

Rules made under s.98(1).

**INCOME TAX (QUALIFYING COMPANIES) RULES****Revoked by LN. 2004/125 as from 31.12.2004****(LN. 1983/080)****22.11.1984**

	Amending enactments	Relevant current provisions	Commencement date
LN.	1990/138	r.12(3)	1.1.1989
	1999/078	rr. 3(1)(a)(ii), (1)(c), (1)(d)(ii) and (1)(e)(ii), 4(1), (1)(a), (1)(b) and (2), 5(1)(a) and (b), 6(1) and (2), 7(3), 8(1), 10, 11(1), (2) and 12(1)(2)	1.11.1999

**ARRANGEMENT OF RULES**

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**1952-11**

**Revoked**

**Subsidiary**

**1983/080**

## Income Tax

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**INCOME TAX (QUALIFYING COMPANIES) RULES.**

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**INCOME TAX (QUALIFYING COMPANIES) RULES.****Title.**

1. These Rules may be cited as the Income Tax (Qualifying Companies) Rules.

**Interpretation.**

2. (1) In these Rules, unless the context otherwise requires—

“bearer certificates or coupons” means certificates of title to securities and coupons representing dividends or interest on a security, which are transferable by delivery with or without endorsement;

“share” means a share in the share capital of a company, and also means stock except where a distinction between stock and shares is expressed or implied.

(2) In these Rules, “exempt company”, “Gibraltarian” and “resident of Gibraltar” have the same meanings as they have in section 2(1) of the Companies (Taxation and Concessions) Ordinance.

(3) For the purposes of these Rules, a person shall be deemed to be interested in a share, loan or debenture if—

(a) he holds any interest therein (other than as a bare nominee or trustee thereof) either directly or indirectly or through a company or series of companies, and whether such interest is equitable, legal or contractual; or

(b) by reason of any agreement or arrangement with any other person he has the right to acquire an interest therein as herein defined or the power to enjoy a dividend or other benefit thereof.

(4) Notwithstanding subrule (3), a person shall not be deemed to be interested in a share, loan or debenture by reason of his holding the same or any interest therein acting in a representative or fiduciary capacity only, even though he may be entitled to remuneration for so acting or may have a charge or lien thereon for such remuneration.

**Requirements for qualifying certificates.**

3. (1) The prescribed requirements to be complied with by a company for the purposes of section 41(1) of the Ordinance are as follows:

(a) the company has a paid up share capital of—

(i) not less than £1,000; or

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- (ii) where the share capital is expressed in any other currency, not less than an amount in that currency that is, on the date of receipt by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette of the application for the grant of a qualifying certificate, equivalent to £1,000 at the ruling rate of exchange in the London foreign exchange market;
- (b) the company has appointed an auditor who complies with rule 7;
- (c) the company does not, without the approval of the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette, carry on or transact any trade or business in Gibraltar, except trade or business all receipts and income whereof arise in the ordinary course thereof either companies or exempt companies or non-resident persons, and originate From persons other than Gibraltarians or residents of Gibraltar;

Provided that the company may in Gibraltar, buy, sell, deal in, or hold and manage investments and property outside Gibraltar, or shares or debentures or other interests in other qualifying companies or exempt companies or debts or other choses in action owed or created by or enforceable against persons other than Gibraltarians or residents of Gibraltar, and may in Gibraltar promote services to be performed for other qualifying companies or exempt companies or services to be performed outside Gibraltar by and for persons other than Gibraltarians or residents of Gibraltar, without contravening this requirement;

- (d) no Gibraltarian and no resident of Gibraltar is interested in any of the share of the company other than as a shareholder in a public company–
  - (i) which is registered under a law of a country other than Gibraltar relating to the registration or incorporation of bodies corporate; and
  - (ii) the shares of which are quoted in a manner approved by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister

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with responsibility for Trade and Industry may from time to time designate by notice in the Gazette;

- (e) the company—
    - (i) where it is not registered under Part IX of the Companies Ordinance, does not keep and is prohibited by its memorandum or articles of association from keeping any register of shares outside Gibraltar; and
    - (ii) where it is registered under Part IX of that Ordinance, and is not a public company whose shares are quoted in a manner approved by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette, keeps in Gibraltar a certified true copy of every share register kept by the company outside Gibraltar;
  - (f) the company has deposited the sum of £1,000 with the Accountant General as security against future income tax; and
  - (g) the company has paid a fee of £250 for a qualifying certificate.
- (2) For the purposes of subrule (1) (c)—
- (a) the holding and managing of investments or property shall be treated as trade or business; and
  - (b) income shall be deemed to arise in the ordinary course of business outside Gibraltar, if its receipt arises, is derived from, or is otherwise in connection with—
    - (i) the buying, selling, dealing in, holding or management of investments and property outside Gibraltar or shares or debentures or other interests in other companies which are non-resident persons;
    - (ii) debts owed by or other choses in action enforceable against non-resident persons other than Gibraltarians; or
    - (iii) the performance of services in Gibraltar for non-resident persons and the performance of services outside Gibraltar for non-resident persons other than Gibraltarians.

### **Restrictions on transactions in shares of qualifying company.**

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4. (1) Where a qualifying company is not a public company whose shares are quoted in a manner approved by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette—

- (a) the company shall not without the approval of the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette allot or issue any of its shares; and
- (b) no person holding any shares in the company or any interest therein shall transfer or attempt to transfer or sell or enter into any legally binding commitment to sell such shares without first submitting to the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette such particulars as he may require in respect of the proposed transferee or purchaser or beneficiary of the shares or interest therein, and obtaining the approval in writing of the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette for the proposed transaction—

but in the case of a company—

- (i) the shares of which are registered in the names of trustees; and
- (ii) which does not in the course of its trade or business accept deposits of money or other assets from the public or from any section of the public—

nothing in this subrule shall apply to the acquisition by transfer or sale or any other means) of an interest by a new or substituted beneficiary under the trust administered by those trustees unless the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette in any particular case so directs where he is apprehensive that a person has acquired or is about to acquire an interest, being a person who would not have been acceptable to the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette as a shareholder on the application

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by the company under section 41 of the Ordinance for registration as a qualifying company.

(2) Unless otherwise directed by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette, where a qualifying company is a public company whose shares are quoted in a manner approved by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette, no person shall issue any share or register the transfer of any share unless there is delivered to the person issuing the share or registering the transfer a statutory declaration signed by the allottee or transferee of the share stating that no Gibraltar or resident of Gibraltar thereby acquires an interest in the share or transfer.

**Issue of bearer certificates and coupons by qualifying company.**

5. (1) Any qualifying company, not being a public company registered under the Companies Ordinance, may issue bearer certificates or coupons or convert its share capital to bearer certificates provided that—

- (a) the bearer certificates and coupons remain deposited in Gibraltar or elsewhere with a bank on behalf of the persons approved by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette as shareholders; and
- (b) no other person has any interest in any such shares except as may be approved in writing by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette.

(2) Except as provided in subrule (1), no qualifying company may issue bearer certificates or coupons or convert its share capital to bearer certificates.

**Banks not to part with possession of bearer certificates and coupons without permission.**

6. (1) A bank shall not part with possession of bearer certificates or coupons deposited with it under rule 5 without the prior permission in writing of the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette which may be either general or special to any particular case.

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(2) Except with the permission of the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette, a bank shall not do any act whereby it recognizes or gives effect to the substitution of one person for another as the person from whom it receives instructions in relation to a certificate of title or coupon, unless there is produced to it reliable evidence that it is not by so doing giving effect to any transaction which is prohibited by these Rules.

(3) A bank which contravenes the provisions of this rule is guilty of an offence.

#### **Auditors.**

7. (1) A person or firm shall not be qualified for appointment as auditor of a qualifying company unless he or it is approved by the Governor for the purposes of this rule and is a member or is a firm whose partners are members of a body of accountants established in the United Kingdom and for the time being recognized for the purposes of the Companies Acts by the Department of Trade or other competent authority.

(2) The auditor shall, before the 30th day of September in every year, submit to the Commissioner of Income Tax, a list of the full names of any resident of Gibraltar who has, during the period of a year ending on the 30th day of June, made any loan to the company and of the full name of any person other than a resident of Gibraltar who has, during the period of a year ending on the 30th day of June, made any loan to the company secured upon any immovable property situate in Gibraltar, and shall further give the following particulars in respect of any such loan, that is to say, the date and the amount thereof, and of any repayment or partial repayment thereof, the rate of interest and the date when due and when paid with the amount of each payment.

(3) The auditor of a qualifying company, being a public company whose shares are quoted in a manner approved by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette under rule 3(1)(d), shall before the 30th day of September in every year submit a certificate to the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette containing a statement that the provisions of rule 4(2) have been complied with.

#### **Secrecy.**



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8. (1) Subject to the provisions of this rule, and without prejudice to the provisions of section 4 of the Ordinance, the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette and every person having any official duty in the administration of these Rules shall regard and deal with all documents, information and declarations relating to the identity of the beneficial owners or persons interested in any shares or bearer certificates or coupons issued under the provisions of these Rules as secret and confidential.

(2) A person having possession of or control over any document, information or declaration relating to the identity of the beneficial owners of or persons interested in any shares, or bearer certificates or coupons issued under the provisions of these Rules (other than the person or all the persons to whose identity the document, information or declaration relates or some person thereunto authorized by him or them) who at any time communicates or attempts to communicate such information or anything contained in any such document or declaration to any person, otherwise than for the purposes of these Rules or the Ordinance or the Estate Duties Ordinance or the Exchange Control Ordinance or for the purposes of any criminal or civil proceedings in which such shares or bearer certificates or coupons are material, is guilty of an offence.

(3) No person employed in carrying out the provisions of these Rules shall be required to produce in any court or before any authority or person for any purpose whatsoever any document or declaration made in pursuance of section 41 of the Ordinance or these Rules, or to divulge or communicate to any court any matter or thing coming to his notice in the performance of his duties under that section or these Rules, except as may be necessary for the purpose of carrying into effect the provisions of these Rules or the Ordinance or the Estate Duties Ordinance or the Exchange Control Ordinance or for the purposes of any criminal or civil proceedings in which such document, declaration, matter or thing is material.

**Restrictions to be observed by qualifying company.**

9. Subject to rule 11, the prescribed requirements for the purposes of section 41(3) of the Ordinance shall be that—

- (a) the company continues to comply with the requirements prescribed in rule 3;
- (b) the company does not alter its memorandum or articles of association without the prior consent in writing of the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for

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- (c) the company does not make or give effect (by registration or otherwise) to any dealing or purported dealing with its shares contrary to rule 4, and rule 5(2) is not contravened in respect of the company;
- (d) the company does not make default in payment of any income tax payable by it after the day on which such tax has under the Ordinance become payable; and
- (e) neither the company nor any of its directors nor (except in the case of a public company) any of its shareholders is convicted of an offence against rule 13.

#### **Notification on cessation of qualification.**

10. If a company, under section 41(3) of the Ordinance or rule 9 of these Rules, ceases to be a qualifying company the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette shall notify the company in writing, setting out the reasons for such cessation.

#### **Consequences of failure to comply with rules.**

11. (1) In case of any failure by or in respect of a qualifying company to comply with rule 3(1) (a) to (g), 7(2) or (3) or 9 (a) to (d), the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette on the application by the company may in his discretion certify that the failure to comply was excusable and made or allowed, without intent to defeat the provisions of section 41 of the Ordinance or these Rules, and if the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette so certifies the qualifying company shall not cease to be a qualifying company by reason only of that failure to comply.

(2) If the default was the failure to pay any income tax, the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette shall not certify in accordance with the provisions of subrule (1) unless—

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- (a) a sum of £25 is paid to the Accountant General in respect of the expenses of such certification; and
  
- (b) all arrears of income tax are paid.

**Residence for purposes of rules and exemptions.**

12. (1) The Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette may by order declare that any person registered as a Gibraltarian under the Gibraltarian Status Ordinance or a person entitled to be so registered under that Ordinance, shall not, for the purposes of these Rules be treated as a Gibraltarian.

(2) The Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette may by order declare that any person ordinarily resident in Gibraltar for the purposes of the Ordinance shall not, for the purposes of these Rules, be treated as resident or ordinarily resident in Gibraltar.

(3) The the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette may by order declare that any company incorporated or registered under the Companies Ordinance shall not for the purpose of these rule be treated as resident or having a permanent place of business in Gibraltar.

**Offence of giving incorrect information.**

13. A person who without reasonable excuse gives any incorrect information, such information being required of him for the purpose of obtaining qualification for a company or otherwise carrying section 41 of the Ordinance or these Rules into effect, is guilty of an offence.