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 subparagraph (1) above the clerk shall send notice to each party entitled to attend the proceedings 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 subparagraph (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 subparagraph (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. 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

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time as they think necessary, or admit the appeal to be made by any agent, clerk or servant on his behalf.

Representation.

10.(1) At the hearing of any proceedings before the Members of the Tribunal at which the taxpayer is entitled to attend a party other than the Commissioner may be represented by a lawyer, solicitor, barrister or accountant.

(2) For the purposes of (1) above an accountant is 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.

(3) The Commissioner may be represented at the hearing of proceedings by a lawyer or any public officer appointed by him for the purpose.

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

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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 subparagraph (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 subparagraph (3) above.

(5) Every notice sent to parties under subparagraph (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.

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(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.

Information power.

14.(1) (a) The Tribunal may at any time before the determination of an appeal give notice to any person (not being the Commissioner or an officer of the Commissioner) requiring him within a time specified in the notice-

(i) to deliver to it such particulars as it may require for the purposes of determining the appeal; and

(ii) to make available for inspection by it, or by any officer of the Commissioner, all such books, accounts, employment records 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.

(b) Where a notice is issued under (a) above to a person who is not party to the proceedings, that person shall neither be required nor entitled to attend and be heard at the time when the notice is given.

(2) Any officer of the Commissioner may, at all reasonable times, inspect and take copies of, or extracts from, any particulars delivered under subparagraph (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 subparagraph (1) (b) above.

(3) The particulars which a person must furnish under subparagraph (1)(a), if he is required by such a notice so to do, include particulars-

(a) as to transactions with respect to which he is or was acting on behalf of others;

(b) as to transactions which in the opinion of the Commissioner it is proper that they should investigate for the purposes Schedule 4 notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under that Schedule; and

(c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions of a description specified in the notice.

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(4) Notwithstanding anything in subparagraph (3) above, a barrister or solicitor shall not be deemed for the purposes of subparagraph (3)(c) to have taken part in a transaction by reason only that he has given professional advice to a client in connection with that transaction, and shall not, in relation to anything done by him on behalf of his client, be compellable under this paragraph, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of the client.

(5) 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.

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(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 25 to 30 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 28 of the Supreme Court Rules and shall affirm 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 with a direction as to the basis of law or fact on which the matter should be determined.

(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 the 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 or electronic form 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 10.

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 in the same manner as specified in paragraph 16.

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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 proceeding.

"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.

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SCHEDULE 3

Section 25

RULES FOR ASCERTAINING PROFITS OR GAINS

PART I

GENERAL

Measure of profits or gains.

1.(1) Subject to the provisions of this Act the amount of profits or gains of any period for any purposes of this Act shall be the full amount of the profits or gains of the year or period computed in accordance with Gibraltar Generally Accepted Accounting Practice or any other accounting standards (as approved by the Commissioner); or UK, or UK-adopted international accounting standards, within the meaning given by section 237(1) of the Companies Act 2014 as may from time to time be modified for the purposes of this Act by Regulations provided that capital gains and capital losses shall be excluded in ascertaining the amount of such profits or gains.

(2) Expenditure incurred by any person with a view to carrying on a trade, business, profession or vocation will be treated as incurred on the first day on which the trade, business, profession or vocation is carried on for the purposes of computing the profits or gains of the trade, business, profession or vocation or capital allowances due against those profits or gains as appropriate.

Deductions not allowable.

2.(1) Subject to subparagraph (2), a deduction in computing the profits or gains of any basis period shall only be allowed in respect of any disbursement or expense, which is money wholly, and exclusively laid out or expended for the purposes of the production of the income of the trade, business, profession or vocation, except-

(a) the rent of the whole or any part of any dwelling-house or domestic offices, except any such part as is used for the purposes of the production of the income of the trade or profession and where any such part is so used, the sum so deducted shall not, unless in any particular case it appears that having regard to all the circumstances some greater sum ought to be deducted, exceed two-thirds of the rent bona fide paid for that dwelling house or those offices;

(b) any sum expended for repairs of premises occupied, or for the supply, repairs or alterations of any implements, utensils or articles employed, for the purposes of

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the trade, business, profession or vocation, beyond the sum actually expended for those purposes;

(c) any loss not connected with or arising out of the trade, business, profession or vocation;

(d) any capital withdrawn from, or any sum employed or intended to be employed as capital in the trade or profession, but so that this paragraph shall not be treated as disallowing the deduction of any interest;

(e) any capital employed in improvements of premises occupied for the purpose of the trade or profession which generates the income;

(f) any interest which might have been made if any such sums under subparagraphs 2(d) or 2(e) had been laid out at interest;

(g) any debts except-

(i) a bad debt;

(ii) a debt or part of a debt released by the creditor wholly and exclusively for the purposes of his trade, business, profession or vocation as part of a relevant arrangement or compromise which became bad or were released during the period for which the profit or gain is being ascertained; and

(iii) doubtful debts to the extent that they are respectively estimated to be bad during the said period, notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said period;

(h) any average loss beyond the actual amount of loss after adjustment;

(i) any sum recoverable under an insurance or contract of indemnity;

(j) any interest paid or payable to a person not resident in Gibraltar if and so far as it is interest at more than a reasonable commercial rate;

(k) depreciation of any assets;

(l) any interest which is paid or payable upon any money borrowed other than for the purposes of the trade or profession which generates the income or acquiring the capital employed in acquiring the trade or profession which generates the income;

(m) any taxation charged under-

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(i) this Act; or

(ii) any tax in respect of which relief may be given under section 37;

(n) contributions made to a provident, pension or other fund for the benefit of employees where such fund has not been approved by the Commissioner for the purposes of this paragraph;

(o) (i) save as provided in (v) below expenses incurred in providing business entertainment including, in the case of any person, any sums paid by him to, or on behalf of, or placed by him at the disposal of a member of his staff exclusively for the purposes of defraying expenses incurred by him or to be incurred by him in providing business entertainment to the extent that such sum does not fall to be chargeable on the member of staff as part of the emoluments of his employment;

(ii) for the purposes of (o)(i) above-

(aa) "business entertainment" means entertainment (including hospitality of any kind) provided by a person, or by a member of his staff in connection with a trade carried on by that person, but does not include anything provided by him for bona fide members of his staff unless its provision for them is incidental to its provision also for others;

(bb) the term "expenses incurred in" providing entertainment includes expenses incurred in providing anything incidental thereto;

(cc) references to the members of a person's staff are references to persons employed by, or providing services to, that person, directors of a company or persons engaged in the management of a company being for this purpose deemed to be persons employed by it.

(iii) This subparagraph (o) shall apply in relation to the provision of a gift as it applies in relation to the provision of entertainment, except that it shall not by virtue of this subparagraph apply in relation to the provision for any person of a gift consisting of an article incorporating a conspicuous advertisement for the donor, being an article-

(aa) which is not food, drink, tobacco or a token or voucher exchangeable for goods; and

(bb) the cost of which to the donor, taken together with the cost to him of any other such articles given by him to that person in the same year of assessment or accounting period does not exceed £100.

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(iv) This subparagraph (o) shall not apply to the cost incurred in the provision by any person of anything which it is his trade to provide, and which is provided by him in the ordinary course of that trade for payment or, with the object of advertising to the public generally, gratuitously.

(v) Subparagraphs (i) and (ii) shall not apply to expenses to provide business entertainment-

(aa) which fall within guidelines to be published by the Commissioner in the Gazette; and

(bb) where the person claiming the deduction can show to the satisfaction of the Commissioner that the claim for deduction only includes the expenditure incurred on those occasions when the claimant is entertaining a client or clients and the benefit to the claimant from the entertainment is merely incidental.

(vi) (aa) Subparagraph (v) shall not apply to any person who has in three of the previous ten years made a claim for expenditure in reliance on that subparagraph which following investigation by the Commissioner has been refused in whole or in part.

(bb) The inability to apply subparagraph (v) in (aa) above will apply for the 5 years of assessment, or in the case of a company for 5 years, since the end of the third year of assessment or accounting period for which the claim for a deduction in reliance on subparagraph (v) is restricted or eliminated.

(p) (i) head office expenses or expenses incurred by any branch for the common purpose of the company and its branches or for the purposes of the head office or another branch exclusively (all for the purposes of (ii) referred to as "head office expenses") in excess of 5% of the gross income of the branch in Gibraltar.

(ii) For the purposes of (i) above head office expenses shall mean a deduction claimed by a branch of a person in respect of expenditure which is incurred in common between the branch in Gibraltar, the person and other branches of the person and is shared on an apportionment basis either between the person and the branches of the person.

(q) the special assistance payment.

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(2) (a) In the case of a person who has income some of which is chargeable to tax and some of which is not chargeable to tax, in computing the profits and gains liable to tax, the deductions allowed in accordance with this Schedule shall be apportioned on a pro-rata basis between the chargeable and non-chargeable income.

(b) The Minister may from time to time by rules prescribe additional disbursements or expenses for which no allowance will be available or amend the list in subparagraph (1) in whatsoever manner is necessary.

(c) The Commissioner may from time to time issue guidance notes in relation to the interpretation of this paragraph and the classes of expenditure which will be allowed as a deduction.

Items to be included in net profits.

3. In computing the profits or gains of a trade or profession for any period which will form the basis period for a year of assessment or accounting period there shall be included-

(a) all sums recovered during the said period on account of a bad or doubtful debt in respect of which a deduction has previously been made in accordance with subparagraph 2(1)(g);

(b) the proceeds of any assignment, sale or capitalisation of any bad or doubtful debts or of any aggregation of bad or doubtful debts in respect of which and to the extent that a deduction has previously been made in accordance with subparagraph 2(1)(g);

(c) the proceeds of sale, assignment or capitalisation of any debt or aggregation of debt which arises from a transaction or transactions the charge or sale price for which has not been accounted for taxation purposes at the time of the sale or assignment;

(d) any payment made or becoming due to an employer out of funds which are or have been held by any provident, pension or other fund for the benefit of his employees.

Contributions to approved pension funds.

4. Where an employer makes a contribution to an approved provident, pension or other fund for the benefit of his employees which is not an ordinary annual contribution the contributions shall be deducted in the year in which it is paid or spread over such period as the Commissioner decides is proper.

Special assistance payment.

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4A.(1) In this Act, "special assistance payment" means a payment falling within the provisions of Schedule 13.

(2) The Minister may by Regulations under this paragraph amend Schedule 13 so as to add, remove or modify a provision.

PART II

CAPITAL ALLOWANCES

Chapter 1

General

Capital Allowances.

5. In computing the profits or gains of a person for any basis period there shall be allowed a deduction ascertained in accordance with the provisions of this Part.

6.(1) The Commissioner may allow a deduction in respect of the amount by which the value of any hotel, mill, factory or other similar premises has diminished by reason of wear and tear arising out of the use by its owner in a trade, business, profession or vocation at the rate of 4 per cent per annum of the cost thereof excluding the cost of the land on which the premises are situated.

(2) Subject to subparagraph (4) below, where the person carrying on the trade, is not the owner of the premises, the deduction may be allowed on either the former or the latter or apportioned between them.

(3) For the purposes of subparagraph (3) the Minister may make regulations prescribing the manner in which such deductions should be apportioned.

(4) No deduction shall be allowed for any period if the deduction exceeds the written down value.

(5) For any year of assessment or accounting period, an amount equivalent to the written down value of the industrial building disposed of, less any sum realised or likely to be realised by the sale thereof or recoverable under any insurance or indemnity will be allowed as a deduction:

Provided that where the sum realised or likely to be realised is greater than the written down value, there shall be no deduction allowed.

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(6) For the purposes of this paragraph –

"mill, factory and other similar premises" means any building which forms part of premises in which goods are subject to a process or manufacture, being either –

(a) a building which contained, and is used wholly or mainly for the purpose or operating machinery worked by steam, electricity or other mechanical power; or

(b) a building the depreciation of which is substantially increased by the operation of machinery so worked on the premises in any such building as mentioned in (a) above.

Deduction for real property in Gibraltar.

6A.(1) The Commissioner may allow a deduction in an accounting period, or year of assessment, as the case may be, in respect of the amount by which the value of any real property in Gibraltar has diminished by reason of wear and tear arising out of the use by its owner for the purposes of a trade, business, profession or vocation at the rate of 1% per annum of the acquisition cost thereof, excluding the cost of the land on which the premises are situated.

(2) Subject to subparagraph (4) below, where the person carrying on the trade, is not the owner of the premises, the deduction may be allowed on either the former or the latter or apportioned between them.

(3) For the purposes of subparagraph (2), the Minister may make regulations prescribing the manner in which such deductions should be apportioned.

(4) No deduction shall be allowed for any accounting period, or year of assessment, as the case may be, if the deduction exceeds the written down value.

(5) No deduction shall be allowed for any accounting period, or year of assessment, as the case may be, if the person qualifies for a deduction in accordance with paragraph 6 of this Schedule.

(6) A deduction shall only be permitted in relation to any accounting period, or year of assessment, as the case may be, ending in the period extending from 1 July 2021 to 30 June 2023.

(7) For any accounting period, or year of assessment, as the case may be, an amount equivalent to the written down value of the real property disposed of, less any sum realized or likely to be realized by the sale thereof or recoverable under any insurance or indemnity, will be allowed as a deduction, provided that where the sum realised, or likely to be realised, is greater than the written down value, no deduction shall be allowed.

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Chapter 2
Deleted

7. *Deleted*

Chapter 3

First Year Allowances

First year allowances.

8.(1) Subject to the provisions of this paragraph, where–

(a) a person carrying on a trade, business, profession or vocation, incurs in any year of assessment or accounting period, capital expenditure wholly and exclusively for the provision of plant and machinery for the purposes of producing the income of the trade, business, profession or vocation; and

(b) in consequence of his incurring that expenditure, the plant and machinery belongs to the person at some time during the year of assessment or accounting period,

then, for the purpose of ascertaining the assessable income of that person from that trade, business, profession or vocation, a deduction shall be given equivalent to the whole amount of that expenditure up to a maximum of £30,000, subject to any accounting periods, or years of assessment, as the case may be, ending within the period extending from 1 July 2021 up to and including 30 June 2023, for which the deduction shall be the higher of the following:

(i) £60,000; or

(ii) 50% of the expenditure incurred by the person in accordance with (a) above;

(c) in this paragraph, "plant and machinery", whether used conjunctively or disjunctively–

(i) includes a fixture and fitting;

(ii) does not include aircraft or vessels used for any purpose other than for a trade, business, profession or vocation;

(iii) does not include a motor vehicle, unless it is of a construction primarily suited for the conveyance of any goods or burden (other than passengers)

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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 the trade, business, profession or vocation.

(2) Subject to the provisions of this paragraph, where–

(a) a person carrying on any trade, business, profession or vocation incurs in any year of assessment or accounting period, capital expenditure wholly and exclusively on computer equipment for the purposes of producing the income of the trade, business, profession or vocation; and

(b) in consequence of his incurring that expenditure, the computer equipment belongs to the person at some time during the year of assessment or accounting period,

then, for the purposes of ascertaining the assessable income of that person from that trade, business, profession or vocation, a deduction shall be given equivalent to the whole amount of that expenditure up to a maximum of £50,000, subject to any accounting periods, or years of assessment, as the case may be, ending within the period extending from 1 July 2021 to 30 June 2023, for which the deduction shall be the higher of the following:

(i) £100,000; or

(ii) 50% of the expenditure incurred by the person in accordance with (a) above;

(c) in this paragraph, "computer equipment" means any device for electronically storing and processing information, including–

(i) equipment peripheral to the operation of such a computer; and

(ii) any software used on such a computer.

(3) Where plant and machinery or computer equipment is used for the purpose of a trade, business, profession or vocation on such terms that the burden of the wear and tear falls on the user and not on the owner thereof, the former person shall, in such circumstances, be entitled to the deductions referred to in subparagraphs (1) and (2).

(4) Where a person incurs capital expenditure on the provision of plant and machinery or computer equipment under a contract which provides that the person shall become the owner of that plant and machinery or computer equipment on the performance of the contract, that person shall be entitled to the deductions referred to in subparagraphs (1) and (2) above.

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(5) In the event of an extended accounting period, as defined by this Act, the allowances under this paragraph will be available in respect of each accounting period determined by the Commissioner in accordance with the provisions of section 16(6) or (7) for the purposes of obtaining the measure of profits for assessment to tax, provided that the Commissioner is satisfied as to the date on which the expenditure being claimed has been incurred.

Pool allowance.

9.(1) Subject to the provisions of this paragraph, where –

(a) a person has incurred capital expenditure on the provision of plant and machinery, computer equipment and motor vehicles, wholly and exclusively for the purposes of producing the income of the trade, business, profession or vocation; and

(b) in consequence of his incurring that expenditure, the plant and machinery, computer equipment and motor vehicles belong to it at some time during the year of assessment or accounting period,

then a "pool allowance" shall be given on the corresponding balance of "qualifying expenditure" available.

(2) For the purposes of this paragraph, the term "qualifying expenditure" is the total of the sum of subparagraphs (a) to (d) less subparagraph (e) –

(a) the capital expenditure incurred for the provision of plant and machinery in the year of assessment or accounting period in excess of any amount for which a deduction has been claimed under paragraph 8(1):

Provided that this expenditure, or any part thereof, has not formed part of a claim for deduction in any previous year of assessment or accounting period;

(b) the capital expenditure incurred on computer equipment in the year of assessment or accounting period in excess of any amount for which a deduction has been claimed under paragraph 8(2):

Provided that this expenditure, or any part thereof, has not formed part of a claim for deduction in any previous year of assessment or accounting period;

(c) the capital expenditure incurred on motor vehicles in the year of assessment or accounting period excluding any amount of first year allowance given under paragraph 8(1)(c)(iii);

(d) any balance of (a) to (c) above available from the preceding year of assessment or accounting period;

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(e) the attributable value of any "disposed assets" on which capital expenditure has been incurred for the purposes of the production of the income of the trade, business, profession or vocation and which belong to the person at some time during the year of assessment or accounting period and in respect of which, during the year of assessment or accounting period, one of the following applies –

(i) the disposed assets cease to belong to the person;

(ii) the disposed assets cease to exist;

(iii) the disposed assets are used wholly for purposes other than for the trade;

(iv) the trade, business, profession or vocation of the person is permanently discontinued.

for the purposes of this subparagraph, the term "disposed assets" includes plant and machinery, computer equipment and motor vehicles as defined in paragraph 8. The reference to value is taken to mean the sale proceeds. Where the sale proceeds are not at arm's length, the net book value at the date of disposal shall be substituted for the amount received.

(3) For the purposes of this paragraph and subject to subsubparagraphs (c) to (e) above, the term "pool allowance" shall, for a year of assessment or accounting period, be an allowance equal to –

(a) 20% of the balance of qualifying expenditure in respect of that year of assessment for any person other than a company, or for a company chargeable in accordance with the provisions of Schedule 6 to this Act;

(b) 15% of the balance of qualifying expenditure in respect of the accounting period for any other company,

Except that for any accounting periods or years of assessment ending within the period extending from 1 July 2021 to 30 June 2023, the allowance shall, for a year or assessment or accounting period, be an allowance equal to-

(c) 30% of the balance of qualifying expenditure in respect of that year of assessment for any person other than a company, or for a company chargeable in accordance with the provisions of Schedule 6 to this Act;

(d) 25% of the balance of qualifying expenditure in respect of the accounting period for any other company.

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(4) If the accounting period is for a period of less than 12 months the allowance in subparagraph (3) shall be apportioned by reference to time.

(5) If the accounting period or year of assessment relates to the permanent discontinuance of the trade, business, profession or vocation, an allowance equivalent to the total balance of qualifying expenditure available shall be allowed.

(6) If for any year of assessment or accounting period, the balance of qualifying expenditure is less than the value of disposed assets referred to in subparagraph (2)(e), the allowance in subparagraph (3) shall be restricted to the value of these disposed assets.

(7) If the balance of qualifying expenditure for any year of assessment or accounting period is less than £1,000, the full amount of the residual qualifying expenditure will be allowed as a deduction for that year of assessment or accounting period.

(8) If the accounting period is an extended accounting period as defined by this Act, the allowance in subparagraph (3) will be available in respect of each accounting period determined by the Commissioner in accordance with the provisions of sections 16(6) or 16(7) for the purposes of obtaining the measure of profits for assessment to tax, provided that the Commissioner is satisfied as to the date on which the expenditure being claimed has been incurred.

(9) Where plant and machinery, computer equipment or motor vehicles are used for the purpose of a trade, business, profession or vocation on such terms that the burden of the wear and tear falls on the user and not on the owner thereof, the former person shall, in such circumstances, be entitled to the deduction referred to in subparagraph (3).

(10) Where a person incurs capital expenditure on the provision of plant and machinery, computer equipment or motor vehicles under a contract which provides that the person shall become the owner of that plant and machinery or computer equipment on the performance of the contract, the person shall be entitled to the deductions referred to in subparagraph (3).

(11) For the purposes of this paragraph–

"plant and machinery", whether used conjunctively or disjunctively–

(a) includes a fixture and fitting;

(b) does not include aircraft or vessels used for any purpose other than for a trade, business, profession or vocation;

(c) does not include a 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

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be so used, or it is provided wholly or mainly for hire to or of the carriage of members of the public in the ordinary course of the trade, business, profession or vocation.

"computer equipment" means any device for electronically storing and processing information, including –

(a) equipment peripheral to the operation of such a computer; and

(b) any software used on such a computer.

(11A) In respect of the accounting periods or years of assessment ending within the period extending from 1 July 2021 to 30 June 2023, the definition of "plant and machinery" shall include a full electric vehicle, used wholly or partly in the ordinary course of a trade, business, profession or vocation.

(11B) The Commissioner shall allow up to a maximum of 50% of any allowance or deduction claimed by any person in relation to a full electric vehicle used partly in the ordinary course of the trade, business, profession or vocation.

(12) Subparagaph (2) shall not apply to any assets purchased and disposed of in the same year of assessment or accounting period.

10 – 12 *Deleted*

Deduction for construction costs.

12A.(1) Where a property developer carries out the development of a qualifying project which consists entirely of office accommodation and construction commences between 1 July 2013 and 31 March 2015, the property developer shall be entitled to a deduction of the total amount of the construction costs in accordance with this paragraph.

(2) In the first year of assessment or accounting period, as the case may be, following completion of construction of the development project, a deduction of 30 per cent of the total construction costs.

(3) In the second to eighth year of assessment, or accounting period, as the case may be, following completion of construction of the development project, a deduction of 10 per cent of the total construction costs per year of assessment.

(4) A deduction under this paragraph may, at the election of the property developer of the qualifying project, be made from the assessable income of–

(a) the property developer for the total of the construction costs; or

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(b) the occupier for the total of the construction costs; or

(c) the property developer and the occupier in the proportion of 50 per cent each of the total construction costs.

(5) No deduction shall be permitted under this rule unless the claim for deduction is accompanied by a certificate of completion of construction.

(6) Any deduction for expenditure given in accordance with this paragraph shall be in addition to any deduction, relief or allowance which may be given in accordance with any other provision of this Act in respect of that same expenditure.

(7) In this paragraph–

"construction costs" means the total expenditure incurred in the construction of the qualifying project, excluding the cost of the land on which the qualifying project is built, and includes the cost of –

(a) planning and design of the project including in connection with the obtaining of full planning permission for the erection of the building;

(b) digging and laying foundations for drains, water-pipes and electric cables;

(c) cost of demolition of any building on the land on which the new building was constructed;

(d) installing fittings forming part of the building;

"occupier" means the person occupying the office accommodation in respect of which the total construction costs are the subject of a deduction under this paragraph;

"property developer" means a person who carries out the development of a qualifying project;

"qualifying project" means a building development project consisting wholly and exclusively of offices for business use and approved by the Commissioner as being a qualifying project for the purposes of this paragraph.

(8) The Minister may make rules for the implementation of the provisions in this paragraph.

Deduction for construction costs: high value accommodation.

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12B.(1)Where a property developer carries out the development of a qualifying project which consists entirely of high value accommodation and construction commences between 1 July 2014 and 31 December 2015, the property developer shall be entitled to a deduction of the total amount of the construction costs in accordance with this paragraph.

(2) In the first year of assessment or accounting period, as the case may be, following completion of construction of the development project, a deduction of 30 per cent of the total construction costs.

(3) In the second to eighth year of assessment or accounting period, as the case may be, following completion of construction of the development project, a deduction of 10 per cent of the total construction costs per year of assessment.

(4) A deduction under this paragraph may, at the election of the property developer of the qualifying project, be made from the assessable income of–

(a) the property developer for the total of the construction costs; or

(b) the occupier for the total of the construction costs; or

(c) the property developer and the occupier in the proportion of 50 per cent each of the total construction costs.

(5) No deduction shall be permitted under this rule unless the claim for deduction is accompanied by a certificate of completion of construction.

(6) Any deduction for expenditure given in accordance with this paragraph shall be in addition to any deduction, relief or allowance which may be given in accordance with any other provision of this Act in respect of that same expenditure.

(7) In this paragraph–

"construction costs" means the total expenditure incurred in the construction of the qualifying project, excluding the cost of the land on which the qualifying project is built, and includes the cost of–

(a) planning and design of the project including in connection with the obtaining of full planning permission for the erection of the building;

(b) digging and laying foundations for drains, water-pipes and electric cables;

(c) cost of demolition of any building on the land on which the new building was constructed;

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(d) installing fittings forming part of the building;

"occupier" means the person occupying the high value accommodation in respect of which the total construction costs are the subject of a deduction under this paragraph;

"property developer" means a person who carries out the development of a qualifying project;

"qualifying project" means a building development project consisting of high value accommodation and approved by the Commissioner as being a qualifying project for the purposes of this paragraph.

(8) The Minister may make rules for the implementation of the provisions in this paragraph.

Relocation costs.

12C.(1) A person who–

(a) holds a licence to retail tobacco pursuant to section 6 of the Tobacco Act 1997; and

(b) by virtue of changes to that Act and to subsidiary legislation thereto, has been required to relocate from those areas commonly known as Laguna Estate and Glacis Estate to another location,

may claim an additional capital allowance equivalent to the relocation costs, where such costs are approved by the Commissioner, but for the avoidance of doubt, the cost of the land or lease is not to be taken into consideration.

(2) The Minister may make rules for the implementation of the provisions in this paragraph.

Chapter 4
Deleted

13. *Deleted*

Chapter 5

Hire Purchase

Assets Bought on Hire Purchase.

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14. Where a person incurs capital expenditure on the provision of plant and machinery under a contract which provides that the person shall become the owner of the plant and machinery on the performance of the contract the plant and machinery will be treated as owned by it for the purposes of this Part.

Chapter 6

Start-ups

14A.(1) The capital allowances referred to in Chapters 1 to 5 may be claimed in full against the tax liability arising from the first year of trade, subject to subparagraphs (2) and (3).

(2) No claim can be made under this paragraph if a claim has already been made in accordance with the provisions of Chapters 1 to 5 of this Part and in respect of that same expenditure.

(3) Where the Commissioner is of the opinion-

(a) that a person connected to the company undertook business in Gibraltar before the company's commencement of business in Gibraltar and that the business undertaken by him was of the same or similar nature (or of an ancillary nature) to the business being undertaken by the company; or

(b) that the incorporation of the company or the commencement of business in Gibraltar by that company is an artificial or fictitious arrangement,

the provisions of subparagraph (1) will not apply.

(4) In this paragraph "business" means a trade, profession, business or vocation." as defined in section 74 of this Act;

PART III

ADDITIONAL DEFINITION OF INCOME – INTEREST AS A TRADING RECEIPT

Additional definition of income - interest as a trading receipt.

15.(1) Subject to subparagraph (2), in computing the profits or gains of a person other than an individual, any sum accrued as interest or similar amounts shall be included in the computation of the profits or gains of the business as trading income and such profits or gains shall be deemed to be accrued in and derived from Gibraltar.

(1A) For the purposes of this paragraph "similar amounts" means, the profit or gain arising to a person to whom subparagraph (1) applies from–

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(a) any instrument paying a recurring amount of income calculated by reference to a transaction for the lending of money whether such instrument directly evidences a transaction pursuant to which money is loaned or advanced or is a derivative instrument referencing such a transaction and whether or not such amount is paid to the initial parties to such an instrument or to a person to whom the benefit of such instrument is assigned or otherwise transferred;

(b) lending, advancing or otherwise generating income from virtual assets by means of an arrangement under which, in return for value (calculated in relation to a percentage of the value or number of those virtual assets or otherwise benchmarked to their characteristics)–

(i) another person or entity is permitted to use the virtual assets; or

(ii) the virtual assets are used to validate transactions on a proof of stake blockchain or any similar consensus mechanism;

(c) discounts; or

(d) any other arrangement (whether legally enforceable or not) in relation to which it is reasonable to assume that the main purpose, or one of the main purposes, of those arrangements is the avoidance of the charge to tax on interest under this paragraph.

(1B) Subparagraph (1A)(b) applies whether the profit or gain to the person concerned arises from–

(a) the use, for the purpose in that subparagraph, of virtual assets which belong to that person or which the person holds on behalf of others; or

(b) the person facilitating the use of another person's virtual assets for that purpose and receiving any part of any value which arises,

and in subparagraph (1A)(b) "virtual asset" has the meaning given in section 7(1) of the Proceeds of Crime Act 2015.

(2) Subparagraph (1) shall only apply to the income of a person other than an individual–

(a) which carries on the activity of money lending to members of the general public or which advertises or announces itself or holds itself out in any way as carrying on that business or actually carries on that business whether solely or jointly with any other business, trade or vocation;

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(b) which is in receipt of interest on funds derived from the regulated activity of accepting deposits as set out in paragraph 3 of Schedule 2 to the Financial Services Act 2019 other than with related counterparts or the proceeds of investment of that interest, which has been placed on deposit with, invested with or loaned to any person;

(c) which has permission under Part 7 of the Financial Services Act 2019 to carry on the regulated activity of effecting or carrying out contracts of insurance; or

(d) which has permission under Part 7 of the Financial Services Act 2019 to carry on the regulated activity of using distributed ledger technology for the storage or transmission of value belonging to another.

(3) Where a person other than an individual is in receipt of interest which is not taxable in accordance with subparagraph (2), no deduction or expense shall be allowed solely in relation to any amount of interest expended or incurred for the purpose of generating the interest.

(4) Where a person other than an individual (the disponor) is chargeable under subparagraph (2) and disposes of any instruments or assets which may give rise to interest or similar amounts to a connected person and such instruments or assets do give rise to interest or similar payments and such interest or similar amounts would be taxable in the hands of the disponor if the disposal had not occurred, then such profits or gains shall form part of the assessable income of the disponor as if the disposal had not occurred.

(5) Subparagraph (4) shall not apply to any person who provides evidence to the satisfaction of the Commissioner that the avoidance of tax was not the main purpose or one of the main purposes of the disposal.

(6) This paragraph applies with effect for accounting periods beginning on or after 1st February 2024.

(7) This paragraph applies subject to section 18.

PART IV

OTHER DEDUCTIONS AND CREDITS

Qualifying training.

16.(1) Where a person has incurred cost in the provision of qualifying training, an employer may claim a further deduction of 50% of those costs as a deduction under this paragraph in addition to the 100% deduction which may be claimed under paragraph 2(1).

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(2) A self-employed individual undertaking qualifying training may also claim the 50% deduction specified in subparagraph (1).

(2A) In respect of accounting periods or years of assessment, as the case may be, ending within the period extending from 1 July to 2021 up to and including 30 June 2023, the deduction referred to in subparagraphs (1) and (2) shall be of 60%.

(3) In this paragraph "qualifying training" means any qualification and training as approved by the Commissioner.

Architects fees and planning costs.

17.(1) Where a person has made an application under the Town Planning Act and which is approved in accordance with that Act–

(a) in respect of a development on or within its own property; and

(b) within 24 months from the day on which it commenced trading,

that person may claim a credit of up to 100% of the costs of the architects fees and any fees paid to the Government in respect of such an application, subject to the provisions of subparagraph (2) below.

(2) The total amount which may be claimed under subparagraph (1)–

(a) must not exceed £5,000;

(b) may be claimed in respect of any tax liability incurred in the first 3 years of operation; and

(c) the proportion of that credit attributed to an accounting period or year of assessment, as the case may be, must not exceed the amount of tax payable in any given accounting period or year of assessment.

Tax credit for Start-Ups.

17A.(1) Where the Commissioner is satisfied on the application of a company, limited partnership or limited liability partnership that-

(a) the said company or partnership commenced business in Gibraltar on or after 5 July 2016 but before 1 July 2017;

(b) such business relates to a bona-fide new activity in Gibraltar;

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(c) the business does not represent a transfer of business previously existing in Gibraltar or the allocation of profits from a business previously existing in Gibraltar; and

(d) employs at least five employees in its first year of trading or business, the Commissioner may direct that the said company or partnership shall be eligible for a tax credit in respect of its first 3 years of trading or business which is equal to the tax due in a year of assessment or accounting period, as the case may be, up to a maximum of £50,000 per year.

(2) The tax credit available in a year of assessment or accounting period, as the case may be, shall not be available for carry forward or set off in any other year of assessment.

Tax credit for properties.

17B.(1) Where the Commissioner is satisfied that a property –

(a) was rented for residential purposes; and

(b) constructed between 1 July 2016 and 1 January 2019,

the owner of such property shall be entitled to a tax credit in accordance with this paragraph.

(2) The tax credit shall be equal to the tax payable on any profits earned by the owner of the property during the first 24 months of rental income.

(3) The rental income must be received within the first five years following the date of completion of the development in which the property is located.

(4) No tax credit shall be permitted under this paragraph unless the claim for the tax credit is accompanied by a certificate of completion of development.

Marketing and promotion.

18.(1) Where a person has incurred cost in the provision of marketing and promotion in an accounting period, or year of assessment, as the case may be, that person may claim a further deduction of 50% of those costs as a deduction under this paragraph in addition to the deduction claimed under paragraph 2(1) of this Schedule.

(2) Any deduction claimed under (1) above, shall be applied in computing the assessable profits for the accounting periods, or years of assessment, as the case may be, ending in the period extending from 1 July 2021 up to and including 30 June 2022.

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(3) For the purposes of this paragraph-

"marketing and promotion" means any costs incurred in relation to the advertising or promotion of Gibraltar as a-

(i) destination for the purposes of enhancing tourism, attracting visitors for leisure-related events, conventions, conferences or similar gatherings, or

(ii) jurisdiction for the purposes of attracting new business ventures and enterprises to set up and operate in and from Gibraltar.

Fixed payroll costs.

19.(1) Where a person has incurred fixed payroll costs in an accounting period, or year of assessment, as the case may be, that person may claim a further deduction of 50% of those costs as a deduction under this paragraph in addition to the deduction claimed under paragraph 2(1) of this Schedule.

(2) Any deductions claimed under (1) above, shall be applied in computing the assessable profits for the accounting periods, or years of assessment, as the case may be, ending in the period extending from 1 July 2021 up to and including 30 June 2023.

(3) For the purposes of this paragraph -

(a) "fixed payroll costs" means all payments to registered employees in the form of contracted salaries and wages and excluding bonuses, incentive or compensation payments, overtime, allowances and any similar non-fixed or contracted amount; and

(b) "registered employees" mean those registered in employment after 1 July 2021 and in accordance with all the requirements of H.M. Government of Gibraltar's Employment Service.

Health and fitness.

19A.(1) An individual shall be eligible to claim a tax credit under this paragraph against his tax liability.

(2) The tax credit shall not exceed 10 per cent of the total cost incurred by the individual referred to in sub-paragraph (1) above, in relation to–

(a) his enrolment or membership in a gymnasium or fitness centre in Gibraltar;

(b) the contracted fitness related services of a personal trainer in Gibraltar.

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(3) For the purposes of sub-paragraph (2)–

(a) a claim shall only be allowed in relation to the services provided by a personal trainer who is registered with the Income Tax Office and is compliant with his tax obligations to the satisfaction of the Commissioner; and

(b) any claim made under sub-paragraph (2) must be accompanied by evidence in support of the entirety of the costs incurred to the satisfaction of the Commissioner.

(4) The tax credit shall not exceed the lower of–

(a) 10 per cent of the total cost incurred referred to in sub-paragraph (2) above; or

(b) the tax liability of the individual referred to in sub-paragraph (1).

(5) Any remaining balance in the tax credit under sub-paragraph (4) above shall be reduced to zero and shall not be available for transfer or carry forward by way of set off against any tax liability in respect of any year of assessment.

Private Education.

19B.(1) A parent, who pays private school tuition fees in Gibraltar in respect of his child, shall be eligible to claim a tax credit under this paragraph against his tax liability.

(2) The tax credit shall not exceed 10 per cent of the cost incurred by the parent referred to in sub-paragraph (1) above in relation to the total private school tuition fees paid in Gibraltar in respect of that child.

(3) For the purposes of this paragraph–

(a) "child" includes a stepchild, an illegitimate child and a child adopted in accordance with an order made by a court of competent jurisdiction;

(b) "private school" means an institution which provides primary or secondary education in Gibraltar and excludes nursery schools; and

(c) any claim must be accompanied by evidence in support of the entirety of the costs incurred to the satisfaction of the Commissioner.

(4) The tax credit shall not exceed the lower of–

(a) 10 per cent of the total cost incurred referred to in sub-paragraph (2) above; or

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(b) the tax liability of the parent referred to in sub-paragraph (1) above.

(5) Any remaining balance in the tax credit under sub-paragraph (4) above shall be reduced to zero and shall not be available for transfer or carry forward by way of set off against any tax liability in respect of any year of assessment.

Sole practitioners.

19C.(1) An individual who is a sole practitioner shall be eligible to claim a tax credit under this paragraph against his tax liability.

(2) For the purposes of this paragraph, "sole practitioner" means an individual registered with the Legal Services Regulatory Authority to conduct or provide a legal service in Gibraltar who is a sole practitioner and does not carry out any professional activity in common with other practitioners; whether in a set of chambers, partnership, firm, company or any other arrangement.

(3) The tax credit shall not exceed 75 per cent of the total fees showed to have been paid by the individual referred to in sub-paragraph (1) above to the Legal Services Regulatory Authority in Gibraltar.

(4) The tax credit available shall not exceed the lower of–

(a) 75 per cent of the total fees incurred referred to in sub-paragraph (3) above; or

(b) the tax liability of the individual sole practitioner referred to in sub-paragraph (1) above.

(5) For the purposes of this paragraph, any claim must be accompanied by evidence in support of the entirety of the costs incurred to the satisfaction of the Commissioner.

Power to amend this Schedule.

20.(1) The Minister may by regulations amend the relevant paragraphs of this Schedule so as to-

(a) amend the amount of any expenditure, allowance or deduction; or

(b) extend any time period;

prescribed in those paragraphs.

(2) The relevant paragraphs of this Schedule are-

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(a) paragraph 6A(1) and (6);

(b) paragraph 8(1)(b) and (2)(b);

(c) the exception to paragraph 9(3) including paragraphs 9(3)(c) and (d);

(d) paragraph 9(11A) and (11B);

(e) paragraph 16(2A); and

(f) paragraphs 18 to 19C.

(3) The regulations may include such supplementary, incidental or consequential provisions as appear to the Minister to be necessary or expedient.

SCHEDULE 4

Section 40

ANTI AVOIDANCE

Anti-avoidance.

1. In addition to the general provision of section 40, the Commissioner may ascertain the taxation due from any person chargeable in accordance with this Act for any year of assessment or accounting period in accordance with the provisions of this Schedule.

PART I

COMPUTATION OF PROFITS OR GAINS GENERALLY

Thin capitalisation.

2.(1) Where at any time in an accounting period, the loan capital to equity ratio of a company, other than a credit institution or deposit taker regulated under the Financial Services (Banking) Act, is greater than 5 to 1, and–

(a) the company pays interest on a loan to a connected person which is not a company and the loan is not considered to be at arm's length by reference to either the rate of interest or the terms and conditions of that loan; or

(b) the company pays interest on a loan to an arm's length party, where that loan is secured wholly or on more than 50% of the assets belonging to a connected person which is not a company and the loan is not considered to be at arm's length by reference to either the rate of interest or the terms and conditions of that loan,

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then, the interest so paid, or payable, to either the connected person or to the arm's length party, as the case may be, will be deemed to be a dividend paid by the company and received by the connected person, or the arm's length party as the case may be, at either time of payment or at such other time as ascertained by the Commissioner and the interest shall not be deductible in computing the profits or gains of the company for that accounting period.

(c) for the purposes of this subparagraph –

"loan capital" means the total interest-bearing debt of a company in an accounting period.

"equity" means preference shares, whether redeemable or irredeemable and regardless of their accounting treatment, together with shareholders' funds including the called-up share capital, the share premium account, any capital redemption reserve, the retained profits and any revaluation reserve only where the Commissioner is satisfied as to the substance of such a revaluation.

(2) For the purposes of subparagraph (1)–

(a) any dividends deemed to have been paid by the company will be determined in accordance with the provisions of this Act as if an actual dividend had been paid by the company;

(b) any deemed dividends shall have available a tax credit determined in accordance with the provisions of this Act as if an actual dividend had been paid by the company;

(c) where a company has insufficient distributable profits to fund the dividends deemed to have been paid, the amount of the tax credit on such a dividend shall be restricted to the amount available in respect of the proportion which would be funded as if an actual dividend had been paid by the company;

(d) any restriction in (c) above shall not preclude the disallowance of the entirety of the interest in accordance with this paragraph.

3. *not used*

PART II

TRANSACTIONS WITH CONNECTED PERSONS

Transactions with Connected persons.

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4.(1) Where a person carries on business with a connected person and it appears to the Commissioner that the course of business between those persons is so arranged, that the business done by the person chargeable to taxation in pursuance of his connection with the other person produces to the person either no profits, less than the ordinary profits, losses or increases the loss which might be expected to arise from that business, the person shall be assessable and chargeable to tax in respect of the profits which might be expected to arise from that business if it were transacted in accordance with the remainder of this Schedule.

(2) The amount of any interest paid by a person to a connected party in any year which exceeds the amount of interest which would have been paid to an arm's length party shall be deemed to be a dividend paid by the person and received by the connected party at the time of payment and shall not be deductible in ascertaining the profits or gains of the person for that year.

(3) Where a person chargeable to taxation in Gibraltar claims a deduction or deductions in computing its profits and gains for taxation for any year of assessment or accounting period in respect of an expense or expenses incurred in favour of a connected party or connected parties (for the purposes of this subparagraph collectively known as "the Expense"), the aggregate amount of the deduction to be allowed in respect of the Expense in computing the profits and gains of the person shall be the least of-

(a) the amount of the Expense;

(b) 5 per cent of the gross turnover of the person for the accounting period or year of assessment; and

(c) (i) 75 per cent of the pre- Expense net profit of the person for the accounting period or year of assessment.

(ii) For the purpose of (i) above the pre Expense net profit of the person shall be the net profit after the Expense has been added back.

(iii) For the purpose of (i) above, any losses available for relief brought forward shall first be deducted from the pre-Expense net profit before applying the 75 per cent.

(4) For the purpose of, and subject to, subparagraph (3) above-

(a) the net profit of the person shall be the net profit computed in accordance with this Act;

(b) the gross turnover of the person shall be that expressed in the return of the person and computed in accordance with any-

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(i) accounting standard or convention applicable to the trade, profession, business or vocation of the person;

(ii) where applicable, any practice in computing the turnover imposed by any statutory regulation,

as amended by the Commissioner for the purposes of imposing taxation on persons conducting the particular trade, profession, business or vocation; or

(iii) guidelines published by the Commissioner for the purpose of this subparagraph.

Non-deductibility of interest paid on certain secured loans.

5. Where at any time in a year a person;

(a) pays interest on a loan made by a lender being an arm's length person, and

(b) a substantial part or all of the loan on which the interest is paid is secured-

(i) by a cash deposit made with the lender or any connected person of the lender by the person or by any connected person of the person; or

(ii) on investments (which has the meaning given in section 3(2)(a) of the Financial Services Act 1989) and income arising or derived therefrom belonging to the person or to any connected person of the person over which the lender or any connected person of the lender has taken security; and

(iii) the income or gains arising or derived from the cash deposit or investment referred to respectively in subparagraphs (i) and (ii) above is not assessable in accordance with this Act,

that interest will not be deductible in computing the profits or gains of the person for the year.

Chargeability of dual employment contracts.

6. Where an employee of an employer ordinarily resident in Gibraltar has one or more other contracts with that or another employer, whether resident in Gibraltar or elsewhere who is a connected person to the employer ordinarily resident in Gibraltar, the income derived from or accruing from all the contracts held by the employee, whether the duties are performed in Gibraltar or elsewhere shall be charged to tax under Schedule 1 Table B (1).

Exemption from Paragraphs 2 and 4 to 6.

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7.(1) Paragraphs 2 and 4 to 6 shall not apply if the person who would otherwise be assessed shows in writing or otherwise to the satisfaction of the Commissioner either-

(a) that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the loans or other arrangements or any of them were effected;

(b) that the loans or other arrangements were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation; and

(c) that the quantum of the loan or other arrangement is reasonable and proportionate in relation to the business of the person who would otherwise be assessed disregarding that loan or arrangement.

(2) The decision of the Commissioner in exercise of the power conferred upon him by this paragraph shall be subject to any appeal in accordance with Section 35 as if it were an appeal against an assessment save that paragraph 13 of Schedule 2 shall not apply but the Tribunal may confirm, vary or quash the decision of the Commissioner.

PART III

DEFINITIONS

Interpretation.

8. For the purposes of this Schedule unless the context otherwise requires-

"arms length person" means a person who is not a connected person;

"business"means any trade, profession or vocation and includes a business carried on for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over land in Gibraltar;

"connected person" has the meaning given in paragraph 9;

"substantial part" means 50% or more.

8A. For the purposes of Part V to Part VII unless the context otherwise requires (and subject to paragraph 22) –

"associated enterprise" means:

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(a) an entity in which the taxpayer holds directly or indirectly a participation in terms of voting rights or capital ownership of 25% or more or is entitled to receive 25% or more of the profits of that entity; or

(b) an individual or entity which holds directly or indirectly a participation in terms of voting rights or capital ownership in a taxpayer of 25% or more or is entitled to receive 25% or more of the profits of the taxpayer;

If an individual or entity holds directly or indirectly a participation of 25% or more in a taxpayer and one or more entities, all the entities concerned, including the taxpayer, shall also be regarded as associated enterprises.

"borrowing costs" means interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance, including, without being limited to, payments under profit participating loans, imputed interest on instruments such as convertible bonds and zero coupon bonds, amounts under alternative financing arrangements, such as Islamic finance, the finance cost element of finance lease payments, capitalised interest included in the balance sheet value of a related asset, or the amortisation of capitalised interest, amounts measured by reference to a funding return under transfer pricing rules where applicable, notional interest amounts under derivative instruments or hedging arrangements related to an entity's borrowings, certain foreign exchange gains and losses on borrowings and instruments connected with the raising of finance, guarantee fees for financing arrangements, arrangement fees and similar costs related to the borrowing of funds;

"consolidated group for financial accounting purposes" means a group consisting of all entities which are fully included in consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or the national financial reporting system of Gibraltar;

"EBITDA" means a taxpayer's taxable revenues before interest, tax, depreciation and amortisation;

"entity" means a company, partnership, trust or foundation;

"exceeding borrowing costs" means the amount by which the deductible borrowing costs of a taxpayer exceed taxable interest revenues and other economically equivalent taxable revenues;

"financial undertaking" means any of the following entities:

(a) a credit institution or an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council or an

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alternative investment fund manager (AIFM) as defined in point (b) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council or an undertaking for collective investment in transferable securities (UCITS) management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC of the European Parliament and of the Council;

(b) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council;

(c) a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;

(d) an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council;

(e) pension institutions operating pension schemes which are considered to be social security schemes covered by Regulation (EC) No 883/2004 of the European Parliament and of the Council and Regulation (EC) No 987/2009 of the European Parliament and of the Council as well as any legal entity set up for the purpose of investment of such schemes;

(f) an alternative investment fund (AIF) managed by an AIFM as defined in point (b) of Article 4(1) of Directive 2011/61/EU or an AIF licenced, authorised or otherwise regulated under the laws of Gibraltar;

(g) an undertaking for collective investment in transferable securities (UCITS) in the meaning of Article 1(2) of Directive 2009/65/EC;

(h) a central counterparty as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council; or

(i) a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council;

"long-term public infrastructure project" means:

(a) a recognised public interest project to provide, upgrade, operate and/or maintain a large-scale asset; or

(b) buildings (or parts of buildings) that are let (or sub-let) (the "Property"); and

a. the taxpayer exclusively carries on a property business in relation to the Property, being a business to let real property and/or interests in land, within or Gibraltar; and

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b. the borrowing costs in question are incurred in the purchase, development or renovation of the Property; and

c. the debt or financing arrangement in question is secured against the Property; and

d. at the date of the loan or other relevant liability which generates the borrowing costs in question, the Property is expected to generate income for a minimum of ten years; and

e. the Property is recognised in accordance with the International Financial Reporting Standards in force from time to time in the financial statements of the taxpayer for the relevant accounting period; and

f. any lease or other similar interest in land granted by the taxpayer on the Property is granted for less than 50 years; and

g. all transactions carried out by the taxpayer in relation to the Property are carried out in accordance with the arm's length principle; and

h. any income generated by the Property is taxable in Gibraltar;

"standalone entity" means a taxpayer that is not part of a consolidated group for financial accounting purposes and has no associated enterprise or permanent establishment situated in a country other than Gibraltar;

"structured arrangement" means an arrangement involving a hybrid mismatch where the mismatch outcome is priced into the terms of the arrangement or an arrangement that has been designed to produce a hybrid mismatch outcome, unless the taxpayer or an associated enterprise could not reasonably have been expected to be aware of the hybrid mismatch and did not share in the value of the tax benefit resulting from the hybrid mismatch.

"taxpayer" means an ordinarily resident company which has assessable income under the provisions of this Act or a permanent establishment of any such company resident in the United Kingdom, a Member State of the European Union or a third country;

"transfer of assets" means an operation whereby the United Kingdom or a Member State of the European Union loses the right to tax the transferred assets, whilst the assets remain under the legal or economic ownership of the same taxpayer;

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"transfer of tax residence" means an operation whereby a taxpayer ceases to be resident for tax purposes in Gibraltar, whilst acquiring tax residence in a Member State of the European Union or third country; and

"transfer of a business carried on by a permanent establishment" means an operation whereby a taxpayer ceases to have taxable presence in - Gibraltar whilst acquiring such presence in the United Kingdom, a Member State of the European Union or third country without becoming resident for tax purposes in the United Kingdom or that Member State of the European Union or third country.

"tax period" means a tax year, calendar year or any other appropriate period for tax purposes.

Connected persons.

9.(1) For the purposes of, and subject to, the provisions of this Act which apply this paragraph, any question of whether a person is connected with another shall be determined in accordance with the following provisions of this paragraph (any provision that one person is connected with another being taken to mean that they are connected with one another).

(2) A person is connected with an individual if that person is the individual's wife or husband living with him or her, or is a relative, or the wife or husband of a relative, of the individual or of the individual's wife or husband and a man and a woman living together as husband and wife are treated as if they were married to each other.

(3) A person, in his capacity as trustee of a settlement, is connected with-

(a) any individual who in relation to the settlement is a settlor,

(b) any person who is connected with such individual, and

(c) any body corporate which is connected with that settlement,

and for the purposes of this paragraph a body corporate is connected with a settlement if–

(d) it is a private company and the participators include the trustees of the settlement; or

(e) it is controlled (within the meaning of paragraph 10) by a company falling within paragraph (d) above.

(3A) A foundation is connected with-

(a) any individual who in relation to the foundation is a founder,

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(b) any person who is connected with such individual, and

(c) any body corporate which is connected with that foundation,

and for the purposes of this paragraph a body corporate is connected with a foundation if–

(d) it is a private company and the participators include the foundation; or

(e) it is controlled (within the meaning of paragraph 10) by a company falling within paragraph (d) above.

(4) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person is connected with any person with whom he is in partnership, and with the wife or husband or relative of any individual with whom he is in partnership.

(5) A company is connected with another company-

(a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other; or

(b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

(6) A company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.

(7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(8) Any two or more persons acting together in a reciprocal arrangement shall be treated in relation to that arrangement as being connected to one another.

(9) In this paragraph-

"company" includes any body corporate or unincorporated association, but does not include a partnership, and this paragraph shall apply in relation to any unit trust scheme as if the scheme were a company and as if the rights of the unit holders were shares in the company;

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"control" shall be construed in accordance with paragraph 10 except where otherwise specifically provided;

"founder" shall have the meaning ascribed to it in sections 2 and 5 of the Private Foundations Act 2017 and shall further include any person who endows assets directly or indirectly to or upon a foundation or who has made with any other person a reciprocal arrangement for that other person to endow assets directly or indirectly to or upon a foundation;

"relative" means brother, sister, cousin of the first blood, uncle, aunt, ancestor, lineal descendant or lineal descendant of a brother or sister;

"settlement" includes any disposition, trust, covenant, agreement, arrangement or transfer of assets; and

"settlor", in relationship to a settlement, means any person by whom the settlement was made and a person shall be deemed to have made a settlement if he has made or entered into the settlement directly or indirectly, and, in particular, but without prejudice to the generality of the preceding words, if he has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

Control.

10.(1) For the purposes of this Schedule except where otherwise specifically provided, a person shall be taken to have control of a company if he exercises, or is able to exercise or is entitled to acquire, direct or indirect control over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses or is entitled to acquire-

(a) the greater part of the share capital or issued share capital of the company or of the voting power in the company; or

(b) such part of the issued share capital of the company as would, if the whole of the income of the company were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive the greater part of the amount so distributed; or

(c) such rights as would, in the event of the winding-up of the company or in any other circumstances, entitle him to receive the greater part of the assets of the company which would then be available for distribution among the participators.

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(2) Where two or more persons together satisfy any of the conditions of subparagraph (1) above, they shall be taken to have control of the company.

(3) For the purposes of subparagraph (1) above a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire.

(4) For the purposes of subparagraph (1) and (2) above, there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

(5) For the purposes of subparagraph (1) and (2) above, there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under subparagraph (4) above, but not those attributed to an associate under this subparagraph; and such attributions shall be made under this subparagraph as will result in the company being treated as under the control of five or fewer participators if it can be so treated.

Participator.

11.(1) For the purposes of Paragraphs 9 and 10, a "participator" is, in relation to any company, a person having a share or interest in the capital or income of the company, and, without prejudice to the generality of the preceding words, includes-

(a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;

(b) any loan creditor of the company;

(c) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption; and

(d) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit.

(2) In subparagraph (1) references to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it.

(3) The provisions of subparagraph (1) above are without prejudice to any particular provision of Paragraphs 9 and 10 requiring a participator in one company to be treated as being also a participator in another company.

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(4) For the purposes of Paragraph 9 and 10 "associate" means, in relation to a participator-

(a) any relative or partner of the participator;

(b) the trustee or trustees of any settlement in relation to which the participator is, or any relative of his (living or dead) is or was, a settlor (for the purposes of this subparagraph "settlor" and “settlement” have the meaning given in subparagraph 9(9)); and

(c) where the participator is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person-

(i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased; and

(ii) if the participator is a company, any other company interested in those shares or obligations;

and has a corresponding meaning in relation to a person other than a participator.

(5) In subparagraph (3) above “relative” means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.

(6) Subject to subparagraph (7) below, for the purposes of paragraphs 9 and 10 “loan creditor”, in relation to a company, means a creditor in respect of-

(a) any debt incurred by the company-

(i) for any money borrowed or capital assets acquired by the company;

(ii) for any right to receive income created in favour of the company; or

(iii) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon); or

(b) any redeemable loan capital issued by the company.

(7) Subject to subparagraph (8) below, a person who is not the creditor in respect of any debt or loan capital to which subparagraph (6) above applies but nevertheless has a beneficial interest therein shall, to the extent of that interest, be treated for the purposes of paragraphs 9 and 10 as a loan creditor in respect of that debt or loan capital.

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(8) A person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.

PART IV

TRANSFER OF ASSETS ABROAD

Prevention of avoidance of income tax.

12.(1) The following provisions of this paragraph shall have effect for the purpose of preventing the avoiding by any ordinarily resident individual of liability to tax by means of transfers of assets by virtue or in consequence of which, either alone or in conjunction with associated operations, income becomes payable to persons resident outside Gibraltar.

(2) Nothing in subparagraph (1) shall be taken to imply the provisions of subparagraphs (3) and (4) apply only if–

(a) the individual in question was ordinarily resident at the time when the transfer was made; or

(b) the avoiding of liability to tax is, or was, the purpose, or one of the purposes, for which the transfer was effected.

(3) Where by virtue or in consequence of any such transfer, either alone or in conjunction with associated operations, the individual has, within the meaning of this paragraph, power to enjoy, whether forthwith or in the future, any income of a person resident outside Gibraltar which, if it were income of that individual received by him in Gibraltar, would be chargeable to income tax by deduction or otherwise, that income shall, whether it would or would not have been chargeable to tax apart from the provisions of this paragraph, be deemed to be income of that individual for all purposes of this Act.

(4) Where, whether before or after any such transfer, the individual receives or is entitled to receive any capital sum the payment of which is in any way connected with the transfer or any associated operation, any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a person resident outside Gibraltar shall, whether it would or would not have been chargeable to tax apart from the provisions of this paragraph, be deemed to be income of that individual for all purposes of this Act.

(5) In subparagraph (4) above "capital sum" means, subject to subparagraph (6) below-

(a) any sum paid or payable by way of loan or repayment of a loan, and

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(b) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money's worth.

(6) For the purposes of subparagraph (4) above, there shall be treated as a capital sum which a individual receives or is entitled to receive any sum which a third person receives or is entitled to receive at the individual's direction or by virtue of the assignment by him of his right to receive it.

(7) Income shall not by virtue of subparagraph (3) above be deemed to be that of a individual for any year of assessment by reason only of his having received a sum by way of loan if that sum has been wholly repaid before the beginning of that year.

(8) Income chargeable to tax by virtue of this paragraph shall be charged under Schedule 1, Table C, Class 5.

(9) This paragraph applies irrespective of when the transfer or associated operations referred to in subparagraph (1) above took place, but applies only to relevant income arising on or after the date this act came into effect.

Liability of non-transferors.

13.(1) This paragraph has effect where-

(a) by virtue or in consequence of a transfer of assets, either alone or in conjunction with associated operations, income, which if it were income of that person received by him in Gibraltar, would be chargeable to income tax by deduction or otherwise, becomes payable to a person resident outside Gibraltar; and

(b) an individual who is not liable to tax under paragraph 12 by reference to the transfer receives a benefit provided out of assets which are available for the purpose by virtue or in consequence of the transfer or of any associated operations.

(2) Subject to the provisions of this paragraph, the amount or value of any such benefit as is mentioned in subparagraph (1) above, if not otherwise chargeable to tax in the hands of the recipient, shall-

(a) to the extent to which it falls within the amount of relevant income of years of assessment up to and including the year of assessment in which the benefit is received, be treated for all the purposes of this Act as the income of the individual for that year;

(b) to the extent to which it is not by virtue of this subparagraph treated as his income for that year and falls within the amount of relevant income of the next following year of assessment, be treated for those purposes as his income for the next

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following year and so on for subsequent years, taking the reference in paragraph (b) to the year mentioned in paragraph (a) as a reference to that and any other year before the subsequent year in question.

(3) The relevant income of a year of assessment, in relation to a individual, is any income which arises in that year to a person resident outside Gibraltar and which by virtue or in consequence of the transfer or associated operations referred to in subparagraph (1) above can directly or indirectly be used for providing a benefit for the individual or for enabling a benefit to be provided for him.

(4) Income chargeable to tax by virtue of this paragraph shall be charged under Schedule 1, Table C, Class 5.

(5) This paragraph applies irrespective of when the transfer or associated operations referred to in subparagraph (1) above took place, but applies only to relevant income arising on or after the date this act came into effect.

Exemption from Paragraphs 12 and 13.

14.(1) Paragraphs 12 and 13 shall not apply if the individual who would otherwise be chargeable to tax under those paragraphs shows in writing or otherwise to the satisfaction of the Commissioner either-

(a) that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the transfer or associated operations or any of them were effected; or

(b) that the transfer and any associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

(2) The jurisdiction of the Tribunal on any appeal shall include jurisdiction to review any relevant decision taken by the Commissioner in exercise of their functions under this paragraph.

Interpretation of Paragraphs 12 to 14.

15.(1) For the purposes of paragraphs 12 to 14 “an associated operation” means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing, whether directly or indirectly, any of the assets transferred, or to the income arising from any such assets, or to any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets.

(2) An individual shall, for the purposes of paragraph 12, be deemed to have power to enjoy income of a person resident outside Gibraltar if-

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(a) the income is in fact so dealt with by any person as to be calculated, at some point of time, and whether in the form of income or not, to enure for the benefit of the individual; or

(b) the receipt or accrual of the income operates to increase the value to the individual of any assets held by him or for his benefit; or

(c) the individual receives or is entitled to receive, at any time, any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which directly or indirectly represent that income; or

(d) the individual may, in the event of the exercise or successive exercise of one or more powers, by whomsoever exercisable and whether with or without the consent of any other person, become entitled to the beneficial enjoyment of the income; or

(e) the individual is able in any manner whatsoever, and whether directly or indirectly, to control the application of the income.

(3) In determining whether an individual has power to enjoy income within the meaning of subparagraph (2) above-

(a) regard shall be had to the substantial result and effect of the transfer and any associated operations, and

(b) all benefits which may at any time accrue to the individual (whether or not he has rights at law or in equity in or to those benefits) as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(4) For the purposes of paragraphs 12 to 14, any body corporate managed and controlled outside Gibraltar shall be treated as if it were resident outside Gibraltar whether it is ordinarily resident in Gibraltar or not.

(5) For the purposes of paragraphs 12 to 14 of this Part-

(a) “individual” shall be deemed to include the wife or husband of the individual;

(b) “assets” includes property or rights of any kind and "transfer" , in relation to rights, includes the creation of those rights;

(c) “benefit” includes a payment of any kind;

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(d) "transfer" includes the waiver by an individual of dividends or any other distribution by a company in any manner the effect of which is to transfer to a non-resident person the benefit of such dividends either directly or indirectly and whether by enhancement of the dividend or other distribution made to the non-resident person;

(e) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligations of any other person to whom, those assets, that income or those accumulations are or have been transferred.

Supplemental provisions.

16.(1) In computing the liability to tax of an individual by virtue of paragraph 12, the same deductions and reliefs shall be allowed as would have been allowed if the income deemed to be his by virtue of that paragraph had actually been received by him.

(2) Where an individual has been charged to tax on any income deemed to be his by virtue of paragraph 12 and that income is subsequently received by him, it shall be deemed not to form part of his income again for the purposes of this Act.

(3) In any case where an individual has for the purposes of that paragraph power to enjoy income of a person abroad by reason of his receiving any such benefit as is referred to in paragraph 15(2)(c), then notwithstanding anything in subparagraph (1) above, the individual shall be chargeable to tax by virtue of paragraph 12 for the year of assessment in which the benefit is received on the whole of the amount or value of that benefit except in so far as it is shown that the benefit derives directly or indirectly from income on which he has already been charged to tax for that or a previous year of assessment.

No duplication of charge.

17.(1) No amount of income shall be taken into account more than once in charging tax under the provisions of paragraphs 12 and 13; and where there is a choice as to the persons in relation to whom any amount of income can be so taken into account-

(a) it shall be so taken into account in relation to such of them, and if more than one in such proportions respectively, as appears to the Commissioner to be just and reasonable; and

(b) the jurisdiction of the Tribunal on any appeal against an assessment charging tax under those provisions shall include jurisdiction to review any relevant decision taken by the Commissioner under this subparagraph.

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(2) In subparagraph (1) above references to an amount of income taken into account in charging tax are-

(a) in the case of tax which under paragraph 12 is charged on income, to the amount of that income;

(b) in the case of tax charged under that paragraph by virtue of paragraph 16(3), to an amount of the income out of which the benefit is provided equal to the amount or value of the benefit charged;

(c) in the case of tax charged under paragraph 13 to the amount of relevant income taken into account under subparagraph (2) of that paragraph in charging the benefit.

PART V

INTEREST LIMITATION RULE

Interest limitation rule

18.(1) Financial undertakings, including where financial undertakings are part of a consolidated group for financial accounting purposes, and standalone entities shall be excluded from the scope of this Part.

(2) Consolidated groups for financial accounting purposes consists of all entities which are fully included in the consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or the national financial reporting system of Gibraltar. For the purposes of this paragraph, the taxpayer shall be given the right to use consolidated financial statements prepared under accounting standards other than the International Financial Reporting Standards or the national financial reporting system of Gibraltar.

(3) Exceeding borrowing costs incurred by a taxpayer shall be deductible in the tax period in which they are incurred only up to the greater of the following two amounts-

(a) 30% of the taxpayer's EBITDA; or

(b) €3,000,000.

(4) For the purposes of paragraph 18(3)(b) the amount of €3,000,000 shall be considered for the entire group.

(5) The EBITDA shall be calculated by adding back to the assessable income the tax-adjusted amounts for exceeding borrowing costs as well as the tax-adjusted amounts for depreciation

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and amortisation. Income not assessable in accordance with this Act shall be excluded from the EBITDA of a taxpayer.

(6) Paragraph 19(3) shall not apply to exceeding borrowing costs related to-

(a) loans that were contracted before 17 June 2016, excluding any subsequent modification of such loans; or

(b) loans used to finance a long-term public infrastructure project, where the project operator, borrowing costs, assets and revenues are all within the European Union. In this case, any income from a long-term public infrastructure project is excluded from a taxpayer's EBITDA.

(7) Where a taxpayer is a member of a consolidated group for financial accounting purposes, the taxpayer may choose to either-

(a) fully deduct its exceeding borrowing costs if it can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group and subject to the following conditions-

(i) the ratio of the taxpayer's entity over its total assets is considered to be equal to the equivalent ratio of the group if the ratio of the taxpayer's equity over its total assets is lower by up to two percentage points; and

(ii) all assets and liabilities are valued using the same method as in the consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or the national financial reporting system of Gibraltar;

or

(b) deduct exceeding borrowing costs at an amount in excess of what it would be entitled to deduct under paragraph 18(3). This higher limit to the deductibility of exceeding borrowing costs shall refer to the consolidated group for financial accounting purposes in which the taxpayer is a member and be calculated in two steps-

(i) first, the group ratio is determined by dividing the exceeding borrowing costs of the group vis-à-vis third parties over the EBITDA of the group; and

(ii) second, the group ratio is multiplied by the EBITDA of the taxpayer calculated pursuant to paragraph 18(5).

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(8) Exceeding borrowing costs not deductible in a tax period under paragraphs 18(3) to 18(7) may be carried forward indefinitely. Unused interest capacity which cannot be used in a given tax period may be carried forward for a maximum of 5 years.

PART VA

EXIT TAXATION

18A.(1) This paragraph applies in any of the following circumstances-

(a) a taxpayer transfers assets from its head office to its permanent establishment in the United Kingdom, a Member State of the European Union or in a third country in so far as Gibraltar, as the jurisdiction of the head office, no longer has the right to tax the transferred assets due to the transfer;

(b) a taxpayer transfers assets from its permanent establishment in Gibraltar to its head office or another permanent establishment in the United Kingdom, a Member State of the European Union or in a third country in so far as Gibraltar as the jurisdiction of the permanent establishment no longer has the right to tax the transferred assets due to the transfer;

(c) a taxpayer transfers its tax residence to the United Kingdom, a Member State of the European Union or to a third country, except for those assets which remain effectively connected with a permanent establishment in Gibraltar;

(d) a taxpayer transfers the business carried on by its permanent establishment from Gibraltar to the United Kingdom, a Member State of the European Union or to a third country in so far as Gibraltar, as the jurisdiction of the permanent establishment, no longer has the right to tax the transferred assets due to the transfer.

(2) The taxpayer shall be chargeable to tax, at the rates set in accordance with section 24 of this Act, at an amount equal to the market value of the transferred assets which would otherwise produce assessable income under the provisions of this Act at the time of exit of the assets, less their value for tax purposes.

(3) A taxpayer may defer the payment of an exit tax referred to in subparagraph (2), by paying it in instalments over five years, in any of the following circumstances-

(a) where a taxpayer transfers assets from its head office to its permanent establishment in the United Kingdom, a Member State of the European Union or in a third country that is party to the Agreement on the European Economic Area (EEA Agreement);

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(b) where a taxpayer transfers assets from its permanent establishment in Gibraltar to its head office or another permanent establishment in the United Kingdom, a Member State of the European Union outside Gibraltar or a third country that is party to the EEA Agreement;

(c) where a taxpayer transfers its tax residence to the United Kingdom, a Member State of the European Union or to a third country that is party to the EEA Agreement;

(d) a taxpayer transfers the business carried on by its permanent establishment to the United Kingdom, a Member State of the European Union or a third country that is party to the EEA Agreement.

(4) Subparagraph (3) shall apply to third countries that are party to the EEA Agreement if they have concluded an agreement with the jurisdiction of the taxpayer on the mutual assistance for the recovery of tax claims.

(5) If a taxpayer defers payment in accordance with subparagraph (3), and there is a demonstrable and actual risk of non-recovery, taxpayers may also be required by the Commissioner to provide a guarantee as a condition for deferring the payment in accordance with subparagraph (3).

(6) Where subparagraph (3) applies, the deferral of payment shall be immediately discontinued and the tax debt becomes recoverable in the following cases-

(a) where the transferred assets or the business carried on by the permanent establishment of the taxpayer are sold or otherwise disposed of;

(b) where the transferred assets are subsequently transferred to a third country;

(c) where the taxpayer's tax residence or the business carried on by its permanent establishment is subsequently transferred to a third country;

(d) where the taxpayer goes bankrupt or becomes insolvent or is wound up;

(e) where the taxpayer fails to honour its obligations in relation to the instalments and does not correct its situation over a reasonable period of time, which shall not exceed 12 months.

(7) Subparagraph (6)(b) and (c) shall not apply to third countries that are party to the EEA Agreement if they have concluded an agreement with the jurisdiction of the taxpayer on the mutual assistance for the recovery of tax claims.

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(8) Where a transfer of assets, tax residence or the business carried on by a permanent establishment is from the United Kingdom or a European Union Member State outside Gibraltar to Gibraltar, Gibraltar shall accept the value established by the United Kingdom or the Member State of the European Union of the taxpayer or of the permanent establishment as the starting value of the assets for tax purposes (in accordance with paragraph 18A(2)), unless this does not reflect the market value.

(9) For the purposes of this paragraph, "market value" is the amount for which an asset can be exchanged or mutual obligations can be settled between willing unrelated buyers and sellers in a direct transaction.

(10) Provided that the assets are set to revert to the United Kingdom or a Member State of the European Union as the transferor within a period of 12 months, this paragraph shall not apply to asset transfers related to the financing of securities, assets posted as collateral or where the asset transfer takes place in order to meet prudential capital requirements or for the purpose of liquidity management.

PART VI

CONTROLLED FOREIGN COMPANY RULE

Controlled foreign company rule

19.(1) For the purposes of this Part "controlled foreign company" shall mean an entity or a permanent establishment, not resident in Gibraltar, whose profits are not taxable or are exempt from tax in Gibraltar when the following conditions are simultaneously fulfilled-

(a) in the case of an entity, the taxpayer by itself, or together with its associated enterprises-

(i) holds a direct or indirect participation of more than 50 percent of the voting rights; or

(ii) owns directly or indirectly more than 50 percent of capital; or

(iii) is entitled to receive more than 50 percent of the profits of that entity; and

(b) the actual tax paid on its profits by the entity or permanent establishment is lower than the difference between the tax that would have been charged on the entity or permanent establishment in accordance with this Act and the actual tax paid on its profits by the entity or permanent establishment. For the purposes of this subparagraph, the permanent establishment of a controlled foreign company within the meaning of this paragraph which are not taxable or are exempt from tax in the jurisdiction of the controlled foreign company shall not be taken into

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account. Furthermore, the tax that would have been charged in the United Kingdom or a Member State of the European Union of the taxpayer means as computed according to the rules of that jurisdiction.

(2) Where an entity or permanent establishment is treated as a controlled foreign company under paragraph 19(1), the non-distributed income of the company or permanent establishment arising from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage shall be included as income of the taxpayer for that tax period.

(3) For the purposes of paragraph 19(2), an arrangement or a series thereof shall be regarded as non-genuine to the extent that the entity or permanent establishment would not own the assets or would not have undertaken the risk which generate all, or part of, its income if it were not controlled by a company where the significant people functions, which are relevant to those assets and risks, are carried out and are instrumental in generating the controlled company's income.

(4) This Part shall not apply to a controlled foreign company-

(a) with accounting profits of no more than €750,000, and non-trading income of no more than €75,000; or

(b) of which the accounting profits amount to no more than 10% of its operating costs for the tax period.

(5) For the purposes of paragraph 19(4)(b), operating costs shall not include (i) the cost of goods sold outside the country where the entity is resident, or the permanent establishment is situated, for tax purposes and (ii) payments to associated enterprises.

Computation of controlled foreign company income

20. The income of the controlled foreign company which is to be included as income of a taxpayer in accordance with paragraph 19(2) shall be calculated as follows-

(a) the income shall be limited to amounts generated through assets and risks which are linked to significant people functions carried out by the controlling company. The attribution of controlled foreign company income shall be calculated in accordance with the arm's length principle;

(b) the income shall be calculated in proportion to the taxpayer's participation in the entity as defined in paragraph 19(1)(a);

(c) the income shall be included in the tax period of the taxpayer in which the tax year of the entity ends;

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(d) where the entity distributes profits to the taxpayer, and those distributed profits are included in the assessable income of the taxpayer, the amounts of income previously included as income of the taxpayer pursuant to paragraphs 19(1) to 19(5) shall be deducted from the income of the taxpayer when calculating the amount of tax due on the distributed profits, in order to ensure there is no double taxation;

(e) where the taxpayer disposes of its participation in the entity or of the business carried out by the permanent establishment, and any part of the proceeds from the disposal previously has been included in the income of the taxpayer pursuant to paragraphs 19(1) to 19(5), that amount shall be deducted from the income of the taxpayer when calculating the amount of tax due on those proceeds, in order to ensure there is no double taxation; and

(f) the Commissioner shall allow a deduction of the tax paid by the entity or permanent establishment in its state of residence or location from the tax liability of the taxpayer in accordance with section 37 of this Act.

PART VII

HYBRID MISMATCH

Hybrid mismatch.

21.(1) For the purpose of this Part "hybrid mismatch" means a situation involving a taxpayer or, with respect to paragraph 25, an entity where-

(a) a payment under a financial instrument gives rise to a deduction without inclusion outcome and-

(i) such payment is not included within a reasonable period of time; and

(ii) the mismatch outcome is attributable to differences in the characterisation of the instrument or the payment made under it;

(b) a payment to a hybrid entity gives rise to a deduction without inclusion and that mismatch outcome is the result of differences in the allocation of payments made to the hybrid entity under the laws of the jurisdiction where the hybrid entity is established or registered and the jurisdiction of any person with a participation in that hybrid entity;

(c) a payment to an entity with one or more permanent establishments gives rise to a deduction without inclusion and that mismatch outcome is the result of differences in the allocation of payments between the head office and permanent establishment

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or between two or more permanent establishments of the same entity under the laws of the jurisdictions where the entity operates;

(d) a payment gives rise to a deduction without inclusion as a result of a payment to a disregarded permanent establishment;

(e) a payment by a hybrid entity gives rise to a deduction without inclusion and that mismatch is the result of the fact that the payment is disregarded under the laws of the payee jurisdiction;

(f) a deemed payment between the head office and permanent establishment or between two or more permanent establishments gives rise to a deduction without inclusion and that mismatch is the result of the fact that the payment is disregarded under the laws of the payee jurisdiction; or

(g) a double deduction outcome occurs.

(2) For the purposes of subparagraph (1)(a), a payment under a financial instrument shall be treated as included in income within a reasonable period of time where-

(a) the payment is included by the jurisdiction of the payee in a tax period that commences within 12 months of the end of the payer's tax period; or

(b) it is reasonable to expect that the payment will be included by the jurisdiction of the payee in a future tax period and the terms of payment are those that would be expected to be agreed between independent enterprises.

(3) For the purposes of this paragraph-

(a) a payment representing the underlying return on a transferred financial instrument shall not give rise to a hybrid mismatch under subparagraph (1)(a) where the payment is made by a financial trader under an on-market hybrid transfer provided the payer jurisdiction requires the financial trader to include as income all amounts received in relation to the transferred financial instrument;

(b) a hybrid mismatch shall only arise under subparagraph (1)(e), (f) or (g) to the extent that the payer jurisdiction allows the deduction to be set off against an amount that is not dual inclusion income;

(c) a mismatch outcome shall not be treated as a hybrid mismatch unless it arises between associated enterprises, between a taxpayer and an associated enterprise, between the head office and permanent establishment, between two or more permanent establishments of the same entity or under a structured arrangement.

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(4) For the purposes of this paragraph and paragraphs 23 to 28-

(a) "mismatch outcome" means a double deduction or a deduction without inclusion;

(b) "double deduction" means a deduction of the same payment, expenses or losses in the jurisdiction in which the payment has its source, the expenses are incurred or the losses are suffered (payer jurisdiction) and in another jurisdiction (investor jurisdiction); and in the case of a payment by a hybrid entity or permanent establishment the payer jurisdiction is the jurisdiction where the hybrid entity or permanent establishment is established or situated;

(c) "deduction without inclusion" means the deduction of a payment or deemed payment between the head office and permanent establishment or between two or more permanent establishments in any jurisdiction in which that payment or deemed payment is treated as made (payer jurisdiction) without a corresponding inclusion for tax purposes of that payment or deemed payment in the payee jurisdiction; and the payee jurisdiction is any jurisdiction where that payment or deemed payment is received, or is treated as being received under the laws of any other jurisdiction;

(d) "deduction" means the amount that is treated as deductible from the taxable income under the laws of the payer or investor jurisdiction (and the term "deductible" shall be construed accordingly);

(e) "inclusion" means the amount that is taken into account in the taxable income under the laws of the payee jurisdiction; and-

(i) a payment under a financial instrument shall not be treated as included to the extent that the payment qualifies for any tax relief solely due to the way that payment is characterised under the laws of the payee jurisdiction; and

(ii) the term "included" shall be construed accordingly;

(f) "tax relief" means a tax exemption, reduction in the tax rate or any tax credit or refund (other than a credit for taxes withheld at source);

(g) "dual inclusion income" means any item of income that is included under the laws of both jurisdictions where the mismatch outcome has arisen;

(h) "person" means an individual or entity;

(i) "hybrid entity" means any entity or arrangement that is regarded as a taxable entity under the laws of one jurisdiction and whose income or expenditure is treated as

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income or expenditure of one or more other persons under the laws of another jurisdiction;

(j) "financial instrument" means any instrument to the extent that it gives rise to a financing or equity return that is taxed under the rules for taxing debt, equity or derivatives under the laws of either the payee or payer jurisdictions and includes a hybrid transfer;

(k) "financial trader" is a person or entity engaged in the business of regularly buying and selling financial instruments on its own account for the purposes of making a profit;

(l) "hybrid transfer" means any arrangement to transfer a financial instrument where the underlying return on the transferred financial instrument is treated for tax purposes as derived simultaneously by more than one of the parties to that arrangement;

(m) "on-market hybrid transfer" means any hybrid transfer that is entered into by a financial trader in the ordinary course of business, and not as part of a structured arrangement;

(n) "disregarded permanent establishment" means any arrangement that is treated as giving rise to a permanent establishment under the laws of the head office jurisdiction and is not treated as giving rise to a permanent establishment under the laws of the other jurisdiction.

Associated enterprise.

22.(1) For the purposes of this Part the definition of "associated enterprise" in paragraph 8A is modified as follows.

(2) Where the mismatch outcome arises under paragraph 21(1)(b), (c), (d), (e) or (g) or where an adjustment is required under paragraph 25, the rate of 25% is replaced by the rate of 50%.

(3) A person who acts together with another person in respect of the voting rights or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person.

(4) An associated enterprise also means-

(a) an entity that is part of the same consolidated group for financial accounting purposes as the taxpayer,

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(b) an enterprise in which the taxpayer has a significant influence in the management, or

(c) an enterprise that has a significant influence in the management of the taxpayer.

Denial of deductions.

23.(1) To the extent that a hybrid mismatch results in a double deduction-

(a) the deduction shall be denied in Gibraltar where it is the investor jurisdiction; and

(b) where the deduction is not denied in the investor jurisdiction, the deduction shall be denied in Gibraltar where it is the payer jurisdiction.

(2) Notwithstanding subparagraph (1), any such deduction is eligible to be set off against dual inclusion income whether arising in a current or subsequent tax period.

24.(1) To the extent that a hybrid mismatch results in a deduction without inclusion-

(a) the deduction shall be denied in Gibraltar where it is the payer jurisdiction; and

(b) where the deduction is not denied in the payer jurisdiction, the amount of the payment that would otherwise give rise to a mismatch outcome shall be included in income in Gibraltar (for the purposes of the calculation of tax in accordance with section 11 of this Act) where Gibraltar is the payee jurisdiction.

(2) Subparagraph (1) does not apply in relation to hybrid mismatches resulting from a payment of interest under a financial instrument to an associated enterprise where-

(a) the financial instrument has conversion, bail-in or write down features;

(b) the financial instrument has been issued with the sole purpose of satisfying loss absorbing capacity requirements applicable to the banking sector and the financial instrument is recognised as such in the taxpayer's loss absorbing capacity requirements;

(c) the financial instrument has been issued-

(i) in connection with financial instruments with conversion, bail-in or write down features at the level of a parent undertaking,

(ii) at a level necessary to satisfy applicable loss absorbing capacity requirements,

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(iii) not as part of a structured arrangement; and

(d) the overall net deduction for the consolidated group under the arrangement does not exceed the amount that it would have been had the taxpayer issued such financial instrument directly to the market.

(3) The exclusion in subparagraph (2) applies in relation to accounting periods ending on or before 31 December 2022.

(4) Subparagraph (1)(a) does not apply in relation to hybrid mismatches as defined in paragraph 21(1)(b), (c), (d) or (f).

25.(1) A deduction shall be denied in Gibraltar for any payment by a taxpayer to the extent that such payment directly or indirectly funds deductible expenditure giving rise to a hybrid mismatch through a transaction or series of transactions between associated enterprises or entered into as part of a structured arrangement.

(2) But subparagraph (1) does not apply to the extent that one of the jurisdictions involved in the transaction or series of transactions has made an equivalent adjustment in respect of such hybrid mismatch.

26.(1) To the extent that a hybrid mismatch involves disregarded permanent establishment income which is not subject to tax in Gibraltar in the case of a taxpayer resident in Gibraltar for tax purposes, the taxpayer must include (for the purposes of the calculation of tax in accordance with section 11 of this Act) the income that would otherwise be attributed to the disregarded permanent establishment.

(2) Subparagraph (1) applies unless income is exempted under a double taxation treaty that applies in relation to Gibraltar.

27. To the extent that a hybrid transfer is designed to produce a relief for tax withheld at source on a payment derived from a transferred financial instrument to more than one of the parties involved, where Gibraltar is the jurisdiction of the taxpayer, the benefit of such relief is limited in proportion to the net taxable income regarding such payment.

Tax residency mismatches.

28.(1) To the extent that a deduction for payment, expenses or losses of a taxpayer who is resident for tax purposes in two or more jurisdictions is deductible from the tax base in both jurisdictions, Gibraltar as the jurisdiction of the taxpayer shall deny the deduction to the extent that the other jurisdiction allows the duplicate deduction to be set off against income that is not dual-inclusion income.

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(2) If the other jurisdiction is the United Kingdom or a Member State of the European Union, Gibraltar as the jurisdiction where the taxpayer is not deemed to be a resident according to the double taxation treaty concerned shall deny the deduction.

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SCHEDULE 5

Section 71

PART I

PARENT AND SUBSIDIARY DIRECTIVE

Interpretation.

1.(1) In this Schedule, unless the context otherwise requires-

"company of a Member State" means a company specified in-

(a) Article 2 of Council Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States as amended from time to time and includes a permanent establishment as defined in that Article and a company incorporated or registered in Gibraltar that satisfies the conditions set out in that Article 2; or

(b) Article 15 of the Agreement between the EC and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments;

"relevant participation" means an interest in the voting share capital of another body corporate equal to at least 10% of the total of such share capital;

"share" means a share in the share capital of a company and shall include stock except where a distinction between shares and stock is expressed or implied.

(2) Subject to subparagraph (3), for the purposes of this Part a company shall be deemed to have an interest in the shares of a company if-

(a) it holds that interest (other than as bare nominee or trustee thereof) directly or indirectly or through a company or series of companies and whether such interest is legal, equitable or contractual, or

(b) by reason of any agreement or arrangement with another person, it has the right to acquire an interest in those shares or the right to enjoy a dividend or other benefit from those shares.

(3) A company shall not be deemed to have an interest in the shares of a company by reason of its holding those shares or an interest therein acting in a representative or financial capacity only, even though it may be entitled to remuneration for so acting or may have a charge or lien on those shares in respect of such remuneration.

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Parent and subsidiary companies.

2. The provisions of this Part shall apply to-

(a) a parent company, being a company-

(i) incorporated or registered in Gibraltar under the provisions of the Companies Act;

(ii) ordinarily resident in Gibraltar; and

(iii) having a relevant participation in a company of a Member State;

(b) a subsidiary company, being a company-

(i) incorporated or registered in Gibraltar under the provisions of the Companies Act;

(ii) ordinarily resident in Gibraltar; and

(iii) in which a company of a Member State has a relevant participation.

Corporation Tax.

3. Subject to paragraphs 4 and 5, a parent company shall not be liable to corporation or other taxation under this Act in respect of income from any relevant participation:

4. The Commissioner shall–

(a) refrain from taxing such profits to the extent that such profits are not deductible by the subsidiary; and

(b) tax such profits to the extent that such profits are deductible by the subsidiary.

5.(1) The benefits conferred by the Directive must not be applied where an arrangement or a series of arrangements which have been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the Directive, are not genuine having regard to all the relevant facts and circumstances, and for the purposes of this paragraph an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put in place for valid commercial reasons which reflect economic reality, in the opinion of the Commissioner.

(2) For the purposes of subparagraph (1), the Commissioner may apply the provisions of–

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(a) section 40 of the Act;

(b) Schedule 4 of the Act.

PART II

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

Interpretation of Part.

4.(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 Table A 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; or

(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

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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 country, territory or jurisdiction 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.

(2A) For the purpose of (2) above, "holdings" must involve only companies resident in a 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.

5.(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; and

(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.

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Scope of Part.

6.(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 a Member State; or

(b) a permanent establishment situated in a Member State of a company of a Member State.

(2) Subparagraph (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) Subparagraph (1) shall apply only where the Commissioner has issued an exemption certificate in accordance with paragraph11.

(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 provisions for certain States.

7.(1) This paragraph 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 paragraph shall cease applying on 30 April 2006.

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(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 subparagraph (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-

(i) 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

(ii) 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.

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8. 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.

Criterion for establishing identity of beneficial owner.

9.(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 paragraph 8 as the payer; or

(b) in accordance with this paragraph, 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.

10. 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.

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11.(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 subparagraph (1), the Commissioner shall determine whether to issue an exemption certificate within three months of receipt of the request.

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

Information to be provided in a request under Paragraph 11.

12.(1) A person requesting the issue of an exemption certificate under paragraph 11 shall provide a written statement certifying that the payment concerned is one to which paragraph 6(1) applies.

(2) For the purposes of subparagraph (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 paragraph 9;

(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, paragraphs 4(2) and 6(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);and

(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.

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13. 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.

14. 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.

15.(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 subparagraph (1) shall contain the information requested under paragraph 12(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.

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

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

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

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TABLE A

PART I

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;

-impuesto sobre sociedades in Spain;

-impôt sur les sociétés in France;

- porez na dobit in Croatia;

-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;

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-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 obţinute din România de nerezidenţi in Romania.

PART II

ANNEX TO DIRECTIVE 2003/49

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 responsibilité limitée" and those public law bodies that operate under pivate law;

companies under Croatian law known as: "dioničko društvo",

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"društvo s ograničenom odgovornošću", and other companies constituted under Croatian law subject to Croatian profit tax;

companies under Danish law known as "aktieselskab" and "anpartsselskab";

companies under German law known as "Aktiengesellschaft, Kommanditgesellschaft auf Aktien, Gesellschaft mit beschränkter Haftung" and "bergrechtliche Gewerkschaft";

companies under Greek law known as: ανώνυμη εταιρία";

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;

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;

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;

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;

companies under Luxembourg law known as: "société anonyme, société en commandite par actions and société à responsabilité limitée";

companies under Dutch law known as "naamloze vennootschap" and "besloten vennootschap met beperkte aansprakelijkheid";

companies under Austrian law known as: "Aktiengesellschaft" and "Gesellschaft mit beschränkter Haftung";

commercial companies or civil law companies having a commercial form, cooperatives and public undertakings incorporated in accordance with Portuguese law:

companies under Finnish law known as: "osakeyhtiö/aktiebolag, osuuskunta/andelslag, säästöpankki/sparbank" and "vakuutusyhtiö/försäkringsbolag""

companies under Swedish law known as "aktiebolag" and "försäkringsaktiebolag";

companies incorporated under the law of the United Kingdom.

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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 ierobe¸otu 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 spoločnos”, “spoločnosť s ručením obmedzeným”, “komanditná spoločnos”, “verejná obchodná spoločnos”, “družstvo”;

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

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

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SCHEDULE 6

Section 23

MISCELLANEOUS COMPANY TAXATION PROVISIONS

PART I

TAX AT THE HIGHER RATE ON UTILITIES

The Tax at the Higher Rate.

1.(1) Subject to subparagraph (2), any Company falling within paragraphs 3 to 17 of this Schedule shall be liable to pay tax at the higher rate of 20% of the taxable income of that company under this Act for each accounting period.

(2) A company falling within paragraph 3 of this Schedule shall be liable to pay tax at the higher rate of 20% only on taxable income made from the provision of services described in subparagraphs (1) to (9) of paragraph 3.

Recovery of tax at the higher rate.

2. The tax at the higher rate imposed by paragraph 1 shall be payable and recoverable in like manner and at the same time as the tax on which it is based.

Telecommunications.

3. Any company whose business includes any one or more of-

(1) the provision to end-users at fixed locations in Gibraltar of all or any part of any one or more of the following services:

(a) the originating or receiving or both of;

(b) facilitating the carriage or transmission or both of;

(c) carrying or transmitting or both;

local or international calls or both such calls where access to the network termination point (as this term is defined in section 2 of the Communications Act 2006) of an end-user is via a number or numbers in the telecommunications numbering plan for Gibraltar;

(2) the provision in Gibraltar of a publicly available mobile telephone service (as this term is defined in Section 2 of the Communications Act 2006);

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(3) the provision in Gibraltar of Asymmetrical Digital Subscriber Lines (ADSL);

(4) the provision in Gibraltar of operator assistance;

(5) the provision in Gibraltar of directory services in respect of numbers in the telecommunications numbering plan for Gibraltar;

(6) the provision in Gibraltar of public pay-telephones (as this term is defined in section 2 of the Communications Act 2006);

(7) *Not used*.

(8) the establishing or operating, or establish and operating, in Gibraltar of electronic communications networks (as this term is defined in section 2 of the Communications Act 2006) for the purpose of providing any one or more of the services listed in subparagraphs (1) to (7);

(9) the provision (and whether by sale, hire or lease as the case may be) to a company whose business includes any one or more of the matters set out in subparagraph (1) to (8), of any one or more of: services; equipment; premises, related to any one or more of those matters.

Services of Telecommunications.

4. The services referred to in paragraph 3(1) may, but without prejudice to the generality of that paragraph, include any one or more of the following:

(1) voice telephony;

(2) facsimile communications;

(3) voice band data transmission via modems;

(4) data transmission via Integrated Services Digital Networks (ISDN);

(5) call back services;

(6) call through services.

Application to providers/definitions.

5.(1) Paragraph 3(9) shall only apply to a provider of any one or more of the: services; equipment; premises, referred to in that paragraph who is a connected person (as this term is

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defined in Part III of Schedule 4) of the recipient of any one or more of those services; equipment; premises.

(2) For the purposes of paragraph 3(9),-

(a) "equipment", without prejudice to its generality, includes a network or part of a network of the nature referred to in paragraph 3(8); and

(b) "services", without prejudice to its generality, includes the provision of a treasury function.

Electricity.

6. Any company whose business includes any one or more of,-

(1) the generation;

(2) the distribution;

(3) the supply of electricity in Gibraltar;

(4) the provision (and whether by sale, hire or lease as the case may be) to a company whose business includes any one or more of the matters set out in subparagraphs (1) to (3), of any one or more of: services; equipment; premises, related to any one or more of those matters.

Application to providers/definitions.

7.(1) Paragraph 6(4) shall only apply to a provider of any one or more of the services; equipment; premises, referred to in that paragraph who is a connected person (as this term is defined in Part III of Schedule 4) of the recipient of any one or more of: those services; equipment; premises.

(2) For the purposes of paragraph 6(4),-

(a) "equipment", without prejudice to its generality, includes a system or part of a system used for any one or more of: the generation; the distribution; the supply, of electricity; and

(b) "services", without prejudice to its generality, includes the provision of a treasury function.

Water.

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8. Any company whose business includes any one or more of, in Gibraltar–

(1) the production of potable or salt water or both;

(2) the desalination of salt water;

(3) the importation or exportation (or both) of potable water but not bottled or pre-packaged mineral water;

(4) the supply or distribution (or both) of potable or salt water (or both) through any one or more of:

(a) mains;

(b) pipes;

(c) supply stations;

(d) bowsers;

(5) the provision (and whether by sale, hire or lease as the case may be) to a company whose business includes any one or more of the matters set out in subparagraphs (1) to (4), of any one or more of: services; equipment; premises, related to any one or more of those matters.

Application to providers.

9. Paragraph 8(4) shall only apply to a provider of any one or more of the: services; equipment; premises, referred to in that paragraph who is a connected person (as this term is defined in Part III of Schedule 4) of the recipient of any one or more of: those services; equipment; premises.

Definitions.

10. For the purposes of paragraph 8(4),-

(1) "equipment", without prejudice to its generality, includes a system or part of a system used for any one or more of: the production; the desalination; the supply; the distribution, of potable or salt water or both; and

(2) "services", without prejudice to its generality, includes the provision of a treasury function.

Sewage.

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11. Any company whose business includes any one or more of-

(1) the provision of sewers in Gibraltar;

(2) the disposal of sewage in Gibraltar;

(3) the treatment of sewage in Gibraltar;

(4) the provision of any one or more of the following services-

(a) the operation;

(b) the management;

(c) the maintenance;

(d) the repair;

(e) the replacement;

(f) the modification;

(g) the renovation;;

(h) the renewal,

of all or any part of such sewers and sewage pumping stations or both as may form part of the system of public sewers serving Gibraltar;

(5) the provision (and whether by sale, hire or lease as the case may be) to a company whose business includes any one or more of the matters set out in subparagraphs (1) to (4), of any one or more of: services; equipment; premises, related to any one or more of those matters.

Application to providers.

12. Paragraph 11(5) shall only apply to a provider of any one or more of the: services; equipment; premises, referred to in that paragraph who is a connected person (as this term is defined in Part III of Schedule 4) of the recipient of any one or more of: those services; equipment; premises.

Definitions.

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13. For the purposes of paragraph 11(5),-

(1) "equipment", without prejudice to its generality, includes a system or part of a system used for any one or more of the matters set out in paragraphs 11(1) to(4); and

(2) "services", without prejudice to its generality, includes the provision of a treasury function.

Petroleum.

14. Any company whose business includes–

(1) the undertaking of any one or more of the following in respect of any one or more fuel oils:

(a) the collection of fuel oil in Gibraltar;

(b) the production of fuel in Gibraltar;

(c) the importation of fuel oil into Gibraltar;

(d) the export from Gibraltar of any fuel oil that is in Gibraltar;

(e) the treatment in Gibraltar of fuel oil;

(f) the improvement in Gibraltar of fuel oil;

(g) the pumping in Gibraltar of fuel oil;

(h) the storage in Gibraltar of fuel oil;

(i) the distribution in Gibraltar of fuel oil;

(j) the supply in Gibraltar of fuel oil;

(2) the provision (and whether by sale, hire or lease as the case may be) to a company whose business includes any one or more of the matters set out in subparagraph (1), of any one or more of: services; equipment; premises, related to any one or more of those matters.

Application to providers.

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15. Paragraph 14(2) shall only apply to a provider of any one or more of the services; equipment; premises, referred to in that paragraph who is a connected person (as this term is defined in Part III of Schedule 4) of the recipient of any one or more of: those services; equipment; premises.

Definitions.

16. For the purposes of paragraph 14(1)–

"fuel oil" means hydrocarbon oils derived from petroleum and includes, without prejudice to the generality of the foregoing words, motor fuel, marine fuel, petroleum, petroleum spirit and white oils;

"marine fuel" means marine gas oil, marine diesel and marine fuel oil;

"motor fuel" means any petroleum derivative, with or without additives, which is intended for use as a fuel for motor vehicles;

'"petroleum" and "petroleum spirit" each has the meaning given in section 2 of the Petroleum Act; and

"white oils" means any one or more of the following classes of fuels:

(a) gasoline;

(b) aviation fuels;

(c) gas oils.

Further Definitions.

17. For the purposes of paragraph 14(2),-

(1) "equipment", without prejudice to its generality, includes a system or part of a system used for any one or more of: the matters set out in paragraph 14(1); and

(2) "services", without prejudice to its generality, includes the provision of a treasury function.

PART II

TAX ON COMPANIES WHICH ABUSE A DOMINANT POSITION

The Charge.

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18.(1) Where the Commissioner is of the opinion that a company not chargeable under Part I of this schedule has during an accounting period a dominant market position and has abused that position, he shall impose taxation on the taxable profits of the Company for the accounting period in which he believes the abuse has taken place at the rate of 20%.

(2) For the purposes of this paragraph-

(a) a company shall be deemed by the Commissioner to have a dominant market position if it has a position of economic strength which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers;

(b) for the purpose of (a) the relevant market will geographically be Gibraltar but the Commissioner may take into account factors other than geographical position in assessing the relevant market if he believes it to be appropriate;

(c) conduct which amounts to an abuse of a dominant market position for the purpose of this shall be conduct which-

(i) exploits customers or suppliers, or

(ii) amounts to exclusionary behaviour because it removes or weakens competition from existing competitors or establishes or strengthens entry barriers into the relevant market thereby removing, preventing or weakening potential competition; or

(iii) if the pricing practice of the person in Gibraltar results in a variation of the prices charged in Gibraltar from the prices charged in another market (at the discretion of the Commissioner) in a manner or to an extent not, in the reasonable opinion of the Commissioner, justified by the additional costs incurred in reference to Gibraltar as compared to that other market.

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SCHEDULE 7

BENEFITS IN KIND

Schedule 1

EARNINGS AND BENEFITS, ETC. TREATED AS EMPLOYMENT INCOME

CHAPTER 1

GENERAL
EARNINGS

Earnings.

1.(1) This paragraph explains what is meant by gains and profits in Schedule 1, Table B (1).

(2) In that table gains and profits in relation to an office or employment, means–

(a) any salary, wages or fee,

(b) any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money's worth, or

(c) anything else that constitutes an emolument of the employment.

(3) For the purposes of subparagraph (2) "money's worth" means something that is-

(a) of direct monetary value to the employee, or

(b) capable of being converted into money or something of direct monetary value to the employee.

Definitions

Meaning of "director" and "full-time working director".

2.(1) In this Schedule "director" means-

(a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body;

(b) in relation to a company whose affairs are managed by a single director or similar person, that director or person; and

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(c) in relation to a company whose affairs are managed by the members themselves, a member of the company,

and includes any person in accordance with whose directions or instructions the directors of the company (as defined above) are accustomed to act.

(2) For the purposes of subparagraph (1) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.

(3) In this Schedule "full-time working director" means a director who is required to devote substantially the whole of his time to the service of the company of which he is director in a managerial or technical capacity.

Meaning of "material interest" in a company.

3.(1) For the purpose of this Schedule a person has a material interest in a company if condition A or B is met.

(2) Condition A is that the person (with or without one or more associates) or any associate of that person (with or without one more such associates) is–

(a) the beneficial owner of, or

(b) able to control, directly or through the medium of other companies or by any other indirect means,

more the 5% of the ordinary share capital of the company.

(3) Condition B is that, in the case of a close company, the person (with or without one or more associates) or any associate of that person (with or without one or more such associates), possesses or is entitled to acquire, such rights as would–

(a) in the event of the winding-up of the company, or

(b) in any other circumstances,

give an entitlement to receive more than 5% of the assets which would then be available for distribution among the participators.

(4) In this paragraph-

"associate" has the meaning given by paragraph 11 Schedule 4 except that, for this purpose, "relative" has the meaning given by subparagraph (5) below, and

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"participator" has the meaning given by paragraph 11 Schedule 4.

(5) For the purposes of this paragraph a person ("A") is a relative of another ("B") if A is-

(a) B's spouse,

(b) a parent, child or remoter relation in the direct line either of B or of B's spouse,

(c) a brother or sister of B or of B's spouse, or

(d) the spouse of a person falling within paragraph (b) or (c).

Extended meaning of "control".

4.(1) The definition of "control" in paragraph 10, Schedule 4 is extended as follows.

(2) For the purposes of this Schedule that definition applies (with the necessary modifications) in relation to an unincorporated association as it applies in relation to a body corporate.

Meaning of "close company".

5. For the purposes of this Schedule, a "close company" is one which-

(1) is under the control of five or fewer of its participators or participators who are directors; or

(2) a company which does not fall under (1) above in which five or fewer participators or participators who are directors together possess or are entitled to acquire-

(a) such rights as would, in the event of the winding up of the company entitle them to receive the greater part of the assets of the company which would then be available for distribution among the participators; or

(b) such rights as would, in the event so entitle them if any rights which any or any other person has as a loan creditor in relation to the company were disregarded.

CHAPTER 2

TAXABLE BENEFITS: EXPENSES PAYMENTS

Sums in respect of expenses.

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6.(1) This Chapter applies to a sum paid to, or made available to an employee in a tax year if the sum–

(a) is paid to the employee in respect of expenses, and

(b) is so paid by reason of the employment; and

(c) to the extent that the sum exceeds expenses paid away by the employee wholly exclusively and necessary in the course of the employment that sum is an emolument of the employment in the year in which it is received.

CHAPTER 3

TAXABLE BENEFITS: VOUCHERS AND CREDIT TOKENS

Cash Vouchers

Cash vouchers to which this Chapter applies.

7.(1) This Chapter applies to a cash voucher provided for an employee by reason of the employment which is received by the employee.

(2) A cash voucher provided for an employee and appropriated to the employee–

(a) by attaching it to a card held for the employee, or

(b) in any other way,

is to be treated for the purposes of this Chapter as having been received by the employee at the time when it is appropriated.

(3) For the purposes of this paragraph any reference to a cash voucher being provided for or received by an employee includes a reference to it being provided for or received by a member of the employee's family.

(4) In this paragraph "cash voucher" means a voucher, stamp or similar document capable of being exchanged for a sum of money which is–

(a) greater than,

(b) equal to, or

(c) not substantially less than,

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the expense incurred by the person at whose cost the voucher, stamp or similar document is or similar document is provided.

(5) For the purposes of subparagraph (4) it does not matter whether the document–

(a) is also capable of being exchanged for goods or services;

(b) is capable of being exchanged singly or together with other vouchers, stamps, or documents;

(c) is capable of being exchanged immediately or only after a time.

(6) If a person incurs expense in or in connection with the provision of vouchers, stamps or similar documents for two or more employees as members of a group or class, the expense incurred in respect of one of them is to be such part of that expense as is just and reasonable.

(7) This paragraph does not apply to a cash voucher if-

(a) it is of a kind made available to the public generally, and

(b) it is provided to the employee or a member of the employee's family on no more favourable terms than to the public generally.

(8) This paragraph does not apply to a cash voucher if it is–

(a) a document intended to enable a person to obtain payment of a sum which would not have constituted employment income if paid to the person directly, or

(b) a savings certificate where the accumulated interest payable in respect of it is exempt from tax (or would be so exempt if certain conditions were met).

(9) The cash equivalent of the benefit of a cash voucher to which this paragraph applies is to be treated as earnings from the employment for the tax year in which the voucher is received by the employee.

(10) The cash equivalent is the sum of money for which the voucher is capable of being exchanged.

Non-cash vouchers

Non-cash vouchers to which this Chapter applies.

8.(1) This paragraph applies to a non-cash voucher provided for an employee by reason of the employment which is received by the employee.

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(2) A non-cash voucher provided for an employee and appropriated to the employee–

(a) by attaching it to a card held for the employee, or

(b) in any other way,

is to be treated for the purposes of this Chapter as having been received by the employee at the time when it is appropriated.

(3) For the purposes of this Chapter any reference to a non-cash voucher being provided for or received by an employee includes a reference to it being provided for or received by a member of the employee's family.

(4) In this Chapter "non-cash voucher" means–

(a) a voucher, stamp or similar document or token which is capable of being exchanged for money, goods or services,

(b) a transport voucher, or

(c) a cheque voucher,

but does not include a cash voucher.

(5) For the purposes of subparagraph (1) (a) it does not matter whether the document or token is capable of being exchanged-

(a) singly or together with other vouchers, stamps, documents or tokens,

(b) immediately or only after a time.

(6) In this Chapter "transport voucher" means a ticket, pass or other document or token intended to enable a person to obtain passenger transport services (whether or not in exchange for it).

(7) In this Chapter "cheque voucher" means a cheque–

(a) provided for an employee, and

(b) intended for use by the employee wholly or mainly for payment for–

(i) particular goods or services, or

(ii) goods or services of one or more particular classes;

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and, in relation to a cheque voucher, references to a voucher being exchanged for goods or services are to be read accordingly.

(8) This Chapter does not apply to a non-cash voucher if–

(a) it is of a kind made available to the public generally, and

(b) it is provided to the employee or a member of the employee's family on no more favourable terms than to the public generally.

(9) The cash equivalent of the benefit of a non-cash voucher to which this Chapter applies is to be treated as earnings from the employment for the tax year in which the voucher is received by the employee.

(10) The cash equivalent is the difference between-

(a) the cost of provision, and

(b) any part of that cost made good by the employee to the person incurring it.

(11) In this Chapter the "cost of provision" means, in relation to a non-cash voucher the expense incurred in or in connection with the provision of-

(a) the voucher, and

(b) the money, goods or services for which it is capable of being exchanged,

by the person at whose cost they are provided.

(12) In the case of a transport voucher, the reference in paragraph (11)(b) to the services for which the voucher is capable of being exchanged is to the passenger transport services which may be obtained by using it.

(13) If a person incurs expense in or in connection with the provision of non-cash vouchers for two or more employees as members of a group or class, the expense incurred in respect of one of them is to be such part of that expense as it just and reasonable.

(14) In the case of a non-cash voucher other than a cheque voucher, the amount treated as earnings under subparagraph (10) is to be treated as received–

(a) in the tax year in which the cost of provision is incurred, or

(b) if later, in the tax year in which the voucher is received by the employee.

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(15) In the case of a cheque voucher, the amount treated as earnings under paragraph 7(10) is to be treated as received in the tax year in which the voucher is handed over in exchange for money, goods or services.

(16) Where a cheque voucher is posted it is to be treated as handed over at the time of posting.

Credit-tokens

Credit-tokens.

9.(1) This paragraph applies to a credit-token provided for an employee by reason of the employment which is used by the employee to obtain money, goods or services.

(2) For the purposes of this paragraph-

(a) any reference to a credit-token being provided for an employee includes a reference to it being provided for a member of the employee's family, and

(b) use of a credit-token by a member of an employee's family is to be treated as use of the token by the employee.

(3) In this paragraph "credit-token" means a credit card, debit card or other card, a token, a document or other object given to a person by another person ("X") who undertakes–

(a) on the production of it, to supply money, goods or services on credit, or

(b) if a third party ("Y") supplies money, goods or services on its production, to pay Y for what is supplied.

(4) A card, token, document or other object can be a credit-token even if–

(a) some other action is required in addition to its production in order for the money, goods or services to be supplied,

(b) X in paying Y may take a discount or commission.

(5) For the purposes of this paragraph–

(a) the use of an object given by X to operate a machine provided by X is to be treated as its production to X, and

(b) the use of an object given by X to operate a machine provided by Y is to be treated as its production to Y.

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(6) A "credit-token" does not include a cash voucher or a non-cash voucher.

(7) This paragraph does not apply to a credit-token if–

(a) it is of a kind made available to the public generally, and

(b) it is provided to the employee or a member of the employee's family on no more favourable terms than to the public generally.

Benefit of a credit-token treated as earnings.

10.(1) On each occasion on which a credit-token to which this paragraph applies is used by the employee in a tax year to obtain money, goods or services, the cash equivalent of the benefit of the token is to be treated as earnings from the employment for that year.

(2) The cash equivalent is the difference between–

(a) the cost of provision, and

(b) any part of that cost made good by the employee to the person incurring it.

(3) In this paragraph the "cost of provision" means the expense incurred–

(a) in or in connection with the provision of the money, goods or services obtained on the occasion in question, and

(b) by the person at whose cost they are provided.

(4) If a person incurs expense in or in connection with the provision of credit-tokens for two or more employees as members of a group or class, the expense incurred in respect of one of them is to be such part of that expense as is just and reasonable.

Disregard for money, goods or services obtained.

11.(1) This paragraph applies if the cash equivalent of the benefit of a cash voucher, a non-cash voucher or a credit token is to be treated as earnings from an employee's employment under this paragraph.

(2) Money, goods or services obtained–

(a) by the employee or another person in exchange for the cash voucher or non-cash voucher , or

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(b) by the employee or a member of the employee's family by use of the credit-token,

are to be disregarded for the purposes of this Act.

(3) But the goods or services are not, however, to be disregarded for the purposes of calculating the profits of the employee where those goods or services are obtained wholly, exclusively and necessarily for the purpose of carrying out employment.

(4) In the case of a transport voucher, the reference in subparagraph (2)(a) to the services obtained in exchange for the voucher is to the passenger transport services obtained by using it.

CHAPTER 4

LIVING ACCOMMODATION

Living accommodation to which this Chapter applies.

12.(1) This Chapter applies to living accommodation provided for-

(a) an employee, or

(b) a member of an employee's family or household,

by reason of the employment.

(2) Living accommodation provided for any of those persons by the employer is to be regarded as provided by reason of the employment unless–

(a) the employer is an individual, and

(b) the provision is made in the normal course of the employer's domestic, family or personal relationships.

Accommodation provided for performance of duties.

13.(1) This Chapter does not apply to living accommodation provided for by an employer if it is necessary for the proper performance of the employee's duties that the employee should reside in it.

(2) This Chapter does not apply to living accommodation provided for an employee if–

(a) it is provided for the better performance of the duties of the employment, and

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(b) the employment is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees.

(3) But if the accommodation is provided by a company and the employee ("E") is a director of the company or of an associated company, the exception in subparagraph (1) or (2) only applies if, in the case of each company of which E is a director–

(a) E has no material interest in the company, and

(b) either–

(i) E's employment is as a full-time working director, or

(ii) the company is non-profit making or is established for charitable purposes only.

(4) "Non-profit making" means that the company does not carry on a trade and its functions do not consist wholly or mainly in the holding of investments or other property.

(5) A company is "associated" with another if–

(a) one has control of the other, or

(b) both are under the control of the same person.

(6) Notwithstanding subparagraph (3) and subject to subparagraph (7), this Chapter does not apply to living accommodation provided for an employee whose change in residence results from the factors specified in paragraph 54(2) to (4) of this Schedule.

(7) Subparagraph (6) shall only apply for the seven years immediately after the date of the change of residence which invokes the provisions of paragraph 54.

Benefit of living accommodation treated as earnings.

14.(1) If living accommodation to which this Chapter applies is provided in any period–

(a) which consists of the whole or part of a tax year, and

(b) throughout which the employee holds the employment,

the cash equivalent of the benefit of the accommodation is to be treated as earnings from the employment for that year.

(2) In this Chapter that period is referred to as "the taxable period".

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Cash equivalent.

15.(1) The cash equivalent is the difference between–

(a) the rental value of the accommodation for the taxable period, and

(b) any sum made good by the employee to the person at whose cost the accommodation is provided that is properly attributable to its provision.

(2) The "rental value of the accommodation" for the taxable period is the rent which would have been payable for that period if the property had been let to the employee at an annual rent equal to the annual value.

(3) But if the person at whose cost the accommodation is provided pays rent for the whole or part of the taxable period at an annual rate greater than the annual value-

(a) subparagraph (2) does not apply to that period or (as the case may be) that part of it; and

(b) instead the "rental value of the accommodation" for that period or part is the rent payable for it by that person.

(4) If the rental value of the accommodation for the taxable period does not exceed any sum made good by the employee as mentioned in subparagraph (2)(b), the cash equivalent is nil.

Cash equivalent: accommodation provided for more than one employee.

16.(1) If, for the whole or part of a tax year, the same living accommodation is provided for more than one employee at the same time, the total of the cash equivalents for all of the employees is to be limited to the amount that would be the cash equivalent if the accommodation was provided for one employee.

(2) The cash equivalent for each of the employees is to be such part of that amount as is just and reasonable.

Supplementary

Meaning of "annual value".

17. For the purposes of this Chapter the "annual value" of living accommodation is the rent which might reasonably be expected to be obtained on a letting from year to year if-

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(a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant; and

(b) the landlord undertook to bear the costs of the repairs and insurance and the other expenses (if any) necessary for maintaining the property in a state to command that rent.

Disputes as to annual value.

18.(1) This paragraph applies if there is a dispute as to the amount of the annual value of living accommodation for the purposes of this Chapter.

(2) The question is to be determined by the Tribunal.

(3) The Tribunal must hear and determine the question in the same way as an appeal.

Meaning of "the property".

19. For the purposes of this Chapter "the property", in relation to living accommodation, means the property consisting of that accommodation.

CHAPTER 5

CARS, VANS AND RELATED BENEFITS

Application.

20.(1) This Chapter applies to a car or a van in relation to a particular tax year if in that year the car or van-

(a) is made available (without any transfer of the property in it) to an employee or a member of the employee's family or household,

(b) is so made available by reason of the employment, and

(c) is available for the employee's or member's private use.

Meaning of "car" and "van".

21.(1) In this Chapter–

"car" means a mechanically propelled road vehicle which is not–

(a) a goods vehicle,

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(b) a motor cycle or scooter, or

(c) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used;

"van" means a mechanically propelled road vehicle which–

(a) is a goods vehicle, and

(b) has a design weight not exceeding 3,500 kilograms,

and which is not a motor cycle or scooter.

(2) For the purposes of subparagraph (1)–

"design weight" means the weight which a vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden;

"goods vehicle" means a vehicle of a construction primarily suited for the conveyance of goods or burden of any description.

Meaning of when car or van is available to employee.

22.(1) For the purposes of this Chapter a car or van is available to an employee at a particular time if it is then made available, by reason of the employment and without any transfer of the property in it, to the employee or a member of the employee's family or household.

(2) References in this Chapter to–

(a) the time when a car is first made available to an employee are to the earliest time when the car is made available as mentioned in subparagraph (1), and

(b) the last day in a year on which a car is available to an employee are to the last day in the year on which the car is made available as mentioned in subparagraph (1).

Availability for private use.

23.(1) For the purposes of this Chapter a car or van made available in a tax year to an employee or a member of the employee's family or household is to be treated as available for the employee's or member's private use unless in that year–

(a) the terms on which it is made available prohibit such use, and

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(b) it is not so used.

(2) In this Chapter "private use", in relation to a car or van made available to an employee or a member of the employee's family or household, means any use other than for the employee's business travel.

Where alternative to benefit of car offered.

24.(1) This paragraph applies where in a tax year–

(a) a car is made available as mentioned in paragraph 20 and

(b) an alternative to the benefit of the car is offered.

(2) The mere fact that the alternative is offered does not result in an amount in respect of the benefit constituting earnings by virtue of Chapter 1 of this Schedule (earnings).

Benefit of car treated as earnings.

25.(1) If this Chapter applies to a car in relation to a particular tax year, the cash equivalent of the benefit of the car is to be treated as earnings from the employment for that year.

(2) In such a case the employee is referred to in this Chapter as being chargeable to tax in respect of the car in that year.

Method of calculating the cash equivalent of the benefits of a car.

26. The cash equivalent of the benefit of the car shall be 25% per annum of the cost of the car or van to the employer for each of the first four years that the employer makes the car available to an employee and 0% per annum thereafter or, if the car is not purchased by the employer providing the car, the cost of the provision or the market value of that provision, whichever is the greater, less any amount made good by the employee.

Pooled cars.

27.(1) This paragraph applies to a car in relation to a particular tax year if for that year the car has been included in a car pool for the use of employees of one or more employers.

(2) For that tax year the car–

(a) is to be treated under subparagraph (1) (cars to which this Chapter applies) as not having been available for the private use of any of the employees concerned, and

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(b) is not to be treated in relation to the employees concerned as an employment-related benefit within the meaning of this Chapter or this Schedule.

(3) In relation to a particular tax year, a car is included in a car pool for the use of the employees of one or more employers if in that year–

(a) the car was made available to, and actually used by, more than one of those employees,

(b) the car was made available, in the case of each of those employees, by reason of the employee's employment,

(c) the car was not ordinarily used by one of those employees to the exclusion of the others,

(d) in the case of each of the employees, any private use of the care made by the employee was merely incidental to the employee's other use of the car in that year, and

(e) the car was not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the car available to them.

Fuel Charge.

28.(1) If in a tax year–

(a) fuel is provided for a car by reason of an employee's employment, and

(b) that person is chargeable to tax in respect of the car by virtue of paragraph 23.

(2) The cash equivalent of the benefit of the fuel shall be 90% of the cost to the employer of the fuel provided less any amount made good by the employee.

(3) Fuel is to be treated as provided for a car, in addition to any other way in which it may be provided, if–

(a) any liability in respect of the provision of fuel for the car is discharged,

(b) a non-cash voucher or a credit-token is used to obtain fuel for the car,

(c) a non-cash voucher or a credit-token is used to obtain money which is spent on fuel for the car, or

(d) any sum is paid in respect of expenses incurred in providing fuel for the car.

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CHAPTER 6

TAXABLE BENEFITS: LOANS

Introduction

Loans to which this Chapter applies.

29.(1) This Chapter applies to a loan if it is an employment-related loan.

(2) In this Chapter–

(a) "loan" includes any form of credit, and

(b) references to making a loan (and related expressions) include arranging, guaranteeing, or in any way facilitating a loan.

Employment-related loans.

30.(1) For the purposes of this Chapter an employment-related loan is a loan–

(a) made to an employee or a relative of an employee, or

(b) a director or shareholder director of a company; and

(c) of a class described in subparagraph (2).

(2) For the purposes of this Chapter the classes of employment-related loan are–

(a) a loan made by the employee's employer;

(b) a loan made by the company or partnership over which the employee's employer had control;

(c) a loan made by a company or partnership by which the employer (being a company or partnership) was controlled;

(d) a loan made by a company or partnership which was controlled by a person by whom the employer (being a company or partnership) was controlled; or

(e) a loan made by a person having a material interest in–

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(i) a close company which was the employer, had control over the employer or was controlled by the employer, or

(ii) a company or partnership controlling that close company.

(3) In this paragraph–

"employee" includes a prospective employee and a director, shadow director or a connected person thereof, and

"employer" includes a prospective employer.

(4) References in this paragraph to a loan being made by a person extend to a person who–

(a) assumes the rights and liabilities of the person who originally made the loan, or

(b) arranges, guarantees or in any way facilitates the continuation of a loan already in existence.

Benefit of taxable cheap loan treated as earnings.

31.(1) The cash equivalent of the benefit of an employment-related loan is to be treated as earnings from the employee's employment for a tax year if the loan is a taxable cheap loan in relation to that year.

(2) For the purposes of this Chapter an employment-related loan is a "taxable cheap loan" in relation to a particular tax year if–

(a) there is a period consisting of the whole or part of that year during which the loan is outstanding and the employee holds the employment,

(b) no interest is paid on it for that year, or the amount of interest paid on in for that year is less than the interest that would have been payable to a bank or building society which neither was the employer nor was connected to the employer or the employee.

(3) The cash equivalent of the benefit of an employment-related loan for a tax year is the difference between–

(a) the amount of interest that would have been payable on the loan for that year had been made to the employee on similar terms other than the charge of interest by a bank or building society which neither employed nor was connected to the employer or the employee; and

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(b) the amount of interest (if any) already paid on the loan for that year.

Exception for loans where interest qualifies for tax relief.

32. A loan is not a taxable cheap loan in relation to a particular tax year to the extent that if, assuming interest is or were to be paid on the loan for that year (whether or not it is in fact paid), the interest–

(a) is eligible for relief under the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 or any other enactment; or

(b) is deductible in computing the amount of the profits to be charged in respect of a trade, profession, business or vocation carried on by the person to whom the loan is made.

Exception for certain advances for necessary expenses.

33.(1) An advance by an employer to an employee for the purpose of paying for–

(a) necessary expenses; or

(b) incidental overnight expenses,

is not a taxable cheap loan in relation to a particular tax year if the following conditions are met.

(2) The conditions are–

(a) that at all times in the tax year in question the amount outstanding on such advances made by the employer to the employee does not exceed £1,000;

(b) that the advance is spent within 6 months after the date on which it is made; and

(c) that the employee accounts to the employer at regular intervals for the expenditure of the amount advanced.

(3) In this paragraph "necessary expenses" are expenses (including travel expenses) which–

(a) the employee is obliged to incur and pay as holder of the employment; and

(b) are necessarily incurred in the performance of the duties of the employment.

(4) In this paragraph "incidental overnight expenses" are expenses which are incidental to the employee's absence from the place where the employee normally lives.

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Apportionment of cash equivalent in case of joint loan etc.

34. Where in any tax year the cash equivalent of the benefit of the same taxable cheap loan is to be treated as earnings of two or more employees–

(a) the cash equivalent of the benefit of the loan (determined in accordance with the provisions of this Chapter) is to be apportioned between them in a just and reasonable manner; and

(b) the portion allocated to each employee is to be treated as the cash equivalent of the benefit of the loan so far as that employee is concerned.

Loan released or written off or made to directors; amount treated as earnings.

35. If either the whole or part of an employment related loan is released or written-off in a tax year the amount which was released or written-off is deemed as earnings on the date of such release or write-off.

Exclusion of charge after death of employee.

36.(1) On the employee's death a taxable cheap loan is to be treated–

(a) for the purposes of this Chapter as ceasing to be outstanding; and

(b) for the purposes of calculating interest otherwise payable as being discharged on the date of death.

(2) Paragraph 35 does not apply in relation to a release or writing off which takes effect on or after the death of the employee.

CHAPTER 7

TAXABLE BENEFITS: RESIDUAL LIABILITY TO CHARGE

Introduction

Employment-related benefits.

37.(1) This Chapter applies to employment-related benefits.

(2) In this Chapter–

"benefit" means a benefit or facility of any kind;

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"employment-related benefit" means a benefit, other than an excluded benefit, which is provided in a tax year–

(a) for an employee, or

(b) for a member of an employee's family or household,

by reason of the employment.

For the definition of "excluded benefit" see paragraph 38.

(3) A benefit provided by an employer is to be regarded as provided by reason of the employment unless–

(a) the employer is an individual, and

(b) the provision is made in the normal course of the employer's domestic, family or personal relationships.

(4) For the purpose of this Chapter it does not matter whether the employment is held at the time when the benefit is provided so long as it is held at some point in the tax year in which the benefit is provided.

(5) References in this Chapter to an employee accordingly include a prospective or former employee.

Excluded benefits.

38.(1) A benefit is an "excluded benefit" for the purposes of this Chapter if–

(a) any of the Chapters of this Schedule other than this Chapter applies to the benefit, or

(b) any of those Chapters would apply to the benefit but for an exception,

(2) In this paragraph "exception", in relation to the application of a Chapter of this Schedule to a benefit, means any enactment in a Chapter which provides that the Chapter does not apply to the benefit.

Reduction of cash equivalent where car is shared.

39.(1) This paragraph applies if in a tax year a car–

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(a) is available to more than one employee concurrently,

(b) is so made available by the same employer, and

(c) is available concurrently for each employee's private use,

and two or more of those employees are chargeable to tax in respect of the car in that year by virtue of paragraph 25.

(2) The cash equivalent of the benefit of the car to each of those employees for that year–

(a) is to be calculated separately under paragraph 26, and

(b) is then to be reduced on a just and reasonable basis.

(3) If the employment of any of the employees mentioned in subparagraph (1)(a) is an excluded employment, the availability of the car to that employee is to be disregarded for the purposes of subparagraph (2)(b).

(4) In this paragraph the reference to the car being available for each employee's private use includes a reference to the car being available for the private use of a member of the employee's family or household.

Cash equivalent of benefit treated as earnings.

40.(1) The cash equivalent of an employment-related benefit is to be treated as earnings from the employment for the tax year in which it is provided.

(2) The cash equivalent of an employment-related benefit is the cost of the benefit less any part of that cost made good by the employee to the persons providing the benefit.

(3) The cost of an employment-related benefit is determined in accordance with paragraph 41 unless–

(a) paragraph 42 provides that the cost is to be determined in accordance with that paragraph, or

(b) paragraph 43 provides that the cost is to be determined in accordance with that paragraph.

Determination of the cost of the benefit

Cost of the benefit; basic rule.

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41. The cost of an employment-related benefit is the expense incurred in or in connection with provision of the benefit (including a proper portion of any expense relating partly to provision of the benefit and partly to other matters).

Cost of the benefit; asset made available without transfer.

42.(1) The cost of an employment-related benefit ("the taxable benefit") is determined in accordance with this paragraph if–

(a) the benefit consists in–

(i) an asset being placed at the disposal of the employee, or at the disposal of a member of the employee's family or household, for the employee's or member's use, or

(ii) an asset being used wholly or partly for the purpose of the employee or a member of the employee's family or household, and

(b) there is no transfer of the property in the asset.

(2) The cost of the taxable benefit is the higher of–

(a) the annual value of the use of the asset, and

(b) the annual amount of the sums, if any, paid by those providing the benefit by way of rent or hire charge for the asset,

together with the amount of any additional expense.

(3) For the purposes of subparagraph (2), the annual value of the use of an asset is–

(a) in the case of land, its annual rental value;

(b) in any other case, 20% of the market value of the asset at the time when those providing for taxable benefit first applied the asset in the provision of an employment-related benefit (whether or not the person provided with that benefit is also the person provided with the taxable benefit).

(4) In this paragraph "additional expense" means the expense incurred in or in connection with provision of the taxable benefit (including a proper proportion of any expense relating partly to provision of the benefit and partly to other matters) other than–

(a) the expense of acquiring or producing the asset incurred by the person to whom the asset belongs, and

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(b) any rent or hire charge payable for the asset by those providing the asset.

Cost of the benefit; transfer of used or depreciated asset.

43.(1) The cost of an employment-related benefit is determined in accordance with this paragraph if–

(a) the benefit consists in the transfer of an asset, and

(b) the asset has been used, or has depreciated, since the person transferring the asset ("the transferor") acquired or produced it.

(2) The cost of the benefit is the market value of the asset at the time of the transfer.

Supplementary provisions

Meaning of "annual rental value".

44.(1) For the purposes of this Chapter the "annual rental value" of land is the rent which might reasonably be expected to be obtained on a letting from year to year if–

(a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and

(b) the landlord undertook to bear the costs of the repairs and insurance and other expenses (if any) necessary for maintaining the land in a state to command the rent.

(2) For the purposes of subparagraph (1) that rent–

(a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of the letting, and

(b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the cost to the landlord of providing any relevant services.

(3) If the land is of a kind that might reasonably be expected to be let on terms under which–

(a) the landlord is to provide any services which are either–

(i) relevant services; or

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(ii) the repair, insurance or maintenance of any premises which do not form part of the land but belong to or are occupied by the landlord, and

(b) the amounts are payable in respect of the services in addition to the rent,

the rent to be established under subparagraph (1) in respect of the land is to be increased under subparagraph (4).

(4) That rent is to include–

(a) where the services are relevant services, so much of the additional amounts as exceeds the cost to the landlord of providing the services,

(b) where the services are within subparagraph (3)(a)(ii), the whole of the additional amounts.

(5) In this paragraph "relevant service" means a service other than the repair, insurance or maintenance of the land or of any other land.

Meaning of "market value".

45. For the purposes of this Chapter the market value of an asset at any time is the price which the asset might reasonably be expected to fetch on a sale in the open market at that time.

Meaning of "persons providing benefit".

46. For the purposes of this Chapter the persons providing a benefit are the person or persons at whose cost the benefit is provided.

47. *not used*

Payments to non-approved personal pension arrangements.

48.(1) Contributions paid by an employer under non-approved personal pension arrangements made by the employee are to be treated as earnings from the employment for the tax year in which they are paid.

(2) Subparagraph (1) does not apply if or to the extent that the contributions are chargeable to income tax as the employee's income apart from this paragraph.

(3) For the purposes of this paragraph–

(a) "personal pension arrangements" has the meaning given by Rule 3(17) of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992.

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(b) arrangements are "non-approved" if they are not "approved" within the meaning of that Rule.

Payments for restrictive undertakings.

49.(1) This paragraph applies where–

(a) an individual gives a restrictive undertaking in connection with the individual's current, future or past employment; and

(b) a payment is made in respect of–

(i) the giving of the undertaking; or

(ii) the total or partial fulfilment of the undertaking.

(2) It does not matter to whom the payment is made.

(3) The payment is to be treated as earnings from the employment for the tax year in which it is made.

(4) Subparagraph (3) does not apply if the payment constitutes earnings from the employment by virtue of any other provision.

(5) A payment made after the death of the individual who gave the undertaking is treated for the purposes of this paragraph as having been made immediately before the death.

(6) In this paragraph "restrictive undertaking" means an undertaking which restricts the individual's conduct or activities. For this purpose it does not matter whether or not the undertaking is legally enforceable or is qualified.

Valuable consideration given for restrictive undertakings.

50.(1) In a case where–

(a) an individual gives restrictive undertaking in connection with the individual's current, future or past employment, and

(b) valuable consideration that is not in the form of money is provided in respect of–

(i) the giving of the undertaking, or

(ii) the total or partial fulfilment of the undertaking,

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paragraph 49 applies as it would if a payment of an amount equal to the value of the consideration had been made instead.

(2) For this purpose merely assuming an obligation to make over or provide valuable property, rights or advantages is not valuable consideration, but wholly or partially discharging such an obligation is.

Annual parties and functions.

51.(1) This paragraph applies to an annual party or similar annual function provided for an employer's employees and available to them generally or available generally to those at a particular location.

(2) Where in the tax year only one annual party or similar annual function to which this paragraph applies is provided for the employer's employees, or the employees in question, no liability to income tax arises in respect of its provision if the cost per head of the party or function does not exceed £75.

(3) Where in the tax year two or more such parties or functions are so provided, no liability to income tax arises in respect of the provision of one or more of them ("the exempt party or parties") if the cost per head of the exempt party or parties does not exceed £75 or £75 in aggregate.

(4) For the purposes of this paragraph, the cost per head of a party or function is the total cost of providing–

(a) the party or function, and

(b) any transport or accommodation incidentally provided for persons attending it (whether or not they are the employer's employees),

divided by the number of those persons.

CHAPTER 8

EXEMPTIONS: REMOVAL BENEFITS AND EXPENSES

Limited exemption of removal benefits and expenses: general.

52. No liability to income tax in respect of earnings arises by virtue of–

(a) the provision of removal benefits to which this chapter applies, or

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(b) the payment or reimbursement of removal expenses to which this chapter applies.

Removal benefits and expenses to which this Chapter applies.

53.(1) Benefits are removal benefits to which paragraph 52 applies if–

(a) they are reasonably provided in connection with a change of the employee's residence which meets the conditions in paragraph 54.

(b) they are within subparagraph (2) or one of the following provisions-

(i) paragraph 58 (acquisition benefits and expenses);

(ii) paragraph 59 (abortive acquisition benefits and expenses);

(iii) paragraph 60 (disposal benefits and expenses);

(iv) paragraph 61 (transporting belongings);

(v) paragraph 62 (travelling and subsistence); and

(vi) paragraph 66 (replacement of domestic goods).

(2) A benefit is within this subparagraph if it is a non-cash voucher, cash voucher or credit-token used–

(a) to obtain goods or services the direct provision of which would be a benefit within one of the provisions specified in subparagraph (1)(b)(i) to (vi), or

(b) to obtain money for the purpose of obtaining such goods or services or meeting expenses within one of those provisions or paragraph 65 (bridging loan expenses).

(3) Expenses are removal expenses to which subparagraph (2) applies if–

(a) they are reasonably incurred by the employee in connection with a change of the employee's residence which meets the conditions in paragraph 54, subparagraph (4).

(b) they are incurred on or before the limitation day, and

(c) they are within one of the provisions referred to in subparagraph (1)(b)(i) to (vi) or within paragraph 65 (bridging loan expenses).

Conditions applicable to change of residence.

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54.(1) The conditions referred to in this Chapter which apply to the change of the employee's residence are conditions A to C.

(2) Condition A is that the change of residence results from one of the following changes–

(a) the employee becoming employed,

(b) an alteration of the duties of the employment, or

(c) an alteration of the place where the employee is normally to perform those duties.

(3) Condition B is that the change of residence is made wholly or mainly to allow the employee to reside within a reasonable daily travelling distance of the place where the employee normally performs or is normally to perform the duties of the employment after the employment change.

(4) Condition C is that the employee's former residence is not within a reasonable daily travelling distance of that place.

Meaning of "the limitation day".

55.(1) In this Chapter "the limitation day", in relation to an employee's change of residence, means the last day of the tax year after that in which the employee begins to perform the duties of the employment after the employment change, but this is subject to any direction under subparagraph (2).

(2) The Minister may direct that the last day of a later tax year is the limitation day in relation to any particular change of residence if it appears to them reasonable to do so having regard to all the circumstances of that change.

Meaning of "the employment change".

56. In this Chapter "the employment change", in relation to an employee's change of residence, means whichever of the changes specified in paragraph 54 results in the change of residence.

Meaning of "residence", "former residence" and "new residence" etc.

57.(1) If an employee has more than one residence, references to this Chapter to the employee's residence are references to the employee's main residence.

(2) In this Chapter, in relation to a change of the employee's residence–

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(a) references to the former residence are references to the employee's residence before the change, and

(b) references to the new residence are references to the employee's residence after the change.

(3) In this Chapter references to an interest in a residence are, in the case of a building, references to an estate or interest in the land concerned.

Acquisition benefits and expenses.

58.(1) This paragraph applies if an interest in the employee's new residence is acquired by–

(a) the employee,

(b) one or more members of the employee's family or household, or

(c) the employee and one or more members of the employee's family or household.

(2) The following benefits are within this paragraph–

(a) legal services connected with the acquisition of the interest, including legal services connected with any loan raised by the employee to acquire it;

(b) the waiving of any procurement fees connected with any such loan;

(c) the waiving of any amount payable in respect of insurance effected to cover risks incurred by the maker of any such loan because the loan equals the whole, or a substantial part, of the value of the interest;

(d) any survey or inspection of the residence undertaken in connection with the acquisition; and

(e) the connection of any utility serving the new residence for use by the employee or by the employee and one or more members of the employee's family or household.

(3) The following expenses are within this paragraph-

(a) sums paid for any services within subparagraph (2);

(b) any procurement fees connected with any loan raised by the employee to acquire the interest;

(c) the costs of any insurance within subparagraph (2)(c);

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(d) fees payable to an appropriate registry or appropriate register in connection with the acquisition; and

(e) stamp duty charged on the acquisition.

(4) In this subparagraph references to a loan raised by the employee include a loan raised by–

(a) one or more members of the employee's family or household; or

(b) the employee and one or more members of the employee's family or household.

Abortive acquisition benefits and expenses.

59. Benefits or expenses are within this paragraph if–

(a) they are benefits provided or expenses incurred with a view to the acquisition of an interest in a residence;

(b) the interest is not acquired–

(i) because of circumstances outside the control of the person seeking to acquire it; or

(ii) because that person reasonably declines to proceed; and

(c) the benefits or expenses would have fallen within paragraph 58 if the interest had been acquired.

Disposal benefits and expenses.

60.(1) This paragraph applies if the employee has an interest in the former residence and because of the change of residence it is disposed of or is intended to be disposed of.

(2) The following expenses are within this paragraph–

(a) legal services connected with the disposal or intended disposal, including legal services connected with the redeeming of a related loan;

(b) the waiving of any penalty for redeeming a related loan for the purpose of the disposal or intended disposal;

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(c) the services of an estate agent or auctioneer engaged in the disposal or intended disposal;

(d) services connected with the advertisement of the disposal or intended disposal;

(e) the disconnection, for the purpose of the disposal or intended disposal, of any utility serving the former residence; and

(f) services connected with maintaining, insuring, or preserving the security of, the former residence at any time when it is unoccupied pending the disposal or intended disposal.

(3) The following expenses are within this paragraph–

(a) sums paid for any services within subparagraph (2)(a),(c),(d) or (e);

(b) any penalty for redeeming a related loan for the purpose of the disposal or intended disposal;

(c) rent paid in respect of the former residence at any time when it is unoccupied pending the disposal or intended disposal; and

(d) expenses of maintaining, insuring, or preserving the security of the former residence at any time when it is unoccupied pending the disposal or intended disposal.

(4) In this paragraph reference to the employee having an interest in a residence include–

(a) one or more members of the employee's family or household having such an interest; or

(b) the employee and one or more members of the employee's family or household having such an interest.

(5) A loan is a "related loan" for this purpose if-

(a) it was raised to obtain an interest in the former residence; or

(b) it is secured on such an interest; or

(c) part of it was so raised and the rest of it is so secured.

Transporting belongings.

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61.(1) The following benefits are within this paragraph-

(a) the transportation of domestic belongings from the employee's former residence to the employee's new residence; and

(b) the effecting of insurance to cover such transportation.

(2) The following expenses are within this paragraph–

(a) expenses connected with such transportation; and

(b) the costs of any such insurance.

(3) In this paragraph–

"domestic belongings" means belongings of the employee or of members of the employee's family or household, and

"transportation" includes-

(a) packing and unpacking belongings;

(b) temporarily storing them, where there is not a direct move from the former to the new residence;

(c) detaching domestic fitting from the former residence, where they are to be taken to the new residence; and

(d) attaching domestic fitting to the new residence and adapting them, where they are brought from the former residence.

Travelling and subsistence.

62.(1) The following benefits are within this paragraph–

(a) subsistence and facilities for travel provided for the employee and members of the employee's family or household for temporary visits to the new area for purposes connected with the change of residence;

(b) any other subsistence provided for the employee;

(c) facilities provided for the employee for travel between the employee's former residence and–

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(i) the place where the employee's new duties are normally performed; or

(ii) the new place where the duties of the employee's employment are normally performed; or

(iii) temporary living accommodation of the employee;

(d) where the employment change is within subparagraph 54(2)(b) or (c) (change of duties or place of performance), facilities provided for the employee for travel before the change between the employee's new residence and-

(i) the place where the employee normally performs the duties of the employment before the change; or

(ii) temporary living accommodation of the employee;

(e) facilities provided for the employee and members of the employee's family or household for travel from the employee's former residence to the employee's new residence in connection with the change of residence;

(f) subsistence provided for a relevant child while the child stays in education-linked living accommodation;

(g) facilities provided for a relevant child for travel between education linked living accommodation and the employee's accommodation.

(2) For the purpose of this paragraph, "education linked living accommodation", in relation to a relevant child, means living accommodation where the child stays for the purpose of securing continuity in education, being-

(a) accommodation in the new area where the child stays before the employee's change of residence;

(b) accommodation in the former area where the child stays after that change;

(c) accommodation in the new area where the child stays while the employee is living in temporary living accommodation in the former area; or

(d) accommodation in the former area where the child stays while the employee is living in temporary living accommodation in the new area.

(3) For the purpose of subparagraph (1)(g) "the employee's accommodation", in relation to travel to or from education linked accommodation, means–

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(a) if that accommodation is within subparagraph (2)(a), the employee's former residence;

(b) if that accommodation is within subparagraph (2)(b), the employee's new residence; and

(c) if that accommodation is within subparagraph (2)(c) or (d), the employee's temporary accommodation.

(4) The cost of providing subsistence or travel of a kind described in subparagraph (1) is an expense within this paragraph.

(5) Subparagraphs (1) and (4) are subject to paragraph 63 (exclusion from this paragraph of benefits and expenses where deduction allowed), and subparagraph (1) is also subject to paragraph 64 (exclusion from this paragraph of taxable car and van facilities).

(6) In this paragraph–

"new duties" means–

(a) if the employment change is within paragraph 54(2)(a) (change of employer), the duties of the employee's new employment; and

(b) if the employment change is within subparagraph 54(2)(b) (change of duties), the new duties of the employment;

"former area" means the area round or near the former residence of the employee;

"new area" means-

(a) if the employment change is within subparagraph 54(2)(a) or (b) (change of employer or duties), the area round or near round or near the place where the employee's new duties normally are or are to be performed, and

(b) if the employment change is within subparagraph 54(2) (c) (change of place of performance), the area round or near the new place where the duties of the employee's employment normally are or are to be performed,

"relevant child" means a person who is a member of the employee's family or household and is aged under 19 at the beginning to the tax year in which the employment change occurs, and

"subsistence" means food, drink and temporary living accommodation.

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Exclusion from paragraph 62 of benefits and expenses where deduction allowed.

63.(1) Benefits and expenses are excluded from paragraph 62 (travelling and subsistence) if or to the extent that an amount is deductible, from the employee's taxable emoluments in respect of the cost of the benefits or of the expenses incurred for any of the following reasons.

(2) They are-

(a) travel at start or finish of overseas employment;

(b) travel between employments where duties performed abroad; and

(c) deductions for earnings representing benefits or reimbursed expenses in respect of certain foreign travel.

(3) If an amount is so deductible in respect of part only of the cost of a benefit, the part of the benefit excluded by this paragraph is to be determined on a just and reasonable basis.

Exclusion of car and van facilities.

64.(1) A car or van is not treated as a facility for the purpose of Chapter 5 if in the tax year in which it is provided it is also made available–

(a) to the employee or members of the employee's family or household for private use not falling within paragraph 20(1),

(b) by reason of the employee's employment, and

(c) without any transfer to the property in it.

(2) The following paragraphs apply for the purpose of this paragraph as they apply for the purpose of Chapter 5 (taxable benefits: car, vans and related benefits)–

(a) paragraph 21 (meaning of "car" and "van"),

(b) paragraph 22 (meaning of when car or van is available to an employee), and

(c) paragraph 23 (availability for private use).

Bridging loan expenses.

65.(1) Subject to subparagraph (2) and (3), expenses are within this paragraph if–

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(a) the employee has an interest in the former residence and disposes of it because of the change of residence;

(b) the employee acquires an interest in the new residence; and

(c) the expenses are interest payable by the employee in respect of a loan raised by the employee wholly or partly because expenditure is incurred in connection with that acquisition before the proceeds of that disposal become available.

(2) Interest is only within this paragraph if or to the extent that the loan is used-

(a) for acquiring the employee's interest in the new residence; or

(b) for redeeming a loan–

(i) which was raised by the employee to obtain an interest in the former residence;

(ii) which is secured on such an interest; or

(iii) which was partly so raised and the rest of which is so secured.

(3) If the loan exceeds the market value of the employee's interest in the former residence at the time of acquisition of the new residence, the interest on the excess is not within this paragraph.

(4) If subparagraph (3) applies in a case where the loan is used partly for purpose within subparagraph (2) and partly for other purpose, the amount of the interest within this paragraph is the appropriate fraction of the total interest.

(5) The appropriate fraction is–

MV divided by L

or, if it is smaller–

PL divided by L

where–

MV is the market value of the employee's interest in the former residence at the time of acquisition of the new residence,

PL is the part of the loan used for purposes within subparagraph (2), and

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L is the amount of the loan.

(6) In this subparagraph–

(a) references to a loan raised by the employee include a loan raised by–

(i) one or more members of the employee's family or household; or

(ii) the employee and one or more members of the employee's family or household; and

(b) references to the employee having, disposing of or acquiring an interest in a residence include-

(i) one or more members of the employee's family or household having, disposing of or acquiring such an interest, or

(ii) the employee and one or more members of the employee's family or household having, disposing of or acquiring such an interest.

Replacement of domestic goods.

66.(1) Benefits and expenses are within this paragraph if–

(a) the employee has an interest in the former residence and disposes of it because of the change of residence;

(b) the employee acquires an interest in the new residence;

(c) in the case of benefits, they are domestic goods provided to replace goods used at the former residence which are unsuitable for use at the new residence; and

(d) in the case of expenses, they are incurred on the purchase of domestic goods intended for such replacement.

(2) In this paragraph references to the employee having, disposing of or acquiring an interest in a residence include–

(a) one or more members of the employee's family or household having, disposing of or acquiring such an interest; or

(b) the employee and one or more members of the employee's family or household having disposing of or acquiring such an interest.

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Limited exemption of certain bridging loans connected with employment moves.

67.(1) No liability to income tax arises by virtue of Chapter 6 (taxable benefits: loans) in respect of a loan if it is a removal benefit (see subparagraph (2)).

(2) For the purpose of this paragraph, a loan is a removal benefit if–

(a) it is raised by the employee in connection with a change of residence meeting the conditions in paragraph 54 (conditions applicable to change of residence),

(b) the employee has an interest in the former residence and disposes of it in consequence of the change of residence,

(c) the employee acquires an interest in the new residence,

(d) the loan is raised wholly or partly because expenditure is incurred in connection with that acquisition before the proceeds of that disposal become available, and

(e) the loan is made before the limitation day.

(3) In this paragraph–

(a) references to a loan raised by the employee include a loan raised by-

(i) one or more members of the employee family or household; or

(ii) the employee and one or more members of the employee's family or household; and

(b) references to the employee having, disposing of or acquiring an interest in a residence include–

(i) one or more members of the employee's family or household having, disposing of or acquiring such an interest, or

(ii) the employee and one or more members of the employee's family or household having, disposing of or acquiring such an interest.

Travel costs and expenses where duties performed abroad: employee's travel.

68.(1) A deduction is allowed from earnings which are profits and gains from employment, where-

(a) the earnings include an amount in respect of-

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(i) the provision of travel facilities for a journey made by the employee, or

(ii) the reimbursement of expenses incurred by the employee on such a journey, and

(b) the circumstances fall within Case A, B or C.

(2) The deduction is equal to the included amount.

(3) Case A is where-

(a) the employee is absent from Gibraltar wholly and exclusively for the purpose of performing the duties of one or more employments,

(b) the duties concerned can only be performed outside Gibraltar, and

(c) the journey is–

(i) a journey from a place outside Gibraltar where such duties are performed to Gibraltar, or

(ii) a return journey following such a journey.

(4) Case B is where–

(a) the duties of the employment are performed partly outside Gibraltar,

(b) those duties are not performed on a vessel,

(c) the journey is between Gibraltar and a place outside Gibraltar where duties of the employment are performed,

(d) the duties performed outside Gibraltar can only be performed there, and

(e) the journey is made wholly and exclusively for the purpose of performing them or returning after performing them.

(5) Case C is where–

(a) the duties of the employment are performed partly outside Gibraltar,

(b) those duties are performed on a vessel,

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(c) the journey is between Gibraltar and a place outside Gibraltar where duties of employment are performed,

(d) the duties performed outside Gibraltar can only be performed there, and

(e) the journey is made wholly and exclusively for the purpose of performing those duties, or those duties and other duties of the employment, or returning after performing them.

Travel costs and expenses where duties performed abroad: visiting spouse's or child's travel.

69.(1) A deduction is allowed from earnings which are profit and gains from employment if–

(a) the earnings include an amount in respect of–

(i) the provision of travel facilities for a journey made by the employee's spouse or child; or

(ii) the reimbursement of expenses incurred by the employee on such a journey; and

(b) conditions A to C are met.

(2) The deduction is equal to the included amount.

(3) Condition A is that the employee is absent from his place of residence for a continuous period of at least 60 days for the purpose of performing the duties of one or more employments.

(4) Condition B is that the journey is between a place in his normal place of residence and a place outside that country, jurisdiction and territory where such duties are performed.

(5) Condition C is that the employee's spouse or child is-

(a) accompanying the employee at the beginning of the period of absence;

(b) visiting the employee during that period; or

(c) returning to a place in the country, jurisdiction or territory of the normal place of residence after so accompanying or visiting the employee.

(6) A deduction is not allowed under this paragraph for, more than two outward and two return journeys by the same person in a tax year.

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(7) In this paragraph "child" includes a stepchild and an illegitimate child, but not a person who is 18 or over at the beginning of the outward journey.

CHAPTER 9

DISPENSATIONS FROM OBLIGATIONS TO REPORT BENEFITS IN KIND

General.

70. This Chapter applies for the purposes of the provisions of this Schedule where a person (the "Person") supplies the Commissioner with a statement of the cases and circumstances in which-

(a) payments of a particular character are made to or for any employees; or

(b) benefits or facilities of a particular kind are provided for any employees, or

(c) the employer has made arrangements to pay the tax liability of the employees in receipt of the payments or provision in (a) or (b) above,

whether they are employees of that Person or some other person.

Commissioner's power to give dispensation.

71. If the Commissioner is satisfied that no additional tax is payable by virtue of the provisions of this Schedule by reference to the payments, benefits, facilities or arrangements mentioned in the statement, he may give the Person a dispensation under this Chapter.

Meaning of Dispensation.

72. A "dispensation" is a notice stating that the Commissioner agrees that no additional tax is payable by virtue of the provisions of this Schedule by reference to the payments, benefits or facilities mentioned in the statement supplied by the Person.

Non taxable allowance in respect of benefits.

73.(1) The Commissioner will not require a return of benefits with a total value of less than the figure provided in subparagraph (2) in any year of assessment in respect of any employee and tax shall tax not be charged on an employee in respect of benefits below the figure provided in that sum in any year of assessment.

(2) The sum referred to in subparagraph (1) above is £250 or such other sum as the Minister may from time to time specify by legal notice.

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Employer's payment of tax due on benefits

74.(1) The employer may opt to pay tax on the benefits on behalf of an employee, in which case no additional tax will be charged on the employee in respect of the tax paid by the employer.

(2) In the case that an employer opts under subparagraph (1) to pay the tax and the value of the benefits otherwise taxable on an employee under this Schedule is between £250 and £15,000 in any year of assessment, tax shall be paid thereon at the rate of 20%;

(3) In the case that an employer opts under subparagraph (1) to pay the tax and the value of the benefits otherwise taxable on an employee under this Schedule are above £15,000 in any year of assessment, tax thereon shall be payable at the rate of 29%.

Effect of Dispensation.

75.(1) Subject to (2) below, if a dispensation is given under this Chapter, nothing in the provisions of this Schedule applies to the payments, or the provisions of the benefits or facilities covered by the dispensation or otherwise has the effect of imposing any additional liability to tax or requirement for making returns by the Person or the employees in respect of them.

(2) No allowance as an expense incurred wholly, exclusively and necessarily in the course of the employment will be given in respect of any payment, benefit or facility treated as non taxable in accordance with (1) above.

(3) A dispensation will continue in effect until the Commissioner revokes the dispensation by notice in writing to the Person.

Revocation of Dispensation.

76. A notice under paragraph 75(3) may revoke the dispensation from-

(a) the date when the dispensation was given, or

(b) a later date specified in the notice.

Effect of revocation from date given.

77. If the notice revokes the dispensation from the date the dispensation was given-

(a) any liability to tax that would have arisen if the dispensation had never been given is treated as having arisen, and

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(b) the Person and the employees in question must make all the returns which they would have had to make if the dispensation had never been given within a period of 30 days from the date of the notice of revocation of the dispensation or such longer period as the Commissioner may by notice in writing to the Person allow.

Effect of revocation from later date.

78. If the notice revokes the dispensation from a later date-

(a) any liability to tax that would have arisen if the dispensation had ceased to have effect on that date is to be treated as having arisen, and

(b) the Person and the employees in question must make all the returns which they would have had to make if the dispensation had ceased to have effect on that date within a period of 30 days from the date of the notice of revocation of the dispensation or such longer period as the Commissioner may by notice in writing to the Person allow.

CHAPTER 10

MISCELLANEOUS

Power to amend this Schedule.

79.(1) The Minister may by regulations amend this Schedule so as to secure that benefits or expenses which would not otherwise fall within this Schedule do so.

(2) The regulations may include such supplementary, incidental or consequential provisions as appear to the Minister to be necessary or expedient.

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SCHEDULE 8

PENALTY TABLES

Section 66

Table A - Overall amount of tax lost

Amount of tax lost/delayed by failure	**Penalty percentage**
Up to £100	5%
£101 to £2,000	10%
£2001 to £20,000	15%
£20,001 to £50,000	20%
£50,001 to £200,000	30%
More than £200,000	50%

Table B - Gravity

Honest mistake/innocent error	Nil
Negligence or failure to take due care	10%
Recklessness	25%
Deliberate Commission/omission	50%

Table C - co-operation in investigation

Full cooperation with the Commissioner's enquiries with full quantification and payment of all amounts due within 60 days of the approach to or from the Commissioner

Nil

Cooperation in part only or with prompting with full quantification and payment of all amounts due within 6 months of the approach to or from the Commissioner

25%

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No cooperation or reluctant cooperation with quantification or payment of all amounts due delayed beyond the 6 months of the approach to or from the Commissioner
50%

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SCHEDULE 9

REPEALS, AMENDMENTS AND TRANSITIONAL PROVISIONS

Section 74

PART 1

Repeals

Repeals and revocations.

1.(1) The following Acts are repealed:–

(a) The Previous Act other than section 41A of that Act

save that the Previous Act shall, unless this Act indicates to the contrary, continue to apply in respect of any liability to tax relating to the period prior to the commencement of this Act.

(b) The Companies (Taxation and Concessions) Act 1983.

(2) The following Rules and Regulations are revoked:—

(a) The Income Tax (Permitted Individuals) Rules 1985;

(b) Qualifying Individuals Rules 1989;

(c) Parent and Subsidiary Company Rules 2008; and

(d) Savings Bank (Bond and Debenture) (Exemption) Regulations 1991

PART II

Transitional Provisions

Cessation.

2.(1) Subject to subparagraph (2) the commencement of this Act shall be deemed to be a cessation for the purpose of Section 8 of the Previous Act and a commencement for the purposes of this Act and the liability of any person who was taxable under the Previous Act shall be computed on the basis that the taxable source(s) of income of that person both ceased immediately prior to the commencement of this Act and commenced on the commencement of this Act.

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(2) Section 8(4)(b) of the Previous Act shall not apply in the case of a company whose tax rate immediately prior to the commencement of this Act was determined in accordance with sub rules 6(6) to 6(11) of the Rates of Tax Rules 1989.

(3) (a) Other than in the case of an assessment on a company, any assessment made under the Previous Act for the year from 1 July 2010 to 30 June 2011 shall be deemed to be an estimate of the profits due for assessment in the period from 1 July 2010 to 31 December 2010 under the Previous Act and an estimate of the payment due for the period 1 January 2011 to 30 June 2011 for the purposes of this Act and the Commissioner shall in charging the profits to tax make the assessment on the basis of the tax chargeable in those period.

(b) No right of appeal will lie against the 2010/11 assessment solely on the basis of the cessation and commencement created by the commencement of this Act, however, the Commissioner may reduce an assessment because of the deemed cessation without appeal.

(c) Given the above, no payment on account will be necessary for the liability due for the period 1 January 2011 to 30 June 2011.

(4) In the case of a company-

(a) any assessment made under the Previous Act for the year from 1 July 2010 to 30 June 2011 shall be deemed to be an estimate of the profits due for assessment in the period from 1 July 2010 to 31 December 2010 under the Previous Act and an assessment of the payment on account due on 28 February 2011 and the Commissioner will charge the profits assessed on this basis.

(b) For the purpose of calculating the amount payable or repayable in respect of the cessation adjustment for the period 1 July 2010 to 31 December 2010 the tax available to be offset shall be the amount of profits charged on the original assessment at 11 per cent and any amount paid in excess or below the amount due for the period will be payable or repayable as the case may be.

(c) For the purpose of calculating the amount to be regarded as a payment on account against the first assessment under this Act the tax available as a payment on account shall be the amount of profits charged on the original assessment at 5 per cent.

Capital Allowances and deductions allowed.

3.(1) Subject to subparagraphs (2),(3) and (4) below, for the purpose of ascertaining the capital allowance or balancing charge due to any person under Schedule 3, any expenditure made, allowance given (under the Previous Act), disposal or other event relevant to the

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computing of the Capital Allowances due occurring prior to the commencement of this Act shall have effect as if this Act had been in force at the time and any allowance given under the Previous Act had been given under this Act.

(2) In the case of a chargeable company which was an exempt company immediately prior to the commencement of this Act and where the Commissioner is satisfied that the accounts of the company have historically reflected the depreciation of its assets in a form acceptable to the Commissioner, the qualifying expenditure at the commencement of this Act shall be the net book value of all the plant and machinery which was in the ownership and use that company at the date of commencement.

(3) In calculating the net book value for the purposes of subparagraph (2) above, the Commissioner may disregard any increase in value of plant and machinery resulting from a revaluation.

(4) If the Commissioner is not satisfied with the revaluation mentioned in subparagraph (3) above, the qualifying expenditure at the commencement of this Act shall be ascertained on the basis of the market value of all that plant and machinery which was in the ownership and use of the company at the date of commencement.

(5) The deductions referred to in subparagraphs (8) to (12) below shall be based on the following–

(a) for the year of assessment commencing 1 July 2008–

(i) tax written down values from the preceding year of assessment; and

(ii) capital expenditure incurred within the basis period for the year of assessment commencing 1 July 2008 under a preceding year basis of taxation;

(b) for the year of assessment commencing 1 July 2009–

(i) tax written down values from the preceding year of assessment (year of assessment commencing 1 July 2008); and

(ii) capital expenditure incurred within the period extending from the first day immediately following the basis period mentioned in subparagraph (a)(ii) above to 30 June 2010;

(c) for the year of assessment commencing 1 July 2010–

(i) tax written down values from the preceding year of assessment (year of assessment commencing 1 July 2009); and

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(ii) capital expenditure incurred within the period extending from 1 July 2010 to 31 December 2010.

(6) Subject to subparagraph (7) below and in relation to the year of assessment commencing 1 January 2011, or as the case may be, accounting period commencing 1 January 2011, the deductions referred to in Schedule 3 shall be based on the following–

(a) tax written down values from the preceding year of assessment (year of assessment commencing 1 July 2010 and ending on 31 December 2010); and

(b) capital expenditure incurred within the period extending from 1 January 2011 to the accounting date;

(c) for the purposes of this subparagraph the amount in subsubparagraph (a) above shall constitute the initial amount available of qualifying expenditure as defined in Chapter 4 of Schedule 3.

(7) For subsequent years of assessment or, as the case may be, accounting periods immediately following the year of assessment commencing 1 January 2011 or, as the case may be, the accounting period specified in subparagraph (6) above, the deductions referred to in Schedule 3 shall be based on the provisions of that Schedule.

(8) (a) In this subparagraph, "plant and machinery", whether used conjunctively or disjunctively–

(i) includes a fixture and a fitting;

(ii) 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 trade or business;

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

(iv) do not include computers or computer programs.

(b) Subject to subparagraph (9) below, where–

(i) a person carrying on any trade, business, profession or vocation incurs in any year of assessment capital expenditure not exceeding £30,000 wholly

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and exclusively for the provision of plant or machinery for the purposes of producing income from that trade, business, profession or vocation; and

(ii) in consequence of the person incurring that expenditure, the plant or machinery belongs to the person 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.

(c) Notwithstanding subsubparagraph (b) above, where a person who has already claimed a deduction under this paragraph in respect of any plant or machinery claims a deduction under this paragraph in respect of any capital expenditure incurred 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.

(d) 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 paragraph, 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.

(e) Where any such plant, machinery or fixtures is used for the purpose of a trade, business or profession on such terms that the burden of the wear and tear falls on the user and not on the owner thereof, the former person shall, in such cases, be entitled to the deduction.

(f) Nothing in this subparagraph shall serve to operate in respect of expenditure incurred prior to the 1st July 1999, in which case the provisions of subsubparagraph (g) below, shall apply in the same manner as prior to the 1st July 1999.

(g) Subject to the provisions of this subparagraph, for the purpose of ascertaining the assessable income of any person there shall be deducted such sum as the Commissioner may consider just and reasonable as representing the amount by which the value of the premises being entertainment centres in respect of which a valid exemption certificate under section 5 of the Gaming Act is in force, hotels, mills, factories or similar premises, has been diminished by reason of wear and

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tear arising out of their use or employment by the owner thereof in a trade, business or profession–

(i) the amount to be deducted in respect of premises being entertainment centres in respect of which a valid exemption certificate under section 5 of the Gaming Act is in force, hotels, mills, factories or other similar premises, shall not exceed 4 per cent of the cost thereof (exclusive of the cost of the land on which the premises are erected);

(ii) where the person carrying on the trade or business is not the owner of the premises, the deduction may be allowed to either the former or the latter or apportioned between them in such a manner as the Commissioner deems just and equitable; and

(iii) no deduction shall be allowed for any period if the deduction will exceed the written down value.

(9) (a) Subject to subsubparagraphs (b) and (c) below, where–

(i) a person carrying on any trade, business, profession or vocation incurs in any year of assessment capital expenditure exceeding £30,000 for the provision of plant or machinery for the purposes of producing income from that trade, business, profession or vocation; and

(ii) 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 for that year 25 per cent of the whole amount of that capital expenditure exceeding £30,000, and an additional 25 per cent in respect of the subsequent three years of assessment.

(b) In relation to subsubparagraph (a) above, the provisions of subparagraph (8) above shall apply in respect of the first £30,000 of the capital expenditure.

(c) Where any such plant, machinery or fixtures is used for the purpose of a trade, business or profession on such terms that the burden of the wear and tear falls on the user and not on the owner thereof, the former person shall, in such cases, be entitled to the deduction.

(d) No deduction shall be allowed under this subparagraph if the deduction will exceed the written down value.

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(e) In the case of the expenditure by any person engaged in any trade, business, profession or vocation of any sum in replacing any plant or machinery (not being plant or machinery to which subparagraph (8) above applies) which was used or employed in such trade, business, profession or vocation, and which has become obsolete, an amount equivalent to the written down value of the plant or machinery replaced, less any sum realised or likely to be realised by the sale thereof, or recoverable under any insurance or indemnity, or the cost of the new plant or machinery, whichever is the less: Provided that where the sum realised or likely to be realised under the provisions of this sub-paragraph is greater than the written down value, there shall be no deduction allowed, and the amount by which the sum realised or likely to be realised exceeds the written down value shall be liable to tax.

(f) Nothing in this subparagraph shall serve to operate in respect of expenditure incurred prior to the 1st July 1999, in which case the provisions of subparagraph (8) above shall apply in the same manner as prior to the 1st July 1999.

(10) (a) Subject to subsubparagraph (b) below, where–

(i) a person carrying on any trade, business, profession or vocation incurs in any year of assessment capital expenditure for the provision of motor vehicles for the purpose of producing income from that trade, business, profession or vocation; and

(ii) in consequence of his incurring that expenditure the vehicles belong 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 for that year 25 per cent of the whole amount of the said capital expenditure, and an additional 25 per cent in respect of the subsequent three years of assessment.

(b) Where any such vehicles are so used for the purpose of a trade, business or profession on such terms that the burden of the wear and tear falls on the user and not on the owner thereof, the former person shall, in such cases, be entitled to the deduction.

(c) No deduction shall be allowed under this rule if the deduction will exceed the written down value.

(d) In the case of the expenditure by any person engaged in any trade, business, profession or vocation of any sum in replacing any vehicles which was used or employed in such trade, business, profession or vocation, and which has become obsolete, an amount equivalent to the written down value of the vehicle replaced,

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less any sum realised or likely to be realised by the sale thereof, or recoverable under any insurance or indemnity, or the cost of the new vehicles, whichever is the less;

(e) Where the sum realised or likely to be realised under the provisions of this subparagraph is greater than the written down value, there shall be no deduction allowed, and the amount by which the sum realised or likely to be realised exceeds the written down value shall be liable to tax.

(f) Nothing in this subparagraph shall serve to operate in respect of expenditure incurred prior to the 1st July 1999, in which case the provisions of subparagraph (8) above shall apply in the same manner as prior to the 1st July 1999.

(g) In this subparagraph, "vehicles", means motor vehicles to which subparagraphs (8) or (9) do not apply.

(11) (a) Subject to subsubparagraph (d) below, where–

(i) a person carrying on any trade, business, profession or vocation incurs in any year of assessment capital expenditure on computers or computer equipment not exceeding £50,000 wholly and exclusively for the purposes of producing income from that trade, business, profession or vocation; and

(ii) in consequence of his incurring that expenditure, the computers or computer programs belong 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.

(b) Notwithstanding subsubparagraph (a) above, where a person who has already claimed a deduction under this subparagraph in respect of computers or computer programs claims a deduction under this subparagraph in respect of any capital expenditure by him for the provision of computers or computer programs in replacement of the first item of computers or computer programs, the Commissioner may refuse to allow the deduction in respect of the second item of computers or computer programs 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.

(c) Where computers or computer programs used for the purposes of any trade, business, profession or vocation, in respect of which a deduction is allowed under this subparagraph, subsequently ceases permanently to be used for those purposes,

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every sum received by the person in whose favour the deduction was allowed by reason of the disposal of computers or computer programs shall be deemed to be income of that person liable to tax.

(d) Where computers or computer programs are used for the purpose of a trade, business, vocation or profession on such terms that the burden of the wear and tear falls on the user and not on the owner thereof, the former person shall, in such cases, be entitled to the deduction.

(e) Nothing in this subparagraph shall serve to operate in respect of expenditure incurred prior to 1 July 2001, in which case the provisions of subparagraph (8) shall apply in the same manner as prior to the 1st July.

(12) (a) Subject to subparagraph (12)(b) and (c) below, where–

(i) a person carrying on any trade, business, profession or vocation incurs in any year of assessment capital expenditure exceeding £50,000 for the provision of computers or computer programs for the purposes of producing income from that trade, business, profession or vocation; and

(ii) in consequence of his incurring that expenditure, the computer or computer program 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 for that year 25 per cent of the whole amount of the said capital expenditure exceeding £50,000, and an additional 25 per cent in respect of the subsequent three years of assessment.

(b) The provisions of subsubparagraph (a) above shall apply in respect of the first £50,000 of the capital expenditure.

(c) Where any computers or computer programs are used for the purposes of a trade, business or profession on such terms that the burden of the wear and tear falls on the user and not on the owner thereof, the former person shall, in such cases, be entitled to the deduction.

(d) No deduction shall be allowed under this subparagraph if the deduction will exceed the written down value.

(e) In the case of the expenditure by any person engaged in any trade, business, profession or vocation of any sum in replacing any computers or computer programs (not being computers or computer programs to which subparagraph (8) above, applies) which were used or employed in such trade, business, profession

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or vocation, and which has become obsolete, an amount equivalent to the written down value of computers or computer programs replaced, less any sum realised or likely to be realised by the sale thereof, or recoverable under any insurance or indemnity, or the cost of the computer hardware or software, whichever is the less.

(f) Where the sum realised or likely to be realised under the provisions of this subparagraph is greater than the written down value, there shall be no deduction allowed, and the amount by which the sum realised or likely to be realised exceeds the written down value shall be liable to tax.

(g) Nothing in this subparagraph shall serve to operate in respect of expenditure incurred prior to the 1st July 2001, in which case the provisions of subparagraph (9) above, shall apply in the same manner as prior to the 1st July 2001.

Carry Forward of Income Tax Loss.

4.(1) For the purpose of ascertaining the profits and gains of any person at the date of commencement of this Act any loss computed in accordance with the provisions of the Previous Act which was available to the company at the date it ceased to be liable to tax under that Act shall be available for carry forward or set off under this Act.

(2) Section 20(3) shall apply as if this Act were in force at the time of the earlier of the change in ownership of the company and the major change in the nature of the trade of the company.

Write back of Provisions.

5.(1) Where in any year of taxation or accounting period a person chargeable to taxation includes in the computation of his profits or gains the writing back of a provision made prior to the commencement of this Act and

(a) the Commissioner for Income Tax in making the assessment based on the year in which the provision was made, accepted the provision as an allowable deduction in computing the profits or gains of the company for that year, or

(b) in the case of a company which was exempt from tax in accordance with the provisions of the Companies (Taxation and Exemptions) Act, the Commissioner is satisfied that the provision would have been an allowable deduction in computing the profits or gains of the company for the purpose of the previous Act if it had been liable to Income Tax;

the tax payable for the year of taxation or accounting period shall be reduced by an amount up to the difference between the tax which would be due on –

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(a) the profits and gains for the year of taxation or accounting period including the amount written back;

(b) the profits and gains for the year of taxation or accounting period excluding the amount written back;

as reduced by the difference between-

(a) the tax charged in the year or years of assessment in which the amount of the provision now being written back was created; and

(b) the amount of tax which would have been charged for the year or years of assessment in which the provision now being written back was created had no allowance been made for the provision or provisions.

(2) For the purpose of subparagraph (1) the matching of provisions to write backs shall be on a first in first out basis.

Designations, Appointments, etc.

6.(1) For the purposes of-

Section 2(1), 2(3) and 2(4);
Section 3(5);
Section 4(1);
Section 50(1);
Section 57(6);
Section 62(1);
Schedule 2, Paragraph 1(2); and
Schedule 2, Paragraph 2(1)

of this Act any designation, appointment, delegation, authorisation or similar act under-

Section 3(1), 3(2) and 3(3);
Section 4(5);
Section 4A(1);
Section 53(1);
Section 65(6);
Section 88(1);
Schedule 1, Paragraph 1 (2); and
Schedule 1, Paragraph 2

of the Previous Act shall be deemed to have been made under this Act and shall therefore continue.

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(2) A declaration by a Member of the Tribunal or clerk or deputy clerk to the Tribunal under Schedule 1, Paragraph 4 of the Previous Act shall be deemed to have been made under Schedule 2, Paragraph 4 of this Act and shall, therefore, continue to be binding.

(3) For the purposes of-

Section 50;
Section 51;
Section 52;
Section 57(5) and 57(6); and
Section 62

of the Act any tax due and unpaid who is subject to collection in accordance with the above sections and which has arisen under the Previous Act shall be deemed to have arisen under this Act and shall remain collectable by means of the corresponding sections of this Act.

Information Requests.

7. Section 6 shall not apply to information or documentation relevant to a liability under the Previous Act other than where in enquiring into liability under this Act the Commissioner discovers an activity or pattern of behaviour which results in a loss of tax and he believes that the activity or pattern of behaviour is part of a series of activities or a continuous pattern of behaviour which would imply a loss of tax under the Previous Act, in such a case Section 6 to 9 shall apply as if the tax potentially lost under the Previous Act was tax lost under this Act.

8. *Not used.*

Advances not satisfied by dividends.

9. Where there has been an advance, loan or payment which has been deemed to be income as if a dividend had been paid in accordance with section 15 of the Previous Act any balance of the deemed dividend which has not been satisfied by the payment of a dividend set off in accordance with section 15(2) of the Previous Act shall at the commencement of this Act be available for the purposes of giving relief under Section 22(2) of this Act.

10. *Deleted*

Liquidation, etc.

11. For the purpose of section 52(2) “any sum due under the Act” shall include any sum due under the Previous Act.

The Surcharge/Penalties.

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12. (1) Any taxation which is imposed under the Previous Act and becomes due after the commencement of this Act shall, if unpaid, be subject to section 64 of this Act.

(2) Subject to subparagraphs (3) and (4), in the event that any tax arising under the Previous Act is tax which would be subject to section 66 if it were tax arising under this Act is unpaid at the date of commencement of this Act, section 66 will apply to the tax.

(3) Notwithstanding any other provisions of this Act, no person shall be liable to a penalty under this Act in respect of any act or omission which is prior to 1 July 2012.

(4) For the avoidance of doubt, subparagraph (3) does not apply to the surcharge on late payment under section 64.

(5) For the purposes of subparagraph (3) above, if a failure to act continues beyond 1 July 2012, it shall be considered to have taken place on 1 July 2012 for the purposes of the imposition of any penalty under this Act.

PART III

CONTINUITY OF THE LAW

Continuity of the law.

13. The repeal of provisions and their enactment in a rewritten form in this Act does not affect the continuity of the law.

Changes in the law.

14. Paragraph 13 does not apply to any change in the law made by this Act.

Subordinate legislation.

15. Any subordinate legislation or other thing which-

(a) has been made or done, or has effect as if made or done, under or for the purposes of a repealed provision, and

(b) is in force or effective immediately before the commencement of the corresponding rewritten provision,

has effect after that commencement as if made or done under or for the purposes of the rewritten provision.

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References to re-written provisions.

16. Any reference (express or implied) in any enactment, instrument or document to–

(a) a rewritten provision, or

(b) things done or falling to be done under or for the purpose of a rewritten provision,

is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding repealed provision had effect, a reference to the repealed provision or (as the case may be) things done or falling to be done under or for the purposes of the repealed provision.

Reference to repealed provisions.

17. Any reference (express or implied) in any enactment, instrument or document to-

(a) a repealed provision, or

(b) things done or falling to be done under or for the purposes of a repealed provision,

is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding rewritten provision has effect, a reference to the rewritten provision or (as the case may be) things done or falling to be done under or for the purposes of the rewritten provision.

Interpretation and General Clauses Act.

18. Paragraphs 13 to 16 have effect instead of section 17 of the Interpretation and General Clauses Act (but are without prejudice to any other provision of that Act).

Application paragraphs 17 and 18.

20. Paragraphs 16 and 17 apply only in so far as the context permits.

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Schedule 10

Section 39

TABLE

PAYMENTS ON ACCOUNT

Accounting period end:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Accounts to be filed by:	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1st payment for accounting period	28 FEB	30 SEP	30 SEP	30 SEP	30 SEP	30 SEP	30 SEP	30 SEP	28 FEB	28 FEB	28 FEB	28 FEB

Payment date													
30 September 2015	Base period:	31/01/14	28/02/14	31/03/14	30/04/14	31/05/14	30/06/14	31/07/14	31/08/14	30/09/13	31/10/13	30/11/13	31/12/13
	Allocated to:	2016	2016	2016	2016	2016	2016	2016	2016	2015	2015	2015	2015
28 February 2016	Base period:	31/01/15	28/02/14	31/03/14	30/04/14	31/05/14	30/06/14	31/07/14	31/08/14	30/09/14	31/10/14	30/11/14	31/12/14
	Allocated to:	2017	2016	2016	2016	2016	2016	2016	2016	2016	2016	2016	2016
30 September 2016	Base period:	31/01/15	28/02/15	31/03/15	30/04/15	31/05/15	30/06/15	31/07/15	31/08/15	30/09/14	31/10/14	30/11/14	31/12/14
	Allocated to:	2017	2017	2017	2017	2017	2017	2017	2017	2016	2016	2016	2016
28 February 2017	Base period:	31/01/16	28/02/15	31/03/15	30/04/15	31/05/15	30/06/15	31/07/15	31/08/15	30/09/15	31/10/15	30/11/15	31/12/15
	Allocated to:	2018	2017	2017	2017	2017	2017	2017	2017	2017	2017	2017	2017
30 September 2017	Base period:	31/01/16	28/02/16	31/03/16	30/04/16	31/05/16	30/06/16	31/07/16	31/08/16	30/09/15	31/10/15	30/11/15	31/12/15
	Allocated to:	2018	2018	2018	2018	2018	2018	2018	2018	2017	2017	2017	2017
28 February 2018	Base period:	31/01/17	28/02/16	31/03/16	30/04/16	31/05/16	30/06/16	31/07/16	31/08/16	30/09/16	31/10/16	30/11/16	31/12/16
	Allocated to:	2019	2018	2018	2018	2018	2018	2018	2018	2018	2018	2018	2018
30 September 2018	Base period:	31/01/17	28/02/17	31/03/17	30/04/17	31/05/17	30/06/17	31/07/17	31/08/17	30/09/16	31/10/16	30/11/16	31/12/16
	Allocated to:	2019	2019	2019	2019	2019	2019	2019	2019	2018	2018	2018	2018
28 February 2019	Base period:	31/01/18	28/02/17	31/03/17	30/04/17	31/05/17	30/06/17	31/07/17	31/08/17	30/09/17	31/10/17	30/11/17	31/12/17
	Allocated to:	2020	2019	2019	2019	2019	2019	2019	2019	2019	2019	2019	2019
30 September 2019	Base period:	31/01/18	28/02/18	31/03/18	30/04/18	31/05/18	30/06/18	31/07/18	31/08/18	30/09/17	31/10/17	30/11/17	31/12/17
	Allocated to:	2020	2020	2020	2020	2020	2020	2020	2020	2019	2019	2019	2019
28 February 2020	Base period:	31/01/19	28/02/18	31/03/18	30/04/18	31/05/18	30/06/18	31/07/18	31/08/18	30/09/18	31/10/18	30/11/18	31/12/18
	Allocated to:	2021	2020	2020	2020	2020	2020	2020	2020	2020	2020	2020	2020

Basis period: The accounting period on which the payment is based. Payments are calculated at the applicable rate of tax on 50% of the taxable profits arising in the accounting periods indicated.

Allocated to: The accounting period for which the payment is made towards.

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TABLE

PAYMENTS ON ACCOUNT

Accounting period end:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Accounts to be filed by:	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1st payment for accounting period	28 FEB	30 SEP	30 SEP	30 SEP	30 SEP	30 SEP	30 SEP	30 SEP	28 FEB	28 FEB	28 FEB	28 FEB

Payment date													
30 September 2015	Basis period:	31/01/14	28/02/14	31/03/14	30/04/14	31/05/14	30/06/14	31/07/14	31/08/14	30/09/13	31/10/13	30/11/13	31/12/13
	Allocated to:	*2016*	*2016*	*2016*	*2016*	*2016*	*2016*	*2016*	*2016*	*2015*	*2015*	*2015*	*2015*
28 February 2016	Basis period:	31/01/15	28/02/14	31/03/14	30/04/14	31/05/14	30/06/14	31/07/14	31/08/14	30/09/14	31/10/14	30/11/14	31/12/14
	Allocated to:	*2017*	*2016*	*2016*	*2016*	*2016*	*2016*	*2016*	*2016*	*2016*	*2016*	*2016*	*2016*
30 September 2016	Basis period:	31/01/15	28/02/15	31/03/15	30/04/15	31/05/15	30/06/15	31/07/15	31/08/15	30/09/14	31/10/14	30/11/14	31/12/14
	Allocated to:	*2017*	*2017*	*2017*	*2017*	*2017*	*2017*	*2017*	*2017*	*2016*	*2016*	*2016*	*2016*
28 February 2017	Basis period:	31/01/16	28/02/15	31/03/15	30/04/15	31/05/15	30/06/15	31/07/15	31/08/15	30/09/15	31/10/15	30/11/15	31/12/15
	Allocated to:	*2018*	*2017*	*2017*	*2017*	*2017*	*2017*	*2017*	*2017*	*2017*	*2017*	*2017*	*2017*
30 September 2017	Basis period:	31/01/16	28/02/16	31/03/16	30/04/16	31/05/16	30/06/16	31/07/16	31/08/16	30/09/15	31/10/15	30/11/15	31/12/15
	Allocated to:	*2018*	*2018*	*2018*	*2018*	*2018*	*2018*	*2018*	*2018*	*2017*	*2017*	*2017*	*2017*
28 February 2018	Basis period:	31/01/17	28/02/16	31/03/16	30/04/16	31/05/16	30/06/16	31/07/16	31/08/16	30/09/16	31/10/16	30/11/16	31/12/16
	Allocated to:	*2019*	*2018*	*2018*	*2018*	*2018*	*2018*	*2018*	*2018*	*2018*	*2018*	*2018*	*2018*
30 September 2018	Basis period:	31/01/17	28/02/17	31/03/17	30/04/17	31/05/17	30/06/17	31/07/17	31/08/17	30/09/16	31/10/16	30/11/16	31/12/16
	Allocated to:	*2019*	*2019*	*2019*	*2019*	*2019*	*2019*	*2019*	*2019*	*2018*	*2018*	*2018*	*2018*
28 February 2019	Basis period:	31/01/18	28/02/17	31/03/17	30/04/17	31/05/17	30/06/17	31/07/17	31/08/17	30/09/17	31/10/17	30/11/17	31/12/17
	Allocated to:	*2020*	*2019*	*2019*	*2019*	*2019*	*2019*	*2019*	*2019*	*2019*	*2019*	*2019*	*2019*
30 September 2019	Basis period:	31/01/18	28/02/18	31/03/18	30/04/18	31/05/18	30/06/18	31/07/18	31/08/18	30/09/17	31/10/17	30/11/17	31/12/17
	Allocated to:	*2020*	*2020*	*2020*	*2020*	*2020*	*2020*	*2020*	*2020*	*2019*	*2019*	*2019*	*2019*
28 February 2020	Basis period:	31/01/19	28/02/18	31/03/18	30/04/18	31/05/18	30/06/18	31/07/18	31/08/18	30/09/18	31/10/18	30/11/18	31/12/18
	Allocated to:	*2021*	*2020*	*2020*	*2020*	*2020*	*2020*	*2020*	*2020*	*2020*	*2020*	*2020*	*2020*

Basis period: The accounting period on which the payment is based. Payments are calculated at the applicable rate of tax on 50% of the taxable profits arising in the accounting periods indicated.

Allocated to: The accounting period for which the payment is made towards.

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SCHEDULE 11

REPORTABLE CROSS-BORDER ARRANGEMENTS: HALLMARKS

Section 10ZE(1)

1. An arrangement which may have the effect of undermining the reporting obligation under the laws implementing agreements on the automatic exchange of Financial Account information or which takes advantage of the absence of such legislation or agreements. Such arrangements include at least the following:

(a) the use of an account, product or investment that is not, or purports not to be, a Financial Account, but has features that are substantially similar to those of a Financial Account;

(b) the transfer of Financial Accounts or assets to, or the use of jurisdictions that are not bound by the automatic exchange of Financial Account information with the State of residence of the relevant taxpayer;

(c) the reclassification of income and capital into products or payments that are not subject to the automatic exchange of Financial Account information;

(d) the transfer or conversion of a Financial Institution or a Financial Account or the assets therein into a Financial Institution or a Financial Account or assets not subject to reporting under the automatic exchange of Financial Account information;

(e) the use of legal entities, arrangements or structures that eliminate or purport to eliminate reporting of one or more Account Holders or Controlling Persons under the automatic exchange of Financial Account information;

(f) arrangements that undermine, or exploit weaknesses in, the due diligence procedures used by Financial Institutions to comply with their obligations to report Financial Account information, including the use of jurisdictions with inadequate or weak regimes of enforcement of anti-money-laundering legislation or with weak transparency requirements for legal persons or legal arrangements.

2. An arrangement involving a non-transparent legal or beneficial ownership chain with the use of persons, legal arrangements or structures:

(a) that do not carry on a substantive economic activity supported by adequate staff, equipment, assets and premises; and

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(b) that are incorporated, managed, resident, controlled or established in any jurisdiction other than the jurisdiction of residence of one or more of the beneficial owners of the assets held by such persons, legal arrangements or structures; and

(c) where the beneficial owners of such persons, legal arrangements or structures are made unidentifiable.

For the purposes of this sub-paragraph, the terms "beneficial ownership" or "beneficial owner" shall be interpreted in a manner consistent with the latest Financial Action Task Force Recommendations and shall include any natural person who exercises control over a legal person or legal arrangement. In the case of a trust, such term means any settlor, trustee, protector (if any), beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions.

In this Schedule, any capitalised term has the meaning given in Section VIII of the Common Reporting Standard set out in Schedule 4 to the International Co-operation (Improvement of International Tax Compliance) Regulations 2016.

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SCHEDULE 12

INTERNATIONAL AGREEMENTS

Section 3A

The Table in this Schedule sets out the following information–

(a) in column 1, the name of each of the countries, territories or international organisations with which the International Agreement is concluded;

(b) in column 2, the date of the International Agreement;

(c) in column 3, the date opposite the name of the country or territory is the operative date for the application of the International Agreement with that country or territory; and

(d) in column 4, the references set out opposite the name of the country or territory correspond to the number and date of the Legal Notice in the Gazette in which the International Agreement concluded with that country or territory is published.

Column 1	**Column 2**	**Column 3**	**Column 4**
United Kingdom	Signed in London on 1 October 2019 and in Gibraltar on 15 October 2019	24 March 2020	LN 127 of 2020, published on 23rd March 2020
Spain	4 March 2019	26 February 2021	LN 157 of 2021, published on 26th February 2021

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SCHEDULE 13

SPECIAL ASSISTANCE PAYMENT

1. A payment qualifies as a "special assistance payment" if–

(a) it is paid in the tax year commencing on 1 July 2023 and ending on 30 June 2024; and

(b) where it is paid to a public sector worker, it falls within paragraph 2; or

(c) where it is paid to an employee that is not a public sector worker, it falls within paragraph 3.

2. The special assistance payment in respect of a public sector worker is–

(a) £1,200 where a worker is in receipt of a basic pay that is under £50,000;

(b) £900 where a worker is in receipt of a basic pay that is between £50,000 and £75,000 (both figures inclusive);

(c) £600 where a worker is in receipt of a basic pay that is over £75,000 and not more than £100,000.

3.(1) The special assistance payment in respect of an employee that is not a public sector worker is–

(a) £1,200 where an employee is in receipt of a basic pay that is under £50,000;

(b) £900 where an employee is in receipt of a basic pay that is between £50,000 and £75,000 (both figures inclusive);

(c) £600 where an employee is in receipt of a basic pay that is over £75,000 and not more than £100,000.

(2) A payment made in accordance with subparagraph (1) must be excluded from the statement made by the employer on the form required under regulation 10 of the Income Tax (Pay As You Earn) Regulations, 1989.

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